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Superior Court of California,
County of Alameda

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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MARICELA DIAZ, individually,
and on behalf of all others similarly
situated,

Plaintiff,

vs.

TRI-CITY AUTOWASH, INC. (DBA
AUTOPIA CAR WASH), and DOES ONE
through TWENTY, inclusive,

Defendant.

Case No. **21CV003425**

CLASS ACTION COMPLAINT

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Rest or Pay Additional Wages in Lieu Thereof;
4. Failure to Provide Meal Periods or Pay Additional Wages in Lieu Thereof;
5. Failure to Maintain and Provide Accurate Itemized Employee Wage
6. Statements Violation of Unfair Competition Law, Cal. Bus. & Prof. Code, §§ 17200 et seq.

NON-CLASS PAGA CLAIM

7. Penalties Pursuant to the Private Attorneys General Act (PAGA), Cal. Lab. Code, §§ 2698 et seq

**DEMAND FOR JURY TRIAL
REQUEST FOR COMPLEX
DESIGNATION**

I. INTRODUCTION

1) Plaintiff MARICELA DIAZ (“PLAINTIFF”) brings this representative action pursuant to California Code of Civil procedure section 382 against DEFENDANT TRI-CITY AUTOWASH, INC. (DBA AUTOPIA CAR WASH), and DOES ONE through TWENTY, inclusive.

2) The class that PLAINTIFF seeks to represent (“Class”) is composed of California residents who worked for AUTOPIA in the State of California as non-exempt workers paid on an hourly basis (“Class Members”) at any time during the period beginning four years prior to the filing of the original complaint through the future date of notice to the Class Members that a class has been certified in this action (“Class Period”). The wage and hour violations alleged in this Complaint revolve around AUTOPIA’s systemic failure to pay its non-exempt California employees in conformance with the California Labor Code, Business and Professions Code, the applicable Wage Order, and other California statutes and caselaw. Principally, AUTOPIA failed to compensate for all hours employees were required to perform unpaid work by not recording all the hours worked while employees are clocked out for meal periods, and otherwise suffering or permitting employees to perform unpaid work outside their paid work time. In addition, AUTOPIA fails to relieve PLAINTIFF and other employees of all duties in order to satisfy their obligation to provide complete, uninterrupted, and timely rest periods. AUTOPIA does not schedule or provide rest periods for non-exempt carwash employees and require them to stay at their workstations throughout their shifts as customers approach the car wash for services consistently throughout work shifts. From this practice, which directly results in unpaid time, are related other violations, including but not limited to recordkeeping violations, the failure to provide proper rest and meal breaks, and wage statement violations. PLAINTIFF and the class are owed wages, interest, and penalties as a result of AUTOPIA’s enforcement of these policies and practices that violate the California Labor Code, applicable Wage Order, and California’s Unfair Competition law (Cal. Bus. & Prof. Code section 17200 et seq., hereinafter “UCL”), as described below.

1 3) At all times relevant hereto, AUTOPIA’s unlawful policies and practices were
2 centrally devised and commonly applied to all Class Members.

3 4) This action is also a law enforcement action that seeks penalties pursuant to the
4 Private Attorneys General Act (PAGA), Labor Code sections 2698 et seq. This action seeks
5 reasonable attorneys’ fees and costs pursuant to Labor Code sections 2698 et seq., Labor Code
6 sections 218.5 and 218.6, and Code of Civil Procedure section 1021.5.

7 5) MARICELA DIAZ was a non-exempt, California-resident employee of
8 AUTOPIA during the Class Period. PLAINTIFF was employed by AUTOPIA beginning in
9 approximately November 2019. PLAINTIFF worked as a carwash non-exempt employee for
10 AUTOPIA and, over the course of her employment with AUTOPIA, has worked at the Fremont,
11 California carwash site. As a result of ALL DEFENDANTS’ violations of the Labor Code,
12 PLAINTIFF is an aggrieved employee within the meaning of the PAGA statute and has suffered
13 injury-in-fact and has lost money or property as a result of ALL DEFENDANTS’ practices.
14 This injury-in-fact and lost money or property consists of lost wages, premium pay, and other
15 harms provided by the Labor Code as detailed in this Complaint. A tally of these harms cannot
16 readily be determined as the necessary records are held nearly exclusively in ALL
17 DEFENDANTS’ possession, custody, and control. However, on information and belief, this
18 injury-in-fact amounts to hundreds of thousands, if not millions, of dollars for the Class.
19 PLAINTIFF, and the Class she seeks to represent, were regularly subjected to, or had personal
20 knowledge of, the violations described in the Complaint and/or the allegations contained herein
21 made on information and belief based upon investigation of counsel.

