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KEVIN GAMEZ and All Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

KEVIN GAMEZ, in his representative capacity,
on behalf of the State of California, the general
public, and all aggrieved employees,

Plaintiff,

v.

GLENN E. THOMAS COMPANY, INC., DBA
GLENN E. THOMAS DODGE CHRYSLER
JEEP, a California Corporation authorized to do
business in California; and DOES 1 THROUGH
50, inclusive,

Defendants.

Case No.: 21STCV27298

**REPRESENTATIVE ACTION FOR CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT OF
2004 (Labor Code §§ 2698 et seq.)**

Plaintiff KEVIN GAMEZ ("Plaintiff") brings this representative enforcement action in his
representative capacity against Defendants GLENN E. THOMAS COMPANY, INC., DBA GLENN E.
THOMAS DODGE CHYRSLER JEEP ("Thomas") and DOES 1 through 50, inclusive (collectively,
"Defendants"), on the following grounds:

INTRODUCTION

1. Plaintiff brings this representative enforcement action under the Private Attorneys General
Act of 2004 (codified in California Labor Code §§ 2698 et seq., "PAGA") on behalf of himself and all

1 other current or former non-exempt employees of Defendants in California who had suffered at least one
2 of the Labor Code violations alleged herein within the applicable statute of limitations up to the time this
3 action is brought to trial (referred to herein collectively as “Aggrieved Employees”).

4 2. Plaintiff alleges that during the relevant time period Defendants engaged in wage and hour
5 violations under the California Labor Code (“Labor Code”) and the Industrial Welfare Commission
6 (“IWC”) Wage Orders by, among other things:

- 7 a. Failing to provide meal periods;
- 8 b. Failing to provide rest periods;
- 9 c. Failing to pay minimum and regular wages;
- 10 d. Failing to pay all overtime wages;
- 11 e. Failing to reimburse necessary business expenses;
- 12 f. Making conditional payment of wages;
- 13 g. Retaliating against employees for use of sick leave;
- 14 h. Failing to timely pay all wages due to temporary service employees;
- 15 i. Failing to maintain accurate records;
- 16 j. Failing to provide accurate itemized wage statements;
- 17 k. Wrongfully constructively terminating employees; and
- 18 l. Failing to timely pay all wages due during and upon separation of employment.

19 3. By and through this representative enforcement action, Plaintiff seeks to recover all
20 available remedies including, but not limited to, civil penalties, reasonable attorneys’ fees, and litigation
21 costs, as provided under California law.

22 4. All allegations in this Complaint are based upon information and belief except those
23 allegations specifically pertaining to Plaintiff and/or his counsel, which are based upon personal
24 knowledge. Each allegation in this Complaint has evidentiary support and/or is likely to have evidentiary
25 support after reasonable opportunity for further investigation and formal discovery.

26 **JURISDICTION AND VENUE**

27 5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure
28 (“Code of Civil Procedure”) § 410.10 and Labor Code §§ 2698 *et seq.* Pursuant to §§ 2698 *et seq.*, Plaintiff

1 brings this action, in his representative capacity, on behalf of himself and all other Aggrieved Employees.

2 6. This Court has personal jurisdiction over Defendants because Defendants conduct business
3 in the state of California and have caused injuries in the county of Los Angeles, as well as throughout the
4 state of California, through their acts, omissions, and violations of the Labor Code and relevant IWC Wage
5 Order.

6 7. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
7 Procedure §§ 395(a) and 395.5. Defendants transact business in Los Angeles County and are otherwise
8 within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have
9 a direct effect on Plaintiff and all other Aggrieved Employees within the county of Los Angeles and
10 throughout the state of California.

11 **THE PARTIES**

12 **I. PLAINTIFF**

13 8. Plaintiff KEVIN GAMEZ at all material times mentioned herein:

- 14 a. Was and is a resident of the county of Los Angeles, California;
- 15 b. Was employed by and/or otherwise performed work for Defendants as a Car Porter
16 from approximately October 27, 2020 through approximately March 16, 2021;
- 17 c. Engaged in work for Defendants in Los Angeles County, California;
- 18 d. Was classified by Defendants as a non-exempt employee for purposes of the Labor
19 Code and the IWC Wage Orders;
- 20 e. Earned an hourly wage and was paid on a biweekly basis;
- 21 f. Regularly worked five days per week, between 6 and 13 hours per day;
- 22 g. Was not timely compensated the appropriate minimum, regular, and/or overtime
23 wages for all time worked;
- 24 h. Was not provided with the opportunity to take legally compliant meal periods
25 and/or paid premium wages for non-compliant meal periods;
- 26 i. Was not authorized and permitted to take legally compliant rest periods and/or paid
27 premium wages for non-compliant rest periods;
- 28

- j. Was not timely paid all wages due and payable upon separation of employment, and/or the necessary waiting time penalties;
- k. Was not adequately reimbursed for all necessary business expenses;
- l. Had Defendants pay his wages conditionally;
- m. Witnessed retaliation against a coworker for using sick leave;
- n. Was not furnished with accurate itemized wage statements and was denied access to wage statements upon request;
- o. Had his records inaccurately maintained by Defendants;
- p. Was forced to resign after Defendants did not relent in their illegal practices despite his bona fide complaint;
- q. Is an "Aggrieved Employee" within the meaning of Labor Code § 2699(c); and
- r. Has complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

II. DEFENDANTS

9. Defendant Thomas is a California corporation that is authorized to do business, and is actually doing business, in the State of California. Defendant Thomas is believed to be a car dealership that provides services throughout the State of California, including in and around Los Angeles County, California. Defendants' Management's headquarters are located in Signal Hill, California.

