

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Rafael Ongkeko

ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonegroup.com
JENNIFER L. CONNOR (SBN 241480)
jennifer@counselonegroup.com
COUNSELONE, PC
9301 Wilshire Boulevard, Suite 650
Beverly Hills, California 90210
Telephone: (310) 277-9945
Facsimile: (424) 277-3727

Attorneys for Plaintiff Karen Castillo and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

KAREN CASTILLO, individually, and on
behalf of other aggrieved employees pursuant to
the California Private Attorneys General Act,

Plaintiff,

v.

PATRIOT HYUNDAI OF EL MONTE LLC, a
California limited liability company; and DOES
1 through 100,

Defendants.

Case No.: **21STCV09670**

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code § 2698, *et seq.*)

UNLIMITED CIVIL CASE

Plaintiff KAREN CASTILLO (“Plaintiff”) on behalf of the people of the State of California and as an “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorneys General Act of 2004, section 2698, *et seq.* (“PAGA”) complains of defendant PATRIOT HYUNDAI OF EL MONTE LLC, a California limited liability company; and DOES 1 through 100 (collectively, “Defendants”) and each of them, as follows:

I. INTRODUCTION

1. This is a representative action brought pursuant to Labor Code section 2699, *et seq.*, on behalf of the State of California and on behalf of aggrieved employees as follows: ***All***

1 *current and former non-exempt employees paid, in whole or part, on a commission basis who*
2 *worked for Defendants, and/or their predecessor or merged entities, within the State of*
3 *California within the longest applicable limitations period* (the “Aggrieved Employees”).

4 2. Throughout the time period involved in this case, Defendants willfully maintained
5 a policy and/or practice of failing to pay all wages, including commissions and minimum wages;
6 failing to pay all overtime wages; failing to provide timely duty-free meal periods; failing to
7 authorize and permit duty-free rest breaks; failing to reimburse for business expenses; failing to
8 maintain and provide accurate itemized wage statements; and failing to pay all wages owed
9 timely and upon separation of employment. Defendants’ illegal conduct has given rise to claims
10 for violation of the Private Attorneys General Act of 2004 (“PAGA”).

11 3. Plaintiff, on behalf of herself and Aggrieved Employees, brings this representative
12 action against Defendants to recover penalties owed pursuant to Labor Code section 2699.
13 Plaintiff was compelled to retain the services of counsel to file this action to protect her interests
14 and those of Aggrieved Employees and has thereby incurred attorneys’ fees and costs, which she
15 is entitled to recover under Labor Code section 2699.

16 **II. JURISDICTION**

17 4. This Court has subject matter jurisdiction over any and all causes of action
18 asserted herein pursuant to Article VI, section 10 of the California Constitution and California
19 Code of Civil Procedure section 410.10 by virtue of the fact that this is a civil action in which
20 the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of
21 action asserted arises under the laws of the State of California or is subject to adjudication in the
22 courts of the State of California.

23 5. This Court has personal jurisdiction over Defendants because they have caused
24 injuries in Los Angeles County, and the State of California through their acts and by their
25 violation of the California Labor Code and California state common law. Defendants also transact
26 business throughout California and have obtained the benefits of the laws of the United States
27 and the State of California and are therefore subject to the personal jurisdiction of this Court.
28 Defendants transact at least \$500,000 dollars of business within the State of California.

1 **III. VENUE**

2 6. Venue as to each defendant is proper in this judicial district, pursuant to Code of
3 Civil Procedure section 395. Defendants operate within California and do business within Los
4 Angeles County.

5 **IV. PARTIES**

6 7. At all relevant times herein, Defendants employed Plaintiff as a non-exempt
7 employee paid, in whole or part, on a commission basis, from March 2020 through June 2020,
8 and subjected her to the same employment policies and practices that affected Aggrieved
9 Employees.

10 8. Plaintiff represents the State of California as well as Aggrieved Employees.

11 9. Plaintiff and Aggrieved Employees at all times pertinent hereto are or were
12 employees of Defendants during the statutory time period ("PAGA period").

13 10. Upon information and belief, Plaintiff and Aggrieved Employees are covered by
14 California Industrial Welfare Commission ("IWC") Occupational Wage Order No(s). 4-2001
15 and/or 7-2001.

16 11. Defendants own and operate an automobile dealership in El Monte, California.