22 6) Defendant TRI-CITY AUTOWASH is a carwash service business that has been
23 incorporated in California and headquartered at 41946 Christy Street, Fremont, California
24 94538 (County of Alameda). On information and believe TRI-CITY AUTOWASH has been
25 doing business as “AUTOPIA CARWASH” and it has multiple locations in the Bay Area,
26 including Walnut Creek, Concord, Livermore, Martinez, Dublin, and Newark. According to
27 their website, AUTOPIA “offers a complete line of detailing products and services” and
28 “[d]etail services range from express hand waxing and carpet cleaning to full vehicle packages.”

1 7) The true names and capacities, whether individual, corporate, associates, or
2 otherwise of Defendants sued herein as DOES 1 through 20, inclusive, are currently unknown to
3 PLAINTIFF, who therefore sues such Defendants by fictitious names under Code of Civil
4 Procedure section 474. PLAINTIFF is informed and believes, and based thereon alleges, that
5 each of the other Defendants designated herein as a DOE is legally responsible in some manner
6 for the unlawful acts referred to herein. PLAINTIFF will seek leave of court to amend this
7 Complaint to reflect the true names and capacities of the Defendants designated hereinafter as
8 DOES when such identities become known.

9 8) PLAINTIFF is informed and believes that AUTOPIA is liable to PLAINTIFF
10 and Class Members as an “employer,” as that term is defined in section 18 of the Labor Code.
11 As the employer of PLAINTIFF and Class Members throughout the Class Period, AUTOPIA is
12 liable for the economic damages and statutory penalties owed to PLAINTIFF and Class
13 Members.

14 **II. JURISDICTION**

15 9) This Court has jurisdiction over PLAINTIFF’ action, which arises under the
16 California Labor Code and alleges damages exceeding \$25,000.00.

17 **III. VENUE**

18
19 10) Venue is proper pursuant to California Code of Civil Procedure section 395(a),
20 because PLAINTIFF was harmed by ALL DEFENDANTS’ violations of the California Labor
21 Code in Alameda County, AUTOPIA is headquartered in Alameda County, and AUTOPIA
22 continues to do business in Alameda County, and employs individuals in Alameda County.
23 Defendants committed the acts in question in the Complaint, partly or wholly, in Alameda
24 County.

25 **IV. FACTUAL ALLEGATIONS**

26 11) As set forth below and at all times relevant hereto, AUTOPIA’s unlawful
27 policies and practices were centrally devised and commonly applied to all Class Members,
28

1 including PLAINTIFF.

2 12) AUTOPIA establishes their employees' work schedules and, on information and
3 belief, understaff shifts for cost saving. Accordingly, assigns non-exempt carwash employees to
4 work during their meal or rest breaks to keep customer satisfaction.

5 13) AUTOPIA does not provide its employees with proper rest and meal breaks nor
6 compensate them with break premiums. This, too, stems directly from AUTOPIA's systematic
7 failure to understaff carwash workers. On information and belief, AUTOPIA does not have a
8 centralized policy of providing lawful rest and meal breaks to its employees but, even in
9 practice, its system to understaff shifts deters employees from being able to take any sort of
10 breaks. Because AUTOPIA's system does not compensate its employees for any time worked
11 "off-the-clock", employees work to complete their job duties within the time allotted to them
12 and interrupt, miss, or take short meal breaks to finish their assigned tasks. By having to fit
13 their work into the time allotted and paid to them, employees, including PLAINTIFF, are not
14 afforded the ability to take rest breaks.

15 14) AUTOPIA also fails to issue accurate itemized wage statements to its non-
16 exempt employees by failing to account for all the time worked, pay premium wages.

17 15) As a result of the aforementioned violations of the Labor Code and applicable
18 Wage Order, AUTOPIA, by way of its unlawful and unfair compensation system, has violated
19 California Business and Professions Code section 17200 et seq.