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

11. At all times mentioned herein, the acts alleged to have been done and/or caused by the named defendants are also alleged to have been done and/or caused by each of the fictitiously named defendants, and by each of their agents and/or employees who acted within the scope of their agency and/or employment.

12. At all times mentioned herein, each named defendant, including each fictitiously named defendant, is believed to have acted individually or as an officer, agent, or employee of each of the other defendants.

13. At all times mentioned herein, each named defendant, including each fictitiously named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of the other defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

14. At all times mentioned herein, the acts and/or omissions of each of the named defendants, including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions of each and every one of the other defendants, including each fictitiously named defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the named defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each named defendant, including each fictitiously named defendant, was and is acting with authority of each and every other defendant and/or are acting as agents of each and every other defendant or Doe defendant.

15. At all times mentioned herein, a unity of interest and ownership between each defendant, including each fictitiously named defendant, such that all defendants acted as a single employer of Plaintiff and all other Aggrieved Employees.

16. At all times mentioned herein, each defendant, including each fictitiously named defendant, exercised supervision and control over the wages, hours, and/or working conditions of Plaintiff and all other Aggrieved Employees, including, but not limited to, implementing standard policies and procedures.

17. At all times mentioned herein, each defendant, including each fictitiously named defendant, caused Aggrieved Employees, including Plaintiff, to work and/or prevented Plaintiff and other Aggrieved Employees from working.

18. At all times mentioned herein, each defendant, including each fictitiously named defendant, had control over Aggrieved Employees.

19. Each named defendant, including each fictitiously named defendant, is alleged to have caused each of the violations alleged herein.

20. Each defendant, including each fictitiously named defendant, is jointly and severally liable for each of the violations alleged herein.

FACTUAL ALLEGATIONS

21. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

22. Plaintiff was employed by, or otherwise performed work for, Defendants from about October 27, 2020 through and including March 16, 2021.

23. Plaintiff performed work as a Car Porter at 2100 E. Spring Street, Signal Hill, California 90755. As a Car Porter, Plaintiff's job duties consisted of basic vehicle maintenance, cleaning, and transporting vehicles, among other things.

24. At all times during his employment, Plaintiff was classified by Defendants as a non-exempt employee, earned an \$14.00 hourly wage, and was paid on a biweekly basis.

25. Defendants did not provide Plaintiff a set schedule. Instead, Defendants required him to remain at work and on-duty until his services were no longer needed. Plaintiff typically worked at least six hours per shift, and he worked for up to 13 hours per day.

26. Plaintiff asserts that Defendants have employed, and will continue to employ, other Aggrieved Employees throughout the state of California. Plaintiff alleges that Aggrieved Employees are categorized as non-exempt, paid an hourly wage, and are paid at least twice per calendar month.

27. Plaintiff contends that he and all other Aggrieved Employees were subject to, and continue to be subject to, the same and/or similar policies, practices, procedures, guidelines, and/or culture described herein. Plaintiff further alleges that he and all other Aggrieved Employees have suffered, and will continue to suffer, the same and/or similar violations of law described herein.

28. Defendants denied Plaintiff and, on information and belief, other aggrieved current and former non-exempt employees, certain rights afforded to them under the California Labor Code and IWC Wage Order. Specifically, Defendants did not properly compensate Plaintiff and other aggrieved current and former non-exempt employees for all hours worked, failed to pay all overtime wages earned, failed

1 to provide compliant meal and rest periods, failed to adequately reimburse all necessary business
2 expenses, retaliated against employees for using legally protected sick leave, conditionally paid wages,
3 failed to maintain accurate time records, failed to provide accurate itemized wage statements, and failed
4 to pay all wages due and owing by the times set forth by law.

5 29. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure,
6 guideline, and/or culture of failing to provide legally compliant meal periods and/or timely pay premium
7 wages for non-compliant meal periods during employment.

8 30. Defendants required Plaintiff and, on information and belief, other Aggrieved Employees
9 to remain on-duty and available via cell phone at all times during their shifts, including the times they
10 were on meal and rest “breaks,” to perform tasks such as moving vehicles. His supervisors interrupted
11 and required Plaintiff and Aggrieved Employees to answer their phones when they were “on lunch.”

12 31. Defendants did not provide Plaintiff and, on information and belief, other Aggrieved
13 Employees with meal or rest period premiums for their on-duty and interrupted meal and rest periods.