17 12. Plaintiff is informed and believes, and based thereon alleges, that Defendants do
18 business in the State of California and, at all times hereinafter mentioned, were and are employers
19 as defined in and subject to the Labor Code and IWC Wage Orders, whose employees are
20 engaged throughout this county and the State of California. During the relevant period,
21 Defendants employed Plaintiff and Aggrieved Employees within the State of California.

22 13. The true names and capacities, whether individual, corporate, associate, or
23 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown
24 to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil
25 Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of
26 the defendants designated herein as DOE is legally responsible in some manner for the unlawful
27 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
28

1 true names and capacities of the defendants designated hereinafter as DOES when such identities
2 become known.

3 14. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
4 include DOES 1 through 100 identified herein.

5 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
6 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
7 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
8 Defendant are legally attributable to other Defendants. Plaintiff is further informed and believes
9 and based thereon alleges that Defendants are joint employers in that they employed Plaintiff and
10 Aggrieved Employees at the same time and were operating as a joint enterprise and single entity
11 at all relevant time periods.

12 16. California courts have recognized that the definition of “employer” for purposes
13 of enforcement of the California Labor Code goes beyond the concept of traditional employment
14 to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
15 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who
16 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
17 person to work or exercises control over the wages, hours, or working conditions of any person
18 may be liable for violations of the California Labor Code as to that person.

19 17. California law also permits and recognizes the piercing of a corporate veil
20 between sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App.
21 4th 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise
22 rule applies where “there are two or more personalities, there is but one enterprise; and that this
23 enterprise has been so handled that it should respond, as a whole, for the debts of certain
24 component elements of it.” *Hasso, supra*, 227 Cal. App. 4th at 155; *Greenspan, supra*, 191 Cal.
25 App. 4th at 512.

26 18. At all times throughout their employment, Plaintiff and Aggrieved Employees
27 were regularly and consistently subject to the common policies and practices utilized by
28 Defendants.

1 19. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and
2 Aggrieved Employees to perform services from which they benefitted. Moreover, the
3 aforementioned Defendants had the right to exercise control over the wages, hours, and/or
4 working conditions over Plaintiff and Aggrieved Employees at all relevant times herein, so as to
5 be considered joint employers. By reason of their status as joint employers, they are each liable
6 for civil penalties for violation of the California Labor Code as to Plaintiff and Aggrieved
7 Employees as set forth herein.

8 **V. REPRESENTATIVE ACTION ALLEGATIONS**

9 **Defendants Systematically Violated State Wage and Hour Laws**

10 20. Defendants employed approximately 100 individuals at their automobile
11 dealership in California during the PAGA period.

12 21. Plaintiff and Aggrieved Employees are, and were at all times pertinent hereto,
13 non-exempt employees paid, in whole or part, on a commission basis for the purposes of
14 minimum wages, overtime, rest breaks, meal periods, reimbursement of expenses, and the other
15 underlying claims alleged herein.

16 22. Labor Code section 510 requires an employer to compensate an employee who
17 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
18 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
19 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to
20 compensate employees at no less than twice the regular rate of pay when an employee works
21 more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day
22 of work.

23 23. During the relevant period, Defendants have had a policy and/or practice of failing
24 to pay overtime wages to Plaintiff and Aggrieved Employees for all overtime hours they worked.
25 The work times of Plaintiff and Aggrieved Employees have been, and continue to be, greater
26 than eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not
27 pay Plaintiff and Aggrieved Employees wages for, *inter alia*, hours that were worked off the
28 clock, including work performed during meal periods, as discussed and alleged *infra*, Plaintiff

1 and Aggrieved Employees were deprived wages at overtime premium amounts attributable to
2 overtime hours. Additionally, if there was any overtime paid to Plaintiff and Aggrieved
3 Employees, upon information and belief, Defendants did not properly include commissions
4 and/or other non-discretionary pay in determining the correct rate of overtime pay, thus depriving
5 Plaintiff and Aggrieved Employees of the full and proper amount of overtime pay due to them.

6 24. By their common policy and/or practice of requiring Plaintiff and Aggrieved
7 Employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a
8 workweek without compensating them at the applicable overtime rate of pay, Defendants
9 willfully violated the provisions of Labor Code sections 510 and 1198, as well as IWC Wage
10 Order Nos. 4-2001 and 7-2001.