20 16) Owing to the preceding allegations, for at least four years prior to the filing of
21 this action and through to the present, AUTOPIA maintained and enforced against PLAINTIFF
22 and the Class unlawful practices and policies in violation of California wage and hour laws,
23 including but not limited to:

- 24 a. forcing Class Members, including PLAINTIFF, to work "off the clock"
- 25 time without compensation as required by law;
- 26 b. failing to create and maintain accurate records of work periods, meal
- 27 periods as required by law for Class Members, including PLAINTIFF;
- 28

- c. failing to pay Class Members, including PLAINTIFF, overtime and double-overtime when required by law;
- d. failing to properly provide/authorize Class Members, including PLAINTIFF, rest periods of at least (10) minutes per four (4) hours worked, or major fraction thereof, and failing to pay such employees one (1) hour of additional wages at the employees' regular rate of compensation for each workday that the rest period was not provided, in violation of California law and public policy;
- e. failing to provide proper, timely meal breaks, requiring Class Members, including PLAINTIFF, to work at least five (5) hours without a full, thirty-minute, uninterrupted meal period, and failing to pay such employees one (1) hour of additional wages at the employees' regular rate of compensation for each workday that the meal period was not provided, in violation of California state laws and public policy;
- f. failing to provide Class Members, including PLAINTIFF, with accurate itemized wage statements in violation of California law and public policy;
- g. failing to pay all wages owed (i.e., wages for all "hours worked," premium rest and meal period wages, and vested vacation wages) to employees timely upon the termination of the employment relationship.

17) On information and belief, AUTOPIA was on notice of the improprieties alleged and/or has intentionally, deliberately, and willfully carried out these unlawful and unfair business practices.

18) AUTOPIA has made it difficult to account with precision for the unlawfully withheld wages due to PLAINTIFF and the Class Members during all relevant times herein, because AUTOPIA did not fully implement and preserve a timekeeping and record-keeping method to accurately record all hours worked, meal breaks, and wages earned by its employees

as required for non-exempt employees by California Labor Code sections 226 and 1174(d), and Industrial Welfare Commission Wage Orders.

19) The enforcement of statutory provisions to protect workers and to ensure, for example, pay for all hours worked and proper rest and meal breaks, is a fundamental public interest. PLAINTIFF'S successful enforcement of important rights affecting the public interest will confer a significant benefit upon the general public. Private enforcement of these rights is necessary, as no public agency has pursued enforcement. PLAINTIFF is incurring a financial burden in pursuing this action, and it would be against the interests of justice to require the payment of attorneys' fees and costs from any recovery obtained.

20) On May 7, 2021, PLAINTIFF, through counsel, sent via certified mail to AUTOPIA and certified mail and e-portal submission to the California Labor & Workforce Development Agency (LWDA) notice of the specific provisions of the Labor Code AUTOPIA is alleged to have violated (which described herein in this complaint) as well as the facts and theories supporting the alleged violations. PLAINTIFF alleged themselves to be an aggrieved employee within the meaning of the PAGA statute. More than 65 days have elapsed since the postmark date of PLAINTIFF' PAGA notice, and no notice has been received by PLAINTIFF of the LWDA's intent to investigate any of the alleged violations.

V. CLASS ALLEGATIONS

21) PLAINTIFF bring this action on behalf of themselves and all others similarly situated as a class action pursuant to section 382 of the Code of Civil Procedure. PLAINTIFF seek to represent the following "Class" composed of and defined as follows:

All non-exempt persons who are employed or have been employed by AUTOPIA in the State of California who, within four (4) years of the filing of the original Complaint.

22) On information and belief, the legal and factual issues implicated by this Complaint are common to the Class and affect all Class Members. PLAINTIFF reserves the

1 right under Rule 3.765, California Rules of Court, to amend or modify the class description or
2 divide into subclasses.

3 23) This action has been brought and may properly be maintained as a class action
4 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
5 defined community of interest in the litigation and the proposed Class is easily ascertainable.

6 **A. Numerosity**

7 24) The potential members of the Class as defined are so numerous that joinder of all
8 the members of the Class is impracticable. While the precise number of Class Members have
9 not been determined at this time, PLAINTIFF is informed and believes that AUTOPIA has
10 employed hundreds of non-exempt employees in the State of California during the Class Period
11 and who are, or have been, affected by AUTOPIA's unlawful practices as alleged herein.