14 32. Defendants deducted one hour of pay from Plaintiff’s and, on information and belief, other
15 Aggrieved Employees’ wages as though they received legally compliant, one-hour meal periods.

16 33. Plaintiff made a bona fide complaint to Defendant Thomas’s Sales Manager and Plaintiff’s
17 supervisor, Brad Davis, about the deduction of wages for meal periods he did not receive. Mr. Davis said
18 the “best [he] could do” was to list that Plaintiff only took 30-minute meal periods. Mr. Davis told Plaintiff
19 he needed to list a 30-minute meal period, even when he did not take them because they were on-duty,
20 interrupted or short, to allegedly comply with California law. Thereafter, Defendants deducted thirty
21 minutes from Plaintiff’s worked hours, for on-duty, short and interrupted meal periods. Plaintiff was paid
22 \$0 for the time worked and illegally deducted for on-duty meal periods.

23 34. Plaintiff complained about on-duty meal periods and the illegal deductions from his hours
24 worked. Plaintiff insisted Defendants provide him with off-duty, uninterrupted and at least 30-minutes
25 long meal periods. However, Mr. Davis failed to authorize Plaintiff to take off-duty meal breaks on a
26 daily basis. This left Plaintiff with no option but to resign. Thus, Defendants are liable for a wrongful
27 constructive discharge in violation of Labor Code § 98.6.

28 35. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure,

1 guideline, and/or culture of failing to timely pay all minimum, regular, and/or overtime wages at least
2 twice per calendar month on the dates designated in advance by Defendants during employment.

3 36. Plaintiff and, on information and belief, other Aggrieved Employees ordinarily worked in
4 excess of 8 hours in one day, and therefore were entitled to receive an overtime rate for unpaid time
5 working for Defendants. As stated above, Defendants failed to pay Plaintiff and Aggrieved Employees all
6 overtime wages when they improperly deducted thirty minutes to one hour of time worked for on-duty
7 meal periods.

8 37. Similarly, Defendant failed to pay at least minimum wage to Plaintiff and all other
9 Aggrieved Employees when they deducted time worked from their non-exempt employees for on-duty
10 meal periods.

11 38. As described above, Defendants knowingly maintained inaccurate time records that,
12 among other things, listed inaccurate total hours worked, as well as inaccurate start and end of work and
13 break periods.

14 39. Defendants knowingly relied upon these inaccurate records when providing Plaintiff and,
15 on information and belief, other Aggrieved Employees wage statements. This rendered the wage
16 statements inaccurate. The inaccuracies include, but are not limited to, inaccurate pay rates, inaccurate
17 hours worked, inaccurate overtime hours worked, and pay, gross pay, and net pay.

18 40. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure,
19 guideline, and/or culture of failing to provide employees with accurate wage statements.

20 41. Defendants passed out wage statements on set days. Seemingly at random, Defendants
21 failed to provide Plaintiff and, on information and belief, other Aggrieved Employees wage statements at
22 all on some occasions.

23 42. Plaintiff often asked his managers for wage statements when they did not provide one to
24 him.

25 43. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure,
26 guideline, and/or culture of failing to timely pay all wages due and owing at the time of separation and/or
27 the required waiting time penalties.

28 44. Defendants failed to pay Plaintiff and, on information and belief, other Aggrieved

1 Employees all minimum, regular, and overtime wages owed during their employment. Defendants
2 continued to fail to pay those wages after their employment relationship concluded. Thus, Plaintiff and,
3 on information and belief, other Aggrieved Employees are entitled to waiting time penalties pursuant to
4 Labor Code § 203.

5 45. Defendants only paid Plaintiff and, on information and belief, other Aggrieved Employees
6 upon certain conditions. Specifically, Defendants required Plaintiff and, on information and belief, other
7 Aggrieved Employees to sign statements verifying the accuracy of their time records. If they failed to do
8 so, Defendants would not pay them. Needing their wages, Plaintiff and, on information and belief, other
9 Aggrieved Employees signed the verifications despite knowing the time records were inaccurate.

10 46. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure,
11 guideline, and/or culture of failing to indemnify Aggrieved Employees for necessary business expenses.

12 47. Defendants required Plaintiff and, on information and belief, other Aggrieved Employees
13 to use their personal cell phones for business purposes. These purposes include, but are not limited to,
14 communications with Defendants' employees and downloading and using an app to unlock and start cars.
15 As a result, Plaintiff and, on information and belief, other Aggrieved Employees consistently used their
16 cell phones for business purposes throughout the day.

17 48. Defendants paid Plaintiff and, on information and belief, other Aggrieved Employees a
18 \$5.00 cell phone expense reimbursement every two weeks. This amount is far below the amount Plaintiff
19 and, on information and belief, other Aggrieved Employees are entitled to receive as reimbursement
20 considering the consistent use of cell phones for business purposes.

