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Case #21CV389877
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10 **SUPERIOR COURT OF STATE OF CALIFORNIA**
11 **COUNTY OF SANTA CLARA**
12

13
14 MATTHEW MUNOZ, an individual, on
behalf of himself, and all others similarly
15 aggrieved,

16 Plaintiff,

17
18 v.

19
20 SONIC AUTOMOTIVE, INC., a
Delaware corporation; SONIC -
21 STEVENS CREEK B, INC. dba
STEVENS CREEK BMW, a California
22 corporation; FIRST AMERICA
AUTOMOTIVE, INC., a Delaware
23 corporation; and DOES 1-100, inclusive,

24 Defendants.
25
26
27
28

CASE NO. 21CV389877

**PLAINTIFF MUNOZ'S FIRST
AMENDED PRIVATE ATTORNEYS
GENERAL ACT ("PAGA")
REPRESENTATIVE ACTION
COMPLAINT**

Action Filed: November 3, 2021
Trial Date: Not set

1 Plaintiff MATTHEW MUNOZ (“PLAINTIFF”), an individual, on behalf of Plaintiff and
2 all other similarly aggrieved employees (“Aggrieved Employees”), hereby files this Complaint
3 against Defendants SONIC AUTOMOTIVE, INC., SONIC - STEVENS CREEK B, INC. dba
4 STEVENS CREEK BMW, and FIRST AMERICA AUTOMOTIVE, INC., (collectively referred
5 to hereinafter as “DEFENDANTS”) and DOES 1-100, inclusive. PLAINTIFF is informed and
6 believes and thereon alleges as follows:

7 **THE PARTIES**

8 **1. Plaintiff Matthew Munoz.** PLAINTIFF is, and at all relevant times was, an individual
9 domiciled in the State of California who worked as a non-exempt employee for DEFENDANTS,
10 from approximately March 2021 to approximately July 23, 2021.

11 **2. Defendant Sonic Automotive, Inc.** Defendant SONIC AUTOMOTIVE, INC. is a
12 Delaware corporation that, at all relevant times, was authorized to do business within the State
13 of California and is doing business in the State of California.

14 **3. Defendant Sonic – Stevens Creek B, Inc. dba Stevens Creek BMW.** Defendant
15 SONIC – STEVENS CREEK B, INC. dba STEVENS CREEK BMW is a California corporation
16 that, at all relevant times, was authorized to do business within the State of California and is
17 doing business in the State of California.

18 **4. Defendant First America Automotive, Inc.** Defendant FIRST AMERICA
19 AUTOMOTIVE, INC. is a Delaware corporation that, at all relevant times, was authorized to do
20 business within the State of California and is doing business in the State of California.

21 **5. Doe Defendants.** The true names and capacities of the DOE Defendants sued herein as
22 DOES 1 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each
23 such Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is
24 legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to
25 amend this Complaint to reflect the true names and capacities of the Doe Defendants when such
26 identities become known.

27 **6.** California courts have recognized that the definition of “employer” for purposes of
28 enforcement of the California Labor Code goes beyond the concept of traditional employment to

1 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
2 California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who
3 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
4 person to work or exercises control over the wages, hours, or working conditions of any person,
5 may be liable for violations of the California Labor Code as to that person.

6 7. PLAINTIFF is further informed and believes that, at all relevant times, each Defendant
7 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
8 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
9 interest of some or all of the other DEFENDANTS, and was engaged with some or all of the
10 other defendants in a joint enterprise for profit, and bore such other relationships to some or all
11 of the other DEFENDANTS so as to be liable for their conduct with respect to the matters alleged
12 in this complaint. PLAINTIFF is further informed and believes and thereon alleges that each
13 Defendant acted pursuant to and within the scope of the relationships alleged above, and that at
14 all relevant times, each Defendant knew or should have known about, authorized, ratified,
15 adopted, approved, controlled, aided, and abetted the conduct of all other DEFENDANTS.

16 8. At all relevant times, DEFENDANTS were and are legally responsible for all of the
17 unlawful conduct, policies, practices, acts and omissions complained of herein. Further,
18 DEFENDANTS are responsible for each of the unlawful acts or omissions complained of herein
19 under the doctrine of respondent superior. The conduct of DEFENDANTS' managers and
20 supervisors was at all relevant times undertaken as employees of DEFENDANTS, acting within
21 the scope of their employment or authority in all of the unlawful activities described herein.