12 25) Upon information and belief, PLAINTIFF alleges that AUTOPIA's employment
13 records would provide information as to the number and location of all Class Members. Joinder
14 of all members of the proposed Class is not practicable.

15 **B. Commonality**

16 26) There are questions of law and fact common to the Class predominating over any
17 questions affecting only individual Class Members. These common questions of law and fact
18 include, without limitation:

- 19 a. Whether Defendants violated the California Labor Code and
20 applicable Wage Order by not compensating PLAINTIFF and other Class
21 Members for all hours worked;
- 22 b. Whether Defendants violated the California Labor Code and
23 applicable Wage Order by not compensating PLAINTIFF and other Class
24 Members at hourly wage rates below the minimum wage rate;
- 25 c. Whether Defendants violated the California Labor Code and
26 applicable Wage Order by not compensating PLAINTIFF and other Class
27 Members for owed premium hours (i.e., overtime and double-overtime);

1 d. Whether Defendants violated the California Labor Code and
2 applicable Wage Order by not compensating PLAINTIFF and other Class
3 Members for all hours worked;

4 e. Whether Defendants violated the California Labor Code, Wage
5 Orders, or public policy by failing to provide daily rest periods to
6 PLAINTIFF and the other Class Members for every four hours or major
7 fraction thereof worked and failing to compensate said employees one
8 hours of additional wages in lieu of each rest period denied;

9 f. Whether Defendants violated the California Labor Code, Wage
10 Orders, or public policy by failing to provide a full, timely meal period to
11 PLAINTIFF and the other Class Members on days they worked work
12 periods in excess of five hours and failing to compensate said employees
13 one hour additional wages in lieu of each meal period denied, and by
14 deducting for lunch periods that were not taken;

15 g. Whether Defendants violated the California Labor Code and
16 applicable Wage Order by failing to create and maintain accurate records
17 of work periods, meal periods for Class Members, including PLAINTIFF;
18 and

19 h. Whether PREMIER committed unfair or unlawful business
20 practices in violation of section 17200 *et seq.* of the Business and
21 Professions Code.

22 **C. Typicality**

23
24 27) The claims of the named PLAINTIFF are typical of the claims of the Class.
25 PLAINTIFF and all Class Members sustained injuries and damages arising out of and caused by
26 AUTOPIA'S common course of conduct in violation of California laws, regulations, and public
27 policy as alleged herein.

D. Adequacy of Representation

28) PLAINTIFF will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represent PLAINTIFF are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

29) A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of AUTOPIA's unlawful policy and/or practice of failing to compensate Class Members for the unlawful practices herein complained of.

30) Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(CALIFORNIA LABOR CODE §§ 1194, 1194.2, 1197, WAGE ORDER 9-2001, AND OTHERS). (PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL DEFENDANTS)

31) PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

32) Defendants failed to pay minimum wage for "all hours worked." For example, PLAINTIFF and the Class were forced to work "off the clock" time without compensation.

33) Labor Code section 1197 states that the minimum wage for employees is "fixed by commission or by any applicable state or local law" and states that "the payment of a lower wage than the minimum so fixed is unlawful."

34) Absent a local minimum wage ordinance, the applicable minimum wages fixed

1 by the commission for transportation industry workers is found in Wage Order 9-2001, with
2 Section 4(A) amended and republished by the Department of Industrial Relations to account for
3 changes in state minimum wage requirements.

4 35) The minimum wage provision of the California Labor Code is enforceable by
5 private civil action pursuant to section 1194(a), which provides a private right of action to
6 recover the unpaid balance of the full amount of minimum wage or overtime compensation and
7 recovery of attorney fees and costs.

8 36) Labor Code section 1194.2 provides for recovery of “liquidated damages in an
9 amount equal to the wages unlawfully unpaid and interest thereon” in suits brought under
10 section 1194.

11 37) Defendants have the ability to pay minimum wages for all hours worked and
12 have willfully refused to pay such wages with the intent to secure for themselves a discount
13 upon this indebtedness and with the intent to annoy, harass, oppress, hinder, delay, or defraud
14 PLAINTIFF and the Class and have, therefore, also violated Labor Code section 226(a).