21 49. Plaintiff is informed and believes Defendants retaliated against Aggrieved Employees for
22 using their legally-protected sick leave. For example, Plaintiff heard his managers speaking negatively
23 about other Aggrieved Employees who used their sick leave, and heard them make comments about
24 reducing other Aggrieved Employees' hours since they were not "coming to work anyway." Moreover,
25 Plaintiff witnessed Defendants reduce in half other Aggrieved Employee's scheduled hours. Thus,
26 Plaintiff feared retaliation if he were to use sick leave.

27 50. On April 26, 2021, Plaintiff submitted written notice to the California Labor and Workforce
28 Development Agency ("LWDA") and Defendants, as required by the PAGA, informing them of

Defendants' alleged violations of the Labor Code. A true and correct copy of the April 26, 2021 written notice is attached hereto as **Exhibit 1** and is incorporated herein by reference.

51. To date, more than 65 days after submission of Plaintiff's written notice, the LWDA has not provided notice of its intent to investigate Plaintiff's alleged violations of the Labor Code.

52. Plaintiff further believes that additional violations may be discovered and therefore reserves his right to allege additional violations of the law as investigation and discovery warrants. In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as necessary.

PAGA DESIGNATION

53. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

54. By and through this representative enforcement action, Plaintiff intends to represent the following class of putative Aggrieved Employees, which is defined as:

All current or former non-exempt employees of Defendants in California during the period commencing on the date that is within one year and sixty-five days prior to the filing of this Complaint through and including the last date of trial (hereinafter the "PAGA Period"). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the PAGA class against Defendants, the PAGA Period should be adjusted accordingly.

55. Members of the PAGA class are all "employees" as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

56. A more precise definition of "Aggrieved Employees" may be determined after further investigation and discovery. Plaintiff reserves his right to redefine "Aggrieved Employees" and/or create additional sub-classes as permitted by California law.

57. Pursuant to Labor Code §§ 2698 *et seq.*, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an Aggrieved Employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

58. Pursuant to PAGA, all civil penalties recovered must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the Aggrieved Employees, pursuant to Labor Code § 2699(i).

59. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed notice of claims with the LWDA, Defendants were Plaintiff's and all other Aggrieved Employees' employers or persons acting on behalf of Aggrieved Employees' employer, either individually or person acting on behalf of Aggrieved Employees' employers, either individually or as an officer, agent, or employee of another person, within the meaning of Labor Code §§ 558(a) and 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such is subject to civil penalties for each underpaid employee.

60. Plaintiff is an "Aggrieved Employee" under the PAGA because he was employed by the alleged violators, Defendants, and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of other Aggrieved Employees. (See *Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519).

61. Plaintiff alleges that all other Aggrieved Employees are also "Aggrieved Employees" under the PAGA as Defendants employed them and all Aggrieved Employees experienced one or more of the alleged violations outlined herein.

62. Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff has exhausted his administrative remedies because he complied with the notice requirements outlined in Labor Code § 2699.3. On April 26, 2021, Plaintiff submitted notice to the LWDA and Defendants informing them of the Defendants' alleged Labor Code violations pursuant to the PAGA. (See Ex. 1.) Pursuant to the PAGA, the LWDA had 65 days to provide notice of whether it intended to investigate the alleged violations. To date, the LWDA has not provided notice of its intent to investigate the alleged violations. Plaintiff thus has the right to pursue, and does pursue, his claims under PAGA in a representative capacity pursuant to Labor Code §§ 2698 *et seq.*

63. As set forth herein, Defendants have committed, and continue to commit, numerous violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in his representative capacity, to recover, on behalf of himself, all other Aggrieved Employees, the State of

California, and the general public, civil penalties as well as attorneys' fees and costs from Defendants for the alleged violations, described herein.

64. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 201.3, 202, 203, 204, 206, 221, 223, 225.5, 226(a), 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, and 1198. Plaintiff and other Aggrieved Employees are entitled to, and therefore seek, the civil penalties described in Labor Code § 2699(f) for the violations of law described herein.

65. Labor Code § 2802 imposes a \$100 per pay period, per employee for the initial violation, and \$250 per pay period, per employee for each subsequent violation of Labor Code § 2802.

66. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records, in addition to the civil penalties provided by Labor Code § 1174(d).

67. Labor Code § 98.6 imposes a civil penalty not to exceed \$10,000 for taking an adverse employment action for filing a bona fide complaint about "rights that are under the jurisdiction of the Labor Commissioner."

68. Labor Code §§ 233, 234, 238, and 246 imposes a civil penalty for violating sick leave rights. This civil penalty shall be \$2,500, plus an additional \$100 penalty for each calendar day that the employer conducts business in violation of these sections, up to a \$100,000 limit.

69. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

70. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

71. Plaintiff expressly disclaims the recovery of any "amount sufficient to recover underpaid wages" on behalf of himself and all other Aggrieved Employees.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff in his Representative Capacity against Defendant and Does 1-50)

PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698 *et seq.*]

72. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

73. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to and thus seeks to recover civil penalties through a representative action based on violations of the following Labor Code and/or IWC Wage Order provisions:

- a. Failure to timely pay all minimum, regular, and/or overtime wages in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and the “Minimum Wages” and “Hours and Days of Work” sections of IWC Wage Order No. 9-2001;
- b. Failure to provide legally compliant meal periods and/or pay premium wages for non-compliant meal periods in violation of Labor Code §§ 204, 226.7, 512, 558 and the “Meal Periods” section of IWC Wage Order No. 9-2001;
- c. Failure to provide legally compliant rest periods and/or pay premium wages for non-compliant rest periods in violation of Labor Code §§ 204, 226.7, and the “Rest Periods” section of IWC Wage Order No. 9-2001;
- d. Failure to timely pay all wages due and owing upon separation of employment and/or the necessary waiting time penalties in violation of Labor Code §§ 201-203 and 210;
- e. Failure to reimburse all necessary business expenses in violation of Labor Code § 2802;
- f. Failure to pay wages unconditionally in violation of Labor Code § 206;
- g. Unlawful retaliation for use of protected sick leave in violation of Labor Code §§ 233, 234, 238, and 246;

- a. Failing to maintain accurate employment, time, and/or payroll records in violation of Labor Code §§ 226, 1174, 1174.5 and the “Records” section of the applicable IWC Wage Order;
- h. Failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and the “Records” section of IWC Wage Order No. 9-2001;
- i. Wrongful constructive termination in violation of Labor Code § 98.6; and
- j. Failure to pay wages in a timely manner upon separation of employment in violation of Labor Code § 203.

74. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 201.3, 203, 204, 204(b), 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff and all other Aggrieved Employees are entitled to, and do seek, such civil penalty.

75. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC. Therefore, Plaintiff and all other Aggrieved Employees are entitled to, and do seek, the described civil penalty.

76. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per Aggrieved Employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d). Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code § 1174.5 on behalf of himself and all other Aggrieved Employees.

77. Labor Code § 1197.1 imposes a civil penalty of \$100 for each underpaid employee for each pay period for which the employee is underpaid and a subsequent civil penalty of \$250 for each underpaid employee for each pay period for which the employee is underpaid, or for paying or causing an employee

1 to be paid a wage less than the minimum wage. Plaintiff and all other Aggrieved Employees are entitled
2 to, and do seek, such civil penalty.

3 78. Labor Code § 225.5 provides that “every person who unlawfully withholds wages due to
4 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as
5 follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
6 (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
7 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” Plaintiff, in his
8 representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and
9 therefore seeks, the civil penalty imposed by Labor Code § 225.5.

10 79. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the
11 initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code
12 provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code
13 §§ 201, 202, 203, 204, 206 226(a), 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, and 2802.
14 Plaintiff and other Aggrieved Employees are entitled to, and therefore seek, the described civil penalty.

15 80. Labor Code § 98.6(a)(3) provides that “[i]n addition to other remedies available, an
16 employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000)
17 per employee for each violation of this section, to be awarded to the employee or employees who suffered
18 the violation.” Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved
19 Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 98.6(a)(3).

20 81. Labor Code §§ 233, 234, 238, and 246 imposes as a consequence for retaliation for the use
21 of protected sick leave, a civil penalty of \$2,500, plus an additional \$100 penalty for each calendar day
22 that the employer conducts business in violation of these sections, up to a \$100,000 limit. Plaintiff and
23 other Aggrieved Employees are entitled to, and therefore seek, the described civil penalty.

24 82. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought
25 pursuant to PAGA shall be entitled to an award of reasonable attorneys’ fees and costs. As such, Plaintiff,
26 in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and
27 therefore seeks, attorneys’ fees and costs.

83. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

84. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, requests further relief as described in the below prayer for relief.

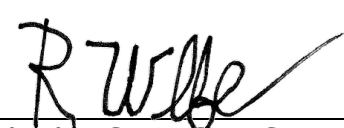
PRAYER FOR RELIEF

Plaintiff, in his representative capacity, prays for judgment against Defendant(s) and in favor of the state of California, Plaintiff, and all other Aggrieved Employees as follows:

- a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 98.6, 210, 225.5, 226.3, 238, 558, 1174.5, 1197.1, 1102.5, 2699(f), and/or other applicable law;
- b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);
- c. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, Labor Code §§ 210, 218.5, 233, 238, 1194, 1102.5, 2699(g)(1), Code of Civil Procedure § 1021.5, and the "common fund" theory, the "substantial benefit" theory, the "catalyst" theory and/or other applicable law; and
- d. For any and all other relief as this Court deems proper and just and is available under Labor Code §§ 2698 *et seq.*

Dated: July 26, 2021

GRAHAMHOLLIS APC

By: 

GRAHAM S.P. HOLLIS
VILMARIE CORDERO
HALI M. ANDERSON
RIDGEWAY WOULFE
Attorneys for Plaintiff
KEVIN GAMEZ and All Aggrieved Employees

EXHIBIT 1

April 26, 2021

Attorneys at Law

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San Diego, California 92103
619.692.0800 voice
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Ridgeway Woulfe
rwoulfe@grahamhollis.com
619.488.6680 direct

VIA ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Glenn E. Thomas Company, Inc.
Attn: Human Resources/Legal Department
2100 East Spring Street
Signal Hill, CA 90755

Glenn E. Thomas Company, Inc.
Attn: James G. Bohm, Agent for Service of Process
695 Town Center Drive, Suite 700
Costa Mesa, CA 92626

Re: Kevin Gamez's Wage and Hour Claims Against Glenn E. Thomas Company, Inc.