11 25. Throughout the applicable period of time, Defendants did not pay Plaintiff and
12 Aggrieved Employees at least the California minimum wage for all hours worked. Labor Code
13 section 1197 states the California requirement that employees must be paid at least the minimum
14 wage fixed by the Commission, and any payment of less than the minimum wage is unlawful.
15 Similarly, Labor Code section 1194 entitles “any employee receiving less than the legal minimum
16 wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.”
17 The applicable IWC Wage Order(s) also obligate employers to pay each employee minimum
18 wages for all hours worked.

19 26. These minimum wage standards apply to each hour employees worked for which
20 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
21 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked,
22 paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*
23 (2005) 135 Cal. App. 4th 314, 324.

24 27. Labor Code section 1194.2 authorizes employees to recover wages to recover
25 liquidated damages for violations of Labor Code section 1194. Where an employee, like Plaintiff
26 and Aggrieved Employees, is not paid for all hours worked under Labor Code section 1194, the
27 employee may recover minimum wages and liquidated damages for the time for which he or she
28 received no compensation. *Sillah v. Command Int’l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp.

3d 891 (holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.) Since Defendants failed to provide Plaintiff and Aggrieved Employees with compensation for all hours worked, they are entitled to recover liquidated damages under Labor Code section 1194.2 through PAGA.

28. Labor Code section 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidated damages as follows: “(1) [f]or any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and Aggrieved Employees are entitled to recover for violations of Labor Code section 1197.1.

29. Plaintiff and Aggrieved Employees were paid based on commission pay plans that are the functional equivalent of the commission pay plan that was found to be unlawful in *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98. In *Stoneledge*, sales associates who worked for Ashley Furniture stores were paid on a commission pay plan, which guaranteed a minimum hourly rate as an advance against commissions earned in later pay periods. The *Stoneledge* court held the commission pay plan was unlawful because it failed to separately compensate sales associates for rest periods in weeks where the employees were paid on a commission basis. Because Defendants’ commission pay plans are the functional equivalent of the commission pay plan in *Vaquero v. Stoneledge Furniture*, Plaintiff and Aggrieved Employees are owed unpaid wages for rest periods for each workday in which they worked more than 3.5 hours, given Defendants’ failure to compensate Plaintiff and Aggrieved Employees separately for rest periods.

1 30. Defendants failed to fully compensate Plaintiff and Aggrieved Employees for
2 “non-productive” time (i.e., non-sales activity). Non-sales activity is compensable time. *See*,
3 *Stoneledge, supra; Balasanyan v. Nordstrom* (S.D. Cal. 2012) 913 F. Supp. 2d 1001.

4 31. Defendants knowingly, intentionally, and willfully failed and refused to pay
5 Plaintiff and Aggrieved Employees the full and complete amount of commissions and bonus
6 wages earned. Plaintiff and Aggrieved Employees entered into a commission contract with
7 Defendants for a specific percent of the commissionable base on each vehicle sold. Plaintiff and
8 Aggrieved Employees have met all lawful conditions precedent to the earning of commissions.
9 Nevertheless, Plaintiff and Aggrieved Employees did not receive any commissions on some of
10 the vehicles sold. Plaintiff and Aggrieved Employees are thus owed unpaid wages for
11 commissions that they are entitled to receive according to contractual terms of which Defendant
12 is in material breach.

13 32. Defendants failed to provide Plaintiff and Aggrieved Employees with timely duty-
14 free meal periods. Labor Code sections 226.7, 512, and IWC Wage Order Nos. 4-2001 and 7-
15 2001 require employers to provide employees with a thirty (30) minute uninterrupted and duty-
16 free meal period within the first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court*
17 (2012) 53 Cal. 4th 1004, 1042 (“Accordingly, first meal periods must start after no more than
18 five hours.”). Moreover, an employee who works more than ten (10) hours per day is entitled to
19 receive a second thirty- (30-) minute uninterrupted and duty-free meal period. *See*, Labor Code
20 § 512.

21 34. Defendants denied Plaintiff and Aggrieved Employees meal periods that comply
22 with Labor Code sections 226.7, 512, and IWC Wage Order Nos. 4-2001 and 7-2001. Plaintiff
23 and Aggrieved Employees suffered late, short, interrupted, and/or missed first and second meal
24 breaks.