15 38) As a result of Defendants’ violations of the minimum wage by failing to record
16 and pay minimum wages for all hours worked, Defendants violated section 226(a) by
17 inaccurately stating gross wages earned, total hours worked, deductions, net wages, and other
18 issues as described herein. Defendants have also violated Labor Code section 226.6 and Wage
19 Order 9-2001.

20 39) In sum, PLAINTIFF, individually and on behalf of the Class, may bring this
21 action for minimum wages, interest, cost of suit, and attorney fees pursuant to section 1194(a)
22 and the UCL.

23 40) WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid
24 minimum wages, liquidated damages in the amount equal to the minimum wages withheld,
25 interest, costs, and attorney fees.
26
27
28

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES
(CALIFORNIA LABOR CODE §§ 510, 1194, 1194.2, AND WAGE ORDER 9-2001)
(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL
DEFENDANTS)

41) PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

42) Labor Code section 510(a) provides for overtime for work in excess of eight hours in one workday and any work in excess of 40 hours in any one work week. It also provides for double-time pay for work in excess of twelve hours in a workday, overtime pay for the first eight hours of work on the seventh day of a workweek, and double-time pay for work on the seventh day beyond the first eight hours. The same standards are set forth in Section 3(A) of Wage Order 9-2001.

43) As described herein, Defendants violated Labor Code section 510 and Wage Order 9-2001 by employing PLAINTIFF and Class Members in excess of eight hours in one day, 40 hours in a workweek, and on the seventh day of a workweek without overtime pay. Defendants also violated section 510 and the applicable Wage Order by employing PLAINTIFF and Class Members greater than eight hours on the seventh day of work and in excess of twelve hours in a day without double-time pay.

44) PLAINTIFF, individually and on behalf of the Class, may bring this action for overtime wages, interest, cost of suit, and attorney fees pursuant to section 1194(a).

45) WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid overtime wages, interest, costs, and attorney fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS OR PAY ADDITIONAL WAGES IN LIEU
THEREOF
(CALIFORNIA LABOR CODE § 226.7 AND WAGE ORDER 9-2001)
(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL
DEFENDANTS)

1 46) PLAINTIFF incorporates all preceding paragraphs as though fully set forth
2 herein.

3 47) Defendants did not authorize or permit PLAINTIFF and the Class Members to
4 take all required rest periods. PLAINTIFF and the Class Members routinely worked and work
5 four-hour periods during the day without rest periods or compensation in lieu thereof.
6 Defendant's employment practices did not provide for rest periods as mandated by California
7 law.

8 48) California Labor Code section 226.7 states:

9 (a) No employer shall require any employee to work during any meal or
10 rest period mandated by an applicable order of the Industrial Welfare
Commission.

11 (b) If an employer fails to provide an employee a meal period or rest
12 period in accordance with an applicable order of the Industrial Welfare
Commission, the employer shall pay the employee one additional hour
13 of pay at the employee's regular rate of compensation for each work
14 day that the meal or rest period is not provided.

15 49) The applicable wage order issued by the Industrial Welfare Commission is Wage
16 Order 9-2001, which states at Section 12 with regard to rest periods:

17 (A) Every employer shall authorize and permit all employees to take
18 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
19 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
20 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
21 shall be counted, as hours worked, for which there shall be no
deduction from wages.

22 (B) If an employer fails to provide an employee a rest period in
23 accordance with the applicable provisions of this Order, the employer
shall pay the employee one (1) hour of pay at the employee's regular
24 rate of compensation for each work day that the rest period is not
25 provided.

26 50) Defendants violated California law by failing to provide rest periods mandated
27 by Labor Code section 226.7 and Wage Order 9 and by failing to provide one hour pay at the
28

employees' regular rate of compensation for each work day that a required rest period was not provided.

51) PLAINTIFF and the Class Members did not voluntarily or willfully waive rest periods. Any express or implied waivers obtained from PLAINTIFF and Class Members were not willfully obtained, was not voluntarily agreed to, was a condition of employment, or part of a contract of an unlawful adhesion.

52) By failing to keep adequate time records required by Labor Code sections 226, 1174 and the Wage Order, Defendants have made it difficult to calculate the unpaid rest period compensation due PLAINTIFF and the Class Members. As a consequence, PLAINTIFF and the Class may be entitled to prove their damages to this claim by just and reasonable inference.