Dear Labor and Workforce Development Agency and Glenn E. Thomas Company, Inc.:

Please be advised that Kevin Gamez ("Claimant") has retained our firm to represent him for claims against his former employer Glenn E. Thomas Company, Inc. ("the Company").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations Claimant claims that the Company committed against him and all other non-exempt employees in California ("aggrieved employees"). Claimant provides this notice in accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2699.3. Claimant desires to file a civil action to enforce his rights under the Labor Code and seek compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent all other current and former non-exempt employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during their employment.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

FACTUAL BACKGROUND

The Company is a car dealership operating as a California corporation. Claimant worked for the Company from approximately October 27, 2020 through March 16, 2021. The Company hired Claimant as a non-exempt employee at the location in Signal Hill, CA. The Company compensated Claimant on an hourly basis at a rate of \$14.00 per hour. As a Car Porter, Claimant moved vehicles, accounted for vehicles, cleaned vehicles, ran errands, and performed basic vehicle maintenance. Claimant worked approximately 5 days per week, regularly working 40 hours or more per week.

The Company denied Claimant and, on information and belief, other aggrieved employees in California specific rights afforded to them under the California Labor Code and the applicable Industrial Welfare Commission Wage Order (“IWC Wage Order”). For example, the Company failed to provide Claimant and/or other aggrieved employees with legally compliant meal and rest breaks or pay meal and rest break premiums; failed to timely pay Claimant and/or other aggrieved employees all minimum, regular, overtime, and double time wages owed; failed to adequately reimburse Claimant and/or other aggrieved employees for all necessary business expenditures; failed to maintain accurate records; failed to issue accurate itemized wage statements; failed to timely pay all wages due during and upon separation of employment; retaliated against employees for attempting to use sick leave; made illegal deductions from employees’ wages; unlawfully withheld wage payment upon completion of a condition; and constructively discharged employees in response to bona fide complaints insisting upon the legally compliant meal and rest periods.

The Company failed to provide 30-minute, off-duty meal breaks commencing before the end of the fifth hour of employment. Instead, the Company required Claimant and, on information and belief, other aggrieved employees to remain in contact via their personal cell phones while on break in order to return to work as their supervisors deemed necessary. Most of the time, despite knowing the Company required employees to take on-duty meal periods, the Company’s owner, Brad Davis, deducted an hour’s worth of work from Claimant’s and, on information and belief, other aggrieved employees’ time records, resulting in lowered pay. When Claimant confronted Mr. Davis about inaccurate records and pay, Mr. Davis said that the “best [he could] offer” was to only deduct 30 minutes’ worth of pay per day because the law required the Company to record at least a 30-minute meal period per day. Despite the Company’s awareness of meal period laws, it did not permit Claimant and, on information and belief, other aggrieved employees to be off-duty during meal periods, and it did not pay wages or meal period premiums in association with the on-duty and interrupted meal periods.

For the same reasons that the Company failed to provide meal breaks, the Company failed to authorize and permit Claimant and other aggrieved employees from taking paid, duty-free rest breaks of at least ten minutes for every four hours worked or major fraction thereof. Although the Company denied Claimant and, on information and belief, other aggrieved employees compliant, off-duty meal and rest breaks, the Company failed to pay rest break premiums.

As described above, the Company denied Claimant and, on information and belief, other aggrieved employees of wages earned during on-duty and interrupted meal periods. As a result, the Company denied them minimum, regular, overtime, and double time wages.

On approximately March 16, 2021, Claimant again insisted upon either taking off-duty meal periods or being paid additional wages to reflect his work through “breaks.” When Mr. Davis blatantly refused to comply with the law again, Claimant had no reasonable option but to resign. Therefore, the Company constructively discharged Claimant because of his bona fide complaint regarding illegal meal and rest period violations. On information and belief, Claimant asserts the Company constructively discharged other aggrieved employees in violation of Labor Code section 98.6.

The Company unlawfully conditioned payment of Claimant’s and, on information and belief, other aggrieved employees’ wages upon signing a verification of time records. If employees did not sign verifications, the Company would not provide their paycheck. Despite knowing Mr. Davis intentionally falsified time records, Claimant signed the verifications so he would be paid for his work.

As a result of the inaccurate time records, the Company provided Claimant and, on information and belief, other aggrieved employees with inaccurate wage statements. The wage statements listed inaccurate hours worked, pay rates, and pay totals. Additionally, the Company often failed to provide wage statements whatsoever. When Claimant asked his supervisors about missing wage statements, they said that the payments were made via direct deposit and made no efforts to correct the legal violation.

