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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 ERIC JACOBS, on behalf of the State of
15 California, as a private attorney general,

16 Plaintiff,

17 vs.

18 CAL-STATE AUTO PARTS, INC., a
19 California Corporation ; and DOES 1 through
20 50, inclusive,

21 Defendants.

Case No. 37-2021-00031457-CU-OE-CTL

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 227.3, 246, 351, 510,
512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B)

1 Plaintiff Eric Jacobs (“PLAINTIFF”), on behalf of the people of the State of California
2 and as an “aggrieved employee” acting as a private attorney general under the Labor Code
3 Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information
4 and belief, except for his own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Cal-State Auto Parts, Inc. (referred to as
8 “DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **not seek to recover anything other than penalties as permitted by California**
11 **Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

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

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

22 **THE PARTIES**

23 4. Defendant Cal-State Auto Parts, Inc. (“DEFENDANT”) is a California
24 corporation that at all relevant times mentioned herein conducted and continues to conduct
25 substantial business in the state of California.

26 5. DEFENDANT offers motor vehicle supplies, accessories, tools, and equipment.
27 DEFENDANT serves auto dealers, independent repair shops, and fleets in California.
28

1 6. PLAINTIFF has been employed by DEFENDANT in California since February
2 of 2019 and has been at all times classified by DEFENDANT as a non-exempt employee, paid
3 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
4 minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by DEFENDANT in
9 California and who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
10 during the time period of April 9, 2020 until a date as determined by the Court (the "PAGA
11 PERIOD").

12 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
15 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
16 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
17 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
18 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
19 employees within the meaning of Labor Code § 2699, *et seq.*

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

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the other AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work assignments while clocked out for what should be PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and the other AGGRIEVED EMPLOYEES are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is evidenced by

1 DEFENDANT's business records.

2 12. State and federal law provides that employees must be paid overtime and meal and
3 rest break premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFF and
4 other AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that
5 is tied to specific elements of an employee's performance.

6 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
7 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
8 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
9 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
10 hourly basis with incentive compensation when the employees met the various performance
11 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
12 overtime and premiums for meal and rest break violations to PLAINTIFF and other
13 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
14 part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
15 premium pay for meal and rest break violations. Management and supervisors described the
16 incentive program to potential and new employees as part of the compensation package. As a
17 matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
18 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted
19 in a underpayment of overtime compensation and meal and rest break premium pay to
20 PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANT.

21 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
22 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
23 are not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
24 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
25 more than five (5) hours during some shifts without receiving a meal break. Further,
26 DEFENDANT from time to time fails to provide PLAINTIFF and other AGGRIEVED
27 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
28 are required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other

1 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
2 and in accordance with DEFENDANT's corporate policy and practice.

3 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
4 are also required from time to time to work in excess of four (4) hours without being provided
5 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
6 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
7 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
8 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
9 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
10 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
11 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
12 provide employees with off-duty rest periods, which the California Supreme Court defined as
13 time during which an employee is relieved from all work related duties and free from employer
14 control. In so doing, the Court held that the requirement under California law that employers
15 authorize and permit all employees to take rest period means that employers must relieve
16 employees of all duties and relinquish control over how employees spend their time which
17 includes control over the locations where employees may take their rest period. Employers
18 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
19 five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and other AGGRIEVED
20 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
21 states PLAINTIFF and other AGGRIEVED EMPLOYEES cannot leave the work premises
22 during their rest period.

23 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
24 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
25 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
26 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
27 meaning the time during which an employee was subject to the control of an employer,
28 including all the time the employee was permitted or suffered to permit this work.

1 DEFENDANT requires these employees to work off the clock without paying them for all the
2 time they are under DEFENDANT's control including, but not limited to, time spent undergoing
3 mandatory drug testing or any other testing and/or examination required as a condition of
4 employment. As such, DEFENDANT knew or should have known that PLAINTIFF and the
5 other AGGRIEVED EMPLOYEES are under compensated for all time worked. As a result,
6 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit time worked by working without
7 their time being accurately recorded and without compensation at the applicable minimum wage
8 and overtime wage rates. To the extent that the time worked off the clock does not qualify for
9 overtime premium payment, DEFENDANT fails to pay minimum wages for the time worked
10 off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

11 17. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
12 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
13 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
14 provides that every employer shall furnish each of his or her employees with an accurate
15 itemized wage statement in writing showing, among other things, gross wages earned and all
16 applicable hourly rates in effect during the pay period and the corresponding amount of time
17 worked at each hourly rate. Specifically, DEFENDANT violated Cal. Lab. Code Section
18 226(a)(8) by failing to list the correct legal entity that is the employer of PLAINTIFF. Aside,
19 from the violations listed above in this paragraph, DEFENDANT fails to issue to PLAINTIFF
20 an itemized wage statement that lists all the requirements under California Labor Code 226 *et*
21 *seq.* As a result, DEFENDANT from time to time provides PLAINTIFF and the other
22 AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

23 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
24 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
25 wages are paid not more than seven calendar days following the close of the payroll period.
26 Cal. Lab. Code § 210 provides:

27 [I]n addition to, and entirely independent and apart from, any other penalty provided in
28 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) For any initial

1 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
2 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
3 for each failure to pay each employee, plus 25 percent of the amount unlawfully
4 withheld.

5 19. DEFENDANT from time to time fails to pay PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
7 accordance with Cal. Lab. Code § 204(d).

8 20. DEFENDANT underpays sick pay wages to PLAINTIFF and other AGGRIEVED
9 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
10 and other non-exempt employees earn non-discretionary remuneration, including but not limited
11 to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular rate
12 of pay, DEFENDANT underpays sick pay to PLAINTIFF and other AGGRIEVED
13 EMPLOYEES at their base rates of pay.

14 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
15 to collect or receive from an employee any part of wages theretofore paid by said employer to
16 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and other
17 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
18 PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the deductions
19 from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, and thereby
20 fails to pay these employees all wages due at each applicable pay period and upon termination.
21 PLAINTIFF and the other AGGRIEVED EMPLOYEES seek recovery of all illegal deductions
22 from wages according to proof, related penalties, interest, attorney fees and costs.

23 22. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
24 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
25 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
26 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
27 2802, employers are required to indemnify employees for all expenses incurred in the course
28 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
indemnify his or her employee for all necessary expenditures or losses incurred by the employee

1 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
2 directions of the employer, even though unlawful, unless the employee, at the time of obeying
3 the directions, believed them to be unlawful."

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

14 24. All of the conduct and violations alleged herein occurred during the PAGA
15 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
16 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
17 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
18 AJDAR 12157 (Certified for Publication 12/19/18).

19 **JURISDICTION AND VENUE**

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

22 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
23 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
24 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
25 in this County and/or conducts substantial business in this County, and (ii) committed the
26 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
27 EMPLOYEES.
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1 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
2 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

3 31. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
5 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
6 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
7 to pay overtime and sick pay wages, and (e) failed to reimburse employees for required
8 expenses, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
9 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194,
10 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision
11 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result
12 of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by
13 the Labor Code Private Attorney General Act of 2004 as the representative of the State of
14 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
15 EMPLOYEES.

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
19 severally, as follows:

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

22 A) Recovery of civil penalties as prescribed by the Labor Code Private
23 Attorneys General Act of 2004; and,

24 B) An award of attorneys' fees and cost of suit, as allowable under the

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27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 law, including, but not limited to, pursuant to Labor Code §2699.

2 Dated: July 22, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

3
4 By: /s/ Norman Blumenthal
5 Norman B. Blumenthal
6 Attorneys for Plaintiff
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