53) As a result of the unlawful acts of Defendant, PLAINTIFF and the Class have been deprived of premium wages in amounts to be determined at trial and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney fees, and costs, under Labor Code sections 226.7, 1194, other statutes, and Wage Order 9.

54) WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid rest break premiums, interest, costs, and attorney fees.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS OR PAY ADDITIONAL WAGES IN LIEU THEREOF

(CALIFORNIA LABOR CODE §§ 226.7, 512, AND WAGE ORDER 9-2001)
(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL DEFENDANTS)

55) PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

56) PLAINTIFF and the Class Members were not afforded meal periods as required by California law, since they were routinely required to work five hours or more without a full, thirty-minute, uninterrupted meal period, and they were not compensated for these missed meal periods.

57) California Labor Code section 226.7 states:

1 (a) No employer shall require any employee to work during any meal or
2 rest period mandated by an applicable order of the Industrial Welfare
Commission.

3 (b) If an employer fails to provide an employee a meal period or rest
4 period in accordance with an applicable order of the Industrial Welfare
5 Commission, the employer shall pay the employee one additional hour
6 of pay at the employee's regular rate of compensation for each work
day that the meal or rest period is not provided.

7 58) The applicable wage order issued by the Industrial Welfare Commission is Wage
8 Order 9-2001. Section 11 of Wage Order 9-2001 states with regards to meal periods:

9 (A) No employer shall employ any person for a work period of more
10 than five (5) hours without a meal period of not less than 30 minutes,
11 except that when a work period of not more than six (6) hours will
12 complete the day's work the meal period may be waived by mutual
13 consent of the employer and employee. Unless the employee is
14 relieved of all duty during a 30 minute meal period, the meal period
15 shall be considered an "on duty" meal period and counted as time
16 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.

17 (B) If an employer fails to provide an employee a meal period in
18 accordance with the applicable provisions of this Order, the employer
19 shall pay the employee one (1) hour of pay at the employee's regular
20 rate of compensation for each work day that the meal period is not
provided.

21 59) A similar provision is contained in Labor Code section 512, which states:

22 (a) An employer shall not employ an employee for a work period of
23 more than five hours per day without providing the employee with a
24 meal period of not less than 30 minutes, except that if the total work
25 period per day of the employee is no more than six hours, the meal
26 period may be waived by mutual consent of both the employer and
27 employee. An employer shall not employ an employee for a work
28 period of more than 10 hours per day without providing the employee
with a second meal period of not less than 30 minutes, except that if
the total hours worked is no more than 12 hours, the second meal

period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

60) In this case, there was no mutual waiver of meal periods and employees worked for periods of more than five hours without an off-duty meal period of at least 30 minutes. Any express or implied waivers obtained from PLAINTIFF and the Class Member was not willfully obtained, was not voluntarily agreed to, was a condition of employment, or part of a contract of an unlawful adhesion. Therefore, as noted above, Defendants violated Labor Code sections 226.7, 512, and Wage. As such, Defendants are liable for one hour of pay at each respective employee's regular rate of compensation for each workday that meal periods were not provided.

61) By failing to keep adequate time records required by Labor Code sections 1174 and the Wage Order, Defendants made it difficult to calculate the unpaid meal period compensation due PLAINTIFF and the Class Members. As a consequence, PLAINTIFF and the Class Members may be entitled to prove their damages to this claim by just and reasonable inference.

62) As a result of the unlawful acts of Defendant, PLAINTIFF and the Class Members have been deprived of premium wages in amounts to be determined at trial and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney fees, and costs, under Labor Code sections 226.7, 1194, other statutes, and Wage Order 9.

63) WHEREFORE, PLAINTIFF and the Class Members are entitled to recover the unpaid meal break premiums, interest, costs, and attorney fees.