The Company deprived Claimant and, on information and belief, other aggrieved employees of all regular, minimum, overtime, and double time wages throughout their employment. The Company did not pay these wages at the conclusion of their employment, or at any time thereafter. Therefore, the Company is liable for waiting time penalties.

While the Company allowed employees to use sick leave, it retaliated against aggrieved employees for utilizing it. In one instance, Claimant overheard his supervisors discussing a Car Porter who used sick leave, saying that they should reduce his hours since he did not want to show up anyway. Following that conversation, the Company halved the scheduled hours of the Car Porter who used sick leave in retaliation for his use of sick leave. Fearing retaliation, Claimant avoided using sick leave. The Company’s retaliatory practices had a chilling effect upon other employees using sick leave.

The Company, on information and belief, unlawfully deducted wages from aggrieved employees’ pay without even notifying them of the deductions. At the beginning of Claimant’s and, on information and belief, other aggrieved employees’ employment, the Company provided shirts for the employees to use as uniforms. After wearing a Company shirt, one of Claimant’s coworkers informed him that the Company deducted the costs of the shirts from wages. If the aggrieved employees did not authorize the deductions, the Company is liable for illegal deductions pursuant to Labor Code sections 221, *et seq.* If the deductions were authorized, the uniforms were necessary business expenditures for which the Company must reimburse employees. The Company did not do so.

The Company is also liable for its failure to provide adequate business expense reimbursement. The Company required Claimant and, on information and belief, other aggrieved employees to use their personal cell phones to respond to supervisor communications during breaks and to use an app which allowed them to unlock and start cars. This caused employees to effectively use their personal cell phones throughout their entire shift. The Company did not provide another method to perform this labor. Despite

requiring employees to use their cell phones consistently throughout their shifts, the Company only provided a \$5 reimbursement for cell phone expenses every two weeks—well below the amount of reimbursement it owed Claimant and, on information and belief, other aggrieved employees.

Due to the foregoing Labor Code violations, the Company denied Claimant and other aggrieved employees certain rights afforded to them under the California Labor Code and IWC Wage Orders. Claimant makes these claims against the Company on behalf of himself and all other aggrieved current and former employees of the Company in California.

**FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND AUTHORIZE AND PERMIT
REST PERIODS**

(Labor Code §§ 226.7, 512 and “Meal Period” and “Rest Period” sections of the Applicable IWC Wage Order)

Labor Code section 226.7(b) states, “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission...” Labor Code section 226.7(c) states, “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Labor Code section 512(a) states, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” and “[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

The “Meal Period” section of the IWC Wage Order states in relevant part:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time. (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided. . . . (D) Notwithstanding any

other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

The "Rest Period" section of the IWC Wage Order states in relevant part:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages. (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

Labor Code section 1198 states, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 558 states,

[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.

As set forth above, the Company did not provide Claimant and, on information and belief, other aggrieved employees with the opportunity to take uninterrupted, off-duty meal breaks of at least 30-minutes before the start of their fifth hour of work and did not authorize or permit Claimant and other aggrieved employees to take legally compliant rest breaks. Consequently, Claimant and, on information and belief, other aggrieved employees were entitled to receive one hour of premium wages for each day a compliant meal break was not provided and one hour of premium wages for each day a compliant rest period was not authorized or permitted. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

WRONGFUL CONSTRUCTIVE DISCHARGE
(Labor Code section 98.6)

Labor Code section 98.6 prohibits employers from "in any manner discriminat[ing], retaliat[ing], or tak[ing] any adverse action against any employee or applicant for employment because the employee..." for filing a bona fide complaint about "rights that are under the jurisdiction of the Labor Commissioner..." An employer who violates Labor Code section 98.6 is liable for a civil penalty not to exceed \$10,000, which is to be awarded to the employee who suffered the violation.

As described above, the Company constructively discharged Claimant and, on information and belief, other aggrieved employees for their insistence upon legally compliant meal and rest periods. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO PAY MINIMUM, REGULAR, OVERTIME, AND DOUBLE TIME WAGES
(Labor Code sections 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198 and the
"Minimum Wages" and "Hours and Days of Work" sections of the Applicable IWC Wage Order)

Labor Code section 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." Labor Code section 1197.1 provides that, "Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203." Section 1198 states, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 510 states,

[e]ight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any

one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The “Hours and Days of Work” sections of the Applicable IWC Wage Order mandate the same requirements.

Labor Code section 1194(a) states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Labor Code section 1194.2 further provides, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

Labor Code section 223 states, “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Labor Code section 225.5 provides that, “...every person who unlawfully withholds wages due any employee in violation of Section ...223 shall be subject to a civil penalty” of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company failed to pay Claimant and, on information and belief, other aggrieved employees all minimum, regular, overtime, and double time wages, as required by law. Claimant and, on information and belief, other aggrieved employees frequently worked during their meal breaks, but the Company deducted wages as though employees received a 1-hour off-duty meal period. This resulted in underpayment of regular, minimum, overtime, and double time wages. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO PAY WAGES UNCONDITIONALLY
(Labor Code section 206)

Labor Code section 206 provides in pertinent part, “[i]n case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance claimed.”