25 35. Defendants were also obligated but failed to provide Plaintiff and Aggrieved
26 Employees with net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a
27 major fraction thereof worked as required by Labor Code section 226.7 and IWC Wage Order
28 Nos. 4-2001 and 7-2001. The California Supreme Court held, in *Augustus v. ABM Security*

1 *Services Inc.*, (2016) 2 Cal. 5th 257, that employees must be relieved of all duties during rest
2 periods pursuant to Labor Code section 226.7 and Subdivision 12(A) of Wage Order Nos. 4-2001
3 and 7-2001. The Court found that the Wage Orders and the Labor Code require employers to
4 “relinquish control over how employees spend their time” and “relieve employees of all duties”
5 during employees’ 10-minute rest periods. Plaintiff and Aggrieved Employees did not receive
6 timely and compliant rest breaks.

7 36. In addition to failing to authorize and permit compliant meal and rest periods,
8 Plaintiff and Aggrieved Employees were not compensated with one (1) hour’s worth of pay at
9 their regular rate of compensation when they were not provided with compliant meal and rest
10 periods in accordance with Labor Code section 226.7(b).

11 37. Plaintiff and Aggrieved Employees incurred necessary business expenses (e.g.,
12 purchase and use of personal cell phones) in discharging their duties. However, Defendants did
13 not pay fully, or at all, for these necessary business expenses incurred by Plaintiff and Aggrieved
14 Employees. Defendants violated Labor Code section 2802 by failing to pay and indemnify
15 Plaintiff and Aggrieved Employees for their necessary business expenditures and losses incurred
16 in direct consequence of the discharge of their duties.

17 38. Labor Code section 203 provides “if an employer willfully fails to pay...any
18 wages of an employee who is discharged or who quits, the wages of the employee shall continue
19 as a penalty...” for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal. App. 4th
20 487, 492.

21 39. Due to Defendants’ non-compliant policies and/or practices described herein,
22 Plaintiff and Aggrieved Employees whose employment with Defendants concluded were not
23 compensated for all straight-time and overtime hours worked, were not paid all commissions,
24 were not paid all meal and rest break premiums owed, and were not reimbursed for necessary
25 business expenses. Thus, Defendants have failed to pay Plaintiff and Aggrieved Employees all
26 wages owed, whose sums were certain, at the time of termination or within seventy-two (72)
27 hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in
28 violation of Labor Code section 203.

1 40. Labor Code section 204 expressly requires employers who pay employees on a
2 weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days
3 following the close of the payroll period.”

4 41. Due to Defendants’ failure to pay Plaintiff and Aggrieved Employees all
5 commissions, minimum and overtime wages, along with meal period and rest break premiums
6 and unreimbursed business expenses, as described above, Defendants failed to timely pay
7 employees within seven calendar days following the close of payroll in accordance with Labor
8 Code section 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC* (N.D.
9 Cal. May 2, 2016) No. 16-cv-00405-JST, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at
10 *3-5 (finding after *Ling v. P.F Chang’s China Bistro, Inc.* that a failure to pay rest period
11 premiums can support claims under Labor Code §§ 203 and 204).

12 42. Plaintiff and Aggrieved Employees were not furnished with accurate itemized
13 wage statements that accurately showed their gross wages earned, net wages earned, premium
14 payments for meal and rest breaks, all applicable hourly rates and corresponding number of hours
15 worked at each hourly rate in effect during their pay periods, and other information required by
16 Labor Code section 226(a).

17 43. As a result of Defendants’ violation of Labor Code section 226(a), Plaintiff and
18 Aggrieved Employees suffered injury because, among other things: (a) the violations hindered
19 them from determining the amounts of wages owed; (b) the violations caused them to have to
20 perform mathematical computations to determine the amounts of wages owed to them and made
21 it exponentially more difficult than if the wage statement contained the required accurate
22 information; and (c) the wage statements inaccurately understated the wages, hours, and wage
23 rates to which they were entitled.

24 44. In addition to Labor Code section 226(a), Defendants also knowingly and
25 intentionally failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage
26 statements in violation of Labor Code section 226(e). Defendants undeniably knew that they
27 were not providing Plaintiff and Aggrieved Employees with wage statements required by
28 California law. *See Garnett v. ADT LLC* (E.D. Cal. Oct. 6, 2015) 139 F. Supp. 1121, 1131

1 (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the
2 “[d]efendant knew that it was not providing total hours worked to plaintiff or other employees
3 paid on commission” even though it believed that employees paid solely on commission or
4 commission and salary “are exempt and therefore we do not record hours on a wage statement.”).