FIFTH CAUSE OF ACTION

**FAILURE TO MAINTAIN AND PROVIDE ACCURATE ITEMIZED EMPLOYEE WAGE STATEMENTS AND RECORDS
(CALIFORNIA LABOR CODE §§ 226, 1174, 1175, AND WAGE ORDER 9-2001)
(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL DEFENDANTS)**

64) PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

65) California Labor Code section 226(a) states:

1
2 (a) An employer, semimonthly or at the time of each payment of wages,
3 shall furnish to his or her employee, either as a detachable part of the
4 check, draft, or voucher paying the employee's wages, or separately if
5 wages are paid by personal check or cash, an accurate itemized
6 statement in writing showing (1) gross wages earned, (2) total hours
7 worked by the employee, except as provided in subdivision (j), . . . (4)
8 all deductions, provided that all deductions made on written orders of
9 the employee may be aggregated and shown as one item, (5) net wages
10 earned, . . . (8) the name and address of the legal entity that is the
11 employer . . . and (9) all applicable hourly rates in effect during the
12 pay period and the corresponding number of hours worked at each
13 hourly rate by the employee . . .

14 66) Defendants failed to provide "accurate itemized statements" to PLAINTIFF and
15 the Class Members, because the wage statements: 1) falsely understated the gross wages earned;
16 2) falsely stated or omitted total hours worked; 3) falsely understated net wages earned; and 4)
17 falsely stated or omitted the numbers of hours worked at each hourly rate.

18 67) California Labor Code section 226(e) and (g) provide for the remedy for the
19 violations described above:

20 (e) An employee suffering injury as a result of a knowing and intentional
21 failure by an employer to comply with subdivision (a) is entitled to
22 recover the greater of all actual damages or fifty dollars (\$50) for the
23 initial pay period in which a violation occurs and one hundred dollars
24 (\$100) per employee for each violation in a subsequent pay period, not
25 exceeding an aggregate penalty of four thousand dollars (\$4,000), and
26 is entitled to an award of costs and reasonable attorney's fees.

27 (g) An employee may also bring an action for injunctive relief to ensure
28 compliance with this section and is entitled to an award of costs and
reasonable attorney's fees.

68) By failing to keep adequate time records required by sections 226 and 1174 (d)
of the Labor Code, Defendants have made it difficult to calculate the unpaid hours and
premiums due and the applicable hourly rates of pay for said hours and premiums, and
PLAINTIFF and the Class are entitled to up to \$4,000.00 in penalties each.

69) WHEREFORE, PLAINTIFF and the Class Members they seek to represent are entitled to damages in an amount to be determined at trial, not to exceed \$4,000 per employee, cost of suit, attorney fees, and injunctive relief.

SIXTH CAUSE OF ACTION
VIOLATION OF UNFAIR COMPETITION LAW
(CALIFORNIA BUS. & PROF. CODE §§ 17200 ET SEQ.)
(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL DEFENDANTS)

70) PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

71) By their policies and practices described above, Defendants engaged in unlawful activity prohibited by Business and Professions Code sections 17200 et seq. Defendants' actions as alleged within this Complaint constitute unlawful and unfair business practices, within the meaning of Business and Professions Code sections 17200 et seq, and PLAINTIFF and similarly situated employee Class members have suffered injury and have lost money or property as a result of Defendants' failure to comply with well-established labor laws.

72) As a result of their unlawful acts, Defendants reaped and continue to reap unfair benefits and unlawful profits at the expense of PLAINTIFF and the Class Members. Defendants should be enjoined from this activity and made to disgorge these ill-gotten gains and restore to PLAINTIFF and the Class Members the wrongfully withheld wages pursuant to Business and Professions Code section 17203. PLAINTIFF are informed and believe and thereon allege that Defendants have been unjustly enriched through these unlawful practices.

73) The unlawful conduct alleged herein is continuing, and there is no indication that Defendants will not continue such activity in the future. PLAINTIFF allege that if Defendants are not enjoined from the conduct set forth in this Complaint, Defendants will continue these violations. As a direct and proximate result of the unfair business practices of Defendants, PLAINTIFF and the Class are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all wages which have been unlawfully withheld from PLAINTIFF and the Class Members as a result of the business acts and practices described

herein and enjoining Defendants to cease and desist from engaging in the practices described herein for the maximum time permitted pursuant to Business and Professions Code section 17208 including any tolling.

74) WHEREFORE, PLAINTIFF for herself and the Class she seeks to represent request injunctive, declaratory, and restitutionary relief as described herein and below.