Absent a specified civil penalty for each violation of the Labor Code, “the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two

hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation,” pursuant to Labor Code section 2699.

As set forth above, the Company willfully conditioned wage payments upon signing verifications of their time records’ accuracy, depriving the employees of wages if they declined to do so. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code sections 1174, 1174.5, 1198, and the “Records” section of the Applicable IWC Wage Order)

Labor Code section 1174 states,

[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.

The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal period, split shift intervals, total hours worked in the payroll period, and applicable rates of pay.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

As set forth above, the Company violated these requirements by deducting time from employee time records for meal periods which were on-duty and/or interrupted and which should be considered “on-the-clock.” Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Labor Code sections 226, 226.3, and 1198 and the “Records” section of the Applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing:

(1) gross wages earned, (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, ... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, ...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code section 226.3 imposes a civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

As set forth above, the Company's wage statements did not accurately reflect all hours worked, pay rates, or total pay. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE DURING AND UPON SEPARATION OF EMPLOYMENT

(Labor Code sections 201, 202, 203, 204, 210, 1194, 1194.2, 1198, and the "Minimum Wages" section of the Applicable IWC Wage Order)

Labor Code section 204(a) states in pertinent part, "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Furthermore, Labor Code section 204(b)(1) states, "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period." Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation. The "Minimum Wages" section of the applicable IWC Wage Order also states that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states, in pertinent part, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code section 203(a) states, in pertinent part,

[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any

wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

As set forth above, the Company violated these Labor Code sections by not paying to Claimant and, on information and belief, other aggrieved employees all minimum, regular, overtime, and double time wages, and all meal and rest break premium wages, within the required time during and upon separation of their employment. As a result of the Company's failure to comply with the aforementioned Labor Code provisions, the Company owes waiting time penalties to aggrieved employees, which they have not yet paid. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved former employees to the extent allowed by law.

FAILURE TO PROVIDE COMPLIANT SICK LEAVE AND RETALIATION FOR USING SICK LEAVE

(Labor Code §§ 233, 234, 238, and 246)

Labor Code section 233 states, "[a]ny employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement..." Labor Code section 234 states, "[a]n employer absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233."

Labor Code section 246(b)(1) states, "[a]n employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section." Section (c) states, "[a]n employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section."

Labor Code section 238 states that any violators "shall be subject to a civil penalty of two thousand five hundred dollars (\$2,500)." If an employer was previously assessed and failed to pay the penalty, the employer "shall be subject to an additional penalty of one hundred dollars (\$100) for each calendar day that the employer conducts business in violation of this section," up to a \$100,000 limit.

As set forth above, the Company, on information and belief, retaliated against aggrieved employees for using sick leave. This had a chilling effect upon others using sick leave. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

ILLEGAL DEDUCTION OF WAGES
(Labor Code sections 221, *et seq.*)

Labor Code section 221 states, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code section 224 disallows employers from making deductions from wages without authorization from the employee, with limited exceptions. As described above, the Company conditioned employment upon employees allowing deductions from employees’ wages to pay for equipment and damages thereof.

Labor Code section 225.5 provides the following penalties for this violation: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For 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 set forth above, the Company illegally deducted from employees’ wages to pay for uniforms. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
(Labor Code section 2802)

Labor Code section 2802 provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code section 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code section 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, the Company required that Claimant and, on information and belief, other aggrieved employees utilize their personal cell phones for business purposes. The Company failed to adequately reimburse for these expenses. In addition, the Company failed to reimburse employees for uniform expenses which were deducted from their pay. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

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CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code sections 558 and 1197.1)

Labor Code section 558 subjects any employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred (\$100) for each underpaid employee for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Similarly, Labor Code section 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For 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. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For 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. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

As set forth above, the Company underpaid Claimant and, on information and belief, aggrieved employees by failing to pay them all regular, minimum, overtime, and double time wages, and meal and rest break premium wages, as required under Labor Code sections 226.7, 510, 512, 233, 234, 246, 1194, 1197, 1198, and the applicable sections of the applicable IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code sections 558 and 1197.1. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

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ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code sections 210, 218.5, 218.6, 225.5, 226(e),
558, 1194, 1194.2, 1197.1, 2802, and 2699, *et seq.*)

Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 2802, and 2699, *et seq.*, among others, give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, double time compensation, reimbursements, damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code section 2699, *et seq.*, an aggrieved employee is entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies, including those provided by PAGA, for these violations on behalf of himself and other aggrieved employees.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional compensation owed to him or other losses incurred by him or by any other aggrieved employee of the Company, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in his complaint.

Sincerely,



Ridgeway Woulfe