22 9. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times,
23 DEFENDANTS operated as a single integrated enterprise with common ownership and
24 centralized human resources as set forth herein. As a result, DEFENDANTS utilized the same
25 unlawful wage and hour policies and practices across all of their dealerships and subjected all
26 Aggrieved Employees to these same policies and practices regardless of the dealerships where
27 they worked.

1 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times,
2 DEFENDANTS were the joint employers of PLAINTIFF and/or the Aggrieved Employees upon
3 whose behalf PLAINTIFF brings these representative claims, in that DEFENDANTS, exercised
4 sufficient control over PLAINTIFF and the Aggrieved Employees' wages, hours and working
5 conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved Employees to work, so
6 as to be considered the joint employers of PLAINTIFF and the Aggrieved Employees.
7 Specifically, based upon information and belief, PLAINTIFF alleges that DEFENDANTS
8 created a uniform set of written policies and procedures concerning, inter alia, commission, piece
9 rate, hourly and overtime pay, time-keeping practices, meal and rest periods that were distributed
10 to, applied to, and controlled the wages, hours and working conditions of PLAINTIFF and the
11 Aggrieved Employees, and further that DEFENDANTS uniformly compensated and controlled
12 the wages of PLAINTIFF and the Aggrieved Employees in a uniform manner. DEFENDANTS
13 collectively represented to PLAINTIFF and the Aggrieved Employees that each was an "at-will"
14 employee of DEFENDANTS, and that DEFENDANTS collectively retained the right to
15 terminate PLAINTIFF's and the Aggrieved Employees' employment with or without cause.
16 Upon information and belief, DEFENDANTS further collectively represented to the Aggrieved
17 Employees in writing the details of their compensation any commission pay agreements, and the
18 manner in which he or she was to take meal and rest periods, the procedures required by
19 DEFENDANTS collectively for recordation of hours worked and the policies applicable to
20 PLAINTIFF and the Aggrieved Employees by which DEFENDANTS collectively would
21 evaluate the wage rate of PLAINTIFF and the Aggrieved Employees.

22 11. Thus, DEFENDANTS collectively exercised the right to control the wages, hours and
23 working conditions of PLAINTIFF and the Aggrieved Employees. Based on information and
24 belief, DEFENDANTS informed PLAINTIFF and the Aggrieved Employees in writing of the
25 uniform standards by which PLAINTIFF and the Aggrieved Employees would have to abide in
26 their employment with DEFENDANTS. Further, based upon information and belief,
27 DEFENDANTS collectively set forth guidelines concerning PLAINTIFF's and the Aggrieved
28 Employees' personal appearance at work with which each was required to comply as a condition

1 of his employment. As such, DEFENDANTS collectively held the right to control virtually every
2 aspect of PLAINTIFF's and the Aggrieved Employees' employment, including the
3 instrumentality that resulted in the illegal conduct for which PLAINTIFF seeks relief in this
4 Complaint.

5 12. PLAINTIFF believes and hereon asserts that DEFENDANTS (SONIC
6 AUTOMOTIVE, INC., SONIC - STEVENS CREEK B, INC. dba STEVENS CREEK BMW,
7 and FIRST AMERICA AUTOMOTIVE, INC.) and unknown entities must be classified as joint
8 employers of PLAINTIFF and Aggrieved Employees, as DEFENDANTS engaged, suffered and
9 permitted PLAINTIFF to perform services from which they benefited, and furthermore
10 DEFENDANTS had the right to exercise control over the wages, hours and/or working
11 conditions of PLAINTIFF and Aggrieved Employees at all relevant times herein, so as to be
12 considered the joint employers of PLAINTIFF and Aggrieved Employees.

13 13. FIRST AMERICA AUTOMOTIVE, INC. appears on PLAINTIFF's wage statements
14 as PLAINTIFF's "Legal Employer" and also shows the "Sonic Automotive" logo for SONIC
15 AUTOMOTIVE, INC. on each wage statement. "Sonic Automotive" appears on documents from
16 PLAINTIFF's personnel file, including but not limited to: associate separation forms, pay
17 position approval forms, and rehire request approval forms.

18 14. The Regional HR Manager for Southern California, Denver, and Nevada dealerships
19 for SONIC AUTOMOTIVE, INC. approved PLAINTIFF's termination. The Regional Vice
20 President of SONIC AUTOMOTIVE, INC. for Northern California and Colorado approved of
21 PLAINTIFF's rehire in March 2021. SONIC AUTOMOTIVE, INC. is listed as PLAINTIFF's
22 employer on tax questionnaires, long-term unemployment recipient self-attestation forms that
23 are submitted to the IRS, applicant/hiring documents, and IRS Form 8850 ("Pre-Screening
24 Notice and Certification Request for the Work Opportunity Credit").