SEVENTH CAUSE OF ACTION

**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
(CALIFORNIA LAB. CODE §§ 2698 ET SEQ.)
(PLAINTIFF AGAINST TRI-CITY AUTOWASH, INC.)**

75) PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

76) PLAINTIFF brings this claim herself as an aggrieved employee on behalf of the State of California and other current and former employees, as expressly authorized by Labor Code sections 2699 et seq. PAGA is an enforcement action that empowers an aggrieved employee to seek penalties on behalf of themselves, current and former employees, and the State, without the need to certify a class. For purposes of this claim only, therefore, PLAINTIFF brings this claim for themselves and other current and former employees and need not comply with Class Action Certification.

77) PLAINTIFF is an aggrieved employees as defined in Labor Code section 2699(a). PLAINTIFF brings this cause of action on behalf of herself and other current or former aggrieved employees affected by the labor law violations alleged in this complaint and set forth in the facts and theories of their pre-lawsuit notice.

78) The pre-lawsuit notice requirements set forth in Labor Code § 2699.3 have been satisfied by written notice by certified mail to TRI-CITY AUTOWASH, INC. and to the Labor and Workforce Development Agency, detailing the facts and theories of the Labor Code and IWC Wage Order violations averred in this complaint.

79) PLAINTIFF seeks penalties due from TRI-CITY AUTOWASH, INC. on behalf of herself, other aggrieved current and former employees, and the State, as provided by Labor

Code § 2699(i) as a result of TRI-CITY AUTOWASH, INC.'S violations of the provisions of the Labor Code and the IWC Wage Order as alleged in this complaint. Each of the cause of actions alleged herein gives rise to direct and derivative bases for PAGA penalty liability. The allegations herein also make TRI-CITY AUTOWASH, INC. liable for penalties under the Labor Code for which there is not a private right of action. For instance, owing to TRI-CITY AUTOWASH, INC.'S failure to keep "payroll records showing the hours worked daily by and the wages paid to" employees (Lab. Code, § 1174), and TRI-CITY AUTOWASH, INC.'S failure to create and maintain accurate records of work periods and meal breaks, under the applicable Wage Order, TRI-CITY AUTOWASH, INC. is liable for PAGA penalties under Labor Code sections 1174 and 1174.5 for its recordkeeping violations.

80) PLAINTIFF seeks all available civil penalties as provided under applicable Labor Code sections for violations of the Labor Code alleged herein pursuant to Labor Code section 2699(a). To the extent that any violation alleged herein does not carry a penalty, PLAINTIFF seeks civil penalties pursuant to Labor Code section 2699(f) for herself, other current or former employees, and the State for violations of those sections. PLAINTIFF is also entitled to an award of attorneys' fees and costs as set forth below.

VII. PRAYER FOR RELIEF

Wherefore, PLAINTIFF prays for judgment for herself and the class as follows:

1. That the court determine that this action may be maintained as a class action with the named plaintiffs appointed as class representative;
2. For the attorneys appearing on the above caption to be named Class Counsel;
3. For compensatory damages in an amount according to proof with interest thereon;
4. For economic and/or special damages in an amount according to proof with interest thereon;
5. For a declaratory judgment that each of the Defendants violated the rights of PLAINTIFF and Class under the California Labor Code, and California Business and Professions Code, as set forth in the preceding paragraphs;

6. That Defendants be found to have engaged in unfair competition in violation of section 17200, et seq. of the Business and Professions Code;
7. That Defendants be ordered and enjoined to make restitution to PLAINTIFF and the Class Members due to their unfair competition, including disgorgement of their wrongfully-obtained revenues, earnings, profits, compensation, and benefits pursuant to Business and Professions Code section 17203 and 17204;
8. That Defendants be enjoined from continuing the unlawful course of conduct alleged herein;
9. For declaratory and injunctive relief to PLAINTIFF and the Class Members;
10. For premium pay and penalties to PLAINTIFF and the Class Members;
11. For wages and premium wages to PLAINTIFF and the Class Members;
12. For all civil penalties pursuant to PAGA;
13. For attorney fees, interest, and costs of suit;
14. For liquidated damages for failure to pay minimum wages to PLAINTIFF and the Class Members; and
15. For such other and further relief as the Court deems just and proper.

VIII. JURY TRIAL DEMANDED

PLAINTIFF hereby demand trial of her claims and of the Class by jury to the extent authorized by law.

Dated: December 1, 2021

Respectfully submitted,

MALLISON & MARTINEZ



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Daniel C. Keller
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