5 45. Plaintiff and Aggrieved Employees will prevail on their claim for PAGA penalties
6 under Labor Code section 226(a). *See Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 4th
7 773, 788 (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code
8 section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements
9 of section 226(e)(1).”); *Willner v. Manpower Inc.* (N.D. Cal. 2014) 35 F. Supp. 3d 1116, 1136
10 (To obtain judgment on a PAGA claim, “all [Plaintiffs] needs to establish is a violation of section
11 226(a), which she has done, as discussed above.”); *McKenzie v. Fed Exp. Corp.* (C.D. Cal. 2011)
12 765 F. Supp. 2d 1222, 1232 (holding that “for the purposes of recovering PAGA penalties, one
13 need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”);
14 *Aguirre v. Genesis Logistics* (C.D. Cal. July 3, 2013) 2013 U.S. Dist. LEXIS 189815, at *28
15 (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under
16 § 2699(f) of PAGA.”)

17 46. Following *Friant*, courts have found that employees can recover separate
18 penalties under PAGA for a defendant’s violations of Labor Code section 226(a) and (e). *See e.g.*
19 *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) 2017 U.S. Dist. LEXIS 204493, at *5
20 [finding after *Friant* that “[t]o the extent the Court’s Order [granting summary judgment to Home
21 Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’
22 derivative claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be
23 read to grant summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of
24 section 226(a).”)].

25 47. Further and in addition to the penalties outlined above, Labor Code section 226.3
26 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a
27 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an
28 initial violation and one thousand dollars (\$1,000) per employee for each violation in a

1 subsequent citation, for which the employer fails to provide the employee a wage deduction
2 statement or fails to keep the records required in subdivision (a) of Section 226.” As explained
3 in detail above, Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
4 itemized wage statements.

5 48. Accordingly, Plaintiff and Aggrieved Employees may also recover Labor Code
6 section 226.3 penalties for Defendants’ violations of Labor Code section 226(a). *See Finder v.*
7 *Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151,
8 at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a
9 PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073,
10 at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to perform
11 actions mandated by § 226(a) may trigger civil penalties.”).

12 49. Moreover, California Labor sections 1174(d) and 1174.5 require an employer to
13 keep, at a central location in the state or at the plants or establishments at which employees are
14 employed, payroll records showing the hours worked daily by the wages paid to employees
15 employed at the respective plants or establishments. These records shall be kept with rules
16 established for this purpose by the commission but in any case, shall be kept on file for not less
17 than three years. During the relevant time period, Defendants failed to keep accurate and
18 complete payroll records showing, *inter alia*, the actual hours worked daily and the wages earned
19 by Plaintiff and Aggrieved Employees, including earned and unpaid minimum, overtime,
20 commissions, and premium wages discussed herein.

21 **FIRST CAUSE OF ACTION**
22 **PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**
23 **Cal. Labor Code §§ 2698, *et seq.***
24 **[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]**

25 50. Plaintiff, on behalf of herself and Aggrieved Employees, re-alleges and
26 incorporates by reference all of the allegations contained in the previous paragraphs of this
27 Complaint as though fully set forth herein.

28 ///

///

1 51. Plaintiff, on behalf of herself and Aggrieved Employees, brings this representative
2 action against Defendants to recover wages and penalties pursuant to the Private Attorneys
3 General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*

4 52. Based on the above allegations incorporated by reference, Defendants have
5 violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5,
6 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, as well as IWC Wage Order Nos. 4-2001 and
7 7-2001.

8 53. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
9 section 2699, *et seq.* because of Defendants’ violations of Labor Code 201, 202, 203, 204, 210,
10 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, as
11 well as IWC Wage Order Nos. 4-2001 and 7-2001.

12 54. Under Labor Code sections 2699(f)(2) and 2699.5, Plaintiff and Aggrieved
13 Employees are entitled to penalties in an amount to be shown at the time of trial subject to the
14 following formula:

15 \$100 for the initial violation per employee per pay period; and

16 \$200 for each subsequent violation per employee per pay period.

17 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
18 Development Agency (LWDA) and twenty-five percent (25%) to the affected employees.

19 55. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
20 itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate
21 PAGA penalties for Defendants’ violations of Labor Code section 226(a) and (e). *Lopez v. Friant*
22 *& Assocs., LLC* (2017) 15 Cal. App. 5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec.
23 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after
24 *Friant* that “[t]o the extent the Court’s Order [granting summary judgment to *Home Depot*] was
25 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative
26 claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant
27 summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of section
28 226(a).”]). For violations of Labor Code section 226(a), Plaintiff seeks the default penalty

provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required records in subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and seek default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226(a).

56. Labor Code section 210 provides that “[i]n addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” As a result of the faulty compensation policies and/or practices, Plaintiff and Aggrieved Employees are also entitled to recover penalties under Labor Code section 210 through PAGA.

57. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.” Accordingly, through PAGA and to the extent permitted by law, Plaintiff and Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

58. Plaintiff has fully and completely exhausted her administrative remedies under PAGA prior to proceeding with the PAGA claim. On January 5, 2021, Plaintiff filed her PAGA

1 Notice online with the LWDA and sent a letter by certified mail to Defendant Patriot Hyundai of
2 El Monte LLC setting forth the facts and theories of the violations alleged against Defendants,
3 as prescribed by Labor Code section 2698, *et seq.* As required by PAGA, Plaintiff submitted the
4 \$75.00 filing fee with the LWDA. Pursuant to Labor Code section 2699.3(a)(2)(A), no notice
5 was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-
6 five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore entitled to
7 commence and proceed with a civil action pursuant to Labor Code section 2699.

8 59. Plaintiff, as a personal representative of the general public, will and does seek to
9 recover any and all penalties for each and every violation shown to exist or to have occurred
10 during the PAGA period, in an amount according to proof, as to those penalties that are otherwise
11 only available to public agency enforcement actions. Funds recovered will be distributed in
12 accordance with the PAGA, with 75% of the penalties recovered being reimbursed to the State
13 of California and the LWDA.

14 60. Plaintiff was compelled to retain the services of counsel to file this action to
15 protect her interests and those of Aggrieved Employees, and to assess and collect the wages and
16 penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
17 she is entitled to recover under Labor Code section 2699(g)(1).

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff, on behalf of the State of California, prays for judgment
20 against Defendants as follows:

21 1. For penalties and other relief allowable under Labor Code section 2699, *et seq.*
22 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3,
23 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, as well as
24 IWC Wage Order Nos. 4-2001 and/or 7-2001;

25 2. A civil penalty against Defendants in the amount of \$100 for the initial violation
26 and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor
27 Code for Plaintiff and Aggrieved Employees for each and every pay period that occurred during
28 the PAGA period;

1 3. A civil penalty against Defendants pursuant to Labor Code section 1197.1 for the
2 initial violation that was committed, in the amount of one hundred dollars (\$100) for each
3 underpaid employee for each pay period for which the employee is underpaid, and for each
4 subsequent violation, two hundred fifty dollars (\$250) for each subsequent violation for each pay
5 period for which the employee is underpaid, for Plaintiff and Aggrieved Employees for each and
6 every pay period that occurred during the PAGA period;

7 4. A civil penalty against Defendants pursuant to Labor Code section 210 for the
8 initial violation that was committed, in the amount of one hundred dollars (\$100) for each
9 underpaid employee for each pay period for which the employee is underpaid, and for each
10 subsequent violation, two hundred dollars (\$200) for each underpaid employee for each pay
11 period for which the employee is underpaid, for Plaintiff and Aggrieved Employees for each and
12 every pay period that occurred during the PAGA period;

13 5. A civil penalty in the amount of \$50 for the initial violation and \$100 for each
14 subsequent violation as specified by Labor Code sections 2699(f) and 226(e) for Plaintiff and
15 Aggrieved Employees for each and every pay period that occurred during the PAGA period;

16 6. A civil penalty in the amount of \$250 for the initial violation and \$1000 for each
17 subsequent violation as specified by Labor Code sections 2699(f) and 226.3 for Plaintiff and
18 Aggrieved Employees for each and every pay period that occurred during the PAGA period for
19 violations of Labor Code section 226(a);

20 7. An award of reasonable attorney's fees against Defendants as specified in Labor
21 Code section 2699(g) and Code of Civil Procedure section 1021.5, for all the work performed by
22 the undersigned counsel in connection with the PAGA claims;

23 8. An award of all costs incurred by the undersigned counsel for Plaintiff in
24 connection with Plaintiff's and Aggrieved Employees' claims against Defendants as provided
25 for in Labor Code section 2699(g)(1); and

26 9. All other relief as this Court deems proper.

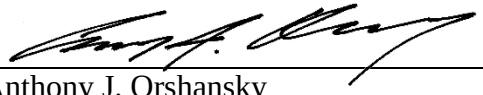
27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: March 11, 2021

Respectfully submitted,
COUNSELONE, PC

By 
Anthony J. Orshansky
Jennifer L. Connor
Attorneys for Plaintiff and Aggrieved
Employees