25 15. SONIC AUTOMOTIVE, INC. obtained authorization from PLAINTIFF to initiate
26 direct deposits to PLAINTIFF's bank accounts. SONIC AUTOMOTIVE, INC. required
27 PLAINTIFF to submit a confidentiality agreement. SONIC AUTOMOTIVE, INC. provided
28 PLAINTIFF with an "Initial Written Employee Notification re: Medical Provider Network."
SONIC AUTOMOTIVE, INC. required PLAINTIFF to sign acknowledgment of receipt of and

1 agree to its terms of: Sonic Automotive's Drug & Alcohol Policy, Sonic Automotive's Eyewear
2 Policy, Sonic Automotive Safety and Loss Control Manual Dealership Policy Statement, Sonic
3 Automotive Code of Business Conduct and Ethics, and Key Control Policy and Procedures.

4 16. SONIC - STEVENS CREEK B, INC. is doing business under the fictitious name,
5 STEVENS CREEK BMW, according to the Fictitious Business Name Statements on file with
6 the Santa Clara County (last viewed on November 9, 2021). SONIC - STEVENS CREEK B,
7 INC. dba STEVENS CREEK BMW issued strict dress code policies applicable to PLAINTIFF,
8 conducted a background check on PLAINTIFF and received its results, is listed as PLAINTIFF's
9 employer on its Labor Code section 2810.5 Notice to Employee. SONIC - STEVENS CREEK
10 B, INC. dba STEVENS CREEK BMW provided PLAINTIFF with an "Hourly Compensation
11 Plan," detailing PLAINTIFF's base hourly wage, attendance requirements, meal and rest period
12 policies, and SONIC - STEVENS CREEK B, INC. dba STEVENS CREEK BMW's right to
13 terminate the pay plan, compensation, and ability to discipline PLAINTIFF.

14 17. SONIC - STEVENS CREEK B, INC. dba STEVENS CREEK BMW and SONIC
15 AUTOMOTIVE, INC. are listed on PLAINTIFF's associate separation form, dated July 23,
16 2021. The General Manager of SONIC - STEVENS CREEK B, INC. dba STEVENS CREEK
17 BMW reported to an unknown individual that he had accepted PLAINTIFF's "resignation" on
18 or around July 22, 2021. SONIC - STEVENS CREEK B, INC. dba STEVENS CREEK BMW
19 and SONIC AUTOMOTIVE, INC. obtained the results of a drug test they required PLAINTIFF
20 to submit to (for which only SONIC AUTOMOTIVE, INC. obtained said authorization from
21 PLAINTIFF to receive). PLAINTIFF's email address was
22 matthew.munoz@stevenscreekbmw.com. PLAINTIFF was directed to login to his email by
23 accessing <https://mail.sonicautomotive.com>.

24 18. On information and belief, all DEFENDANTS required PLAINTIFF to comply with
25 their employment handbooks, "Teammate Handbook," employment policies, and manuals. On
26 information and belief, SONIC - STEVENS CREEK B, INC. dba STEVENS CREEK BMW
27 obtained permission to rehire PLAINTIFF on a contingency basis from one of the other entities,
28 or an unknown entity.

1 19. Accordingly, all DEFENDANTS engaged, suffered and permitted PLAINTIFF to
2 perform services from which they benefited, and furthermore that the aforementioned entities
3 had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF
4 and Aggrieved Employees at all relevant times herein, so as to be considered the joint employers
5 of PLAINTIFF and Aggrieved Employees.

6 20. Whenever and wherever reference is made in this complaint to any act or failure to act
7 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean
8 the acts and/or failures to act by each Defendant acting individually, jointly, and severally.

9 **JURISDICTION AND VENUE**

10 21. This court possesses original subject matter jurisdiction over this matter. Venue is
11 proper in Santa Clara County, California, because Defendant SONIC - STEVENS CREEK B,
12 INC. maintains its principal place of business in this judicial district. Moreover, Defendants, and
13 each of them, transact business within this judicial district and some of the complained of conduct
14 occurred in this judicial district.

15 **FACTUAL AND LEGAL ALLEGATIONS**

16 22. During the one year and sixty-five-day period preceding filing of this Complaint,
17 PLAINTIFF was employed at all relevant times by DEFENDANTS as a non-exempt employee
18 in the State of California. DEFENDANTS, at all relevant times, exercised control over
19 PLAINTIFF and the other Aggrieved Employees (as defined below) and suffered and/or
20 permitted them to work.

21 23. PLAINTIFF was originally hired on November 19, 2019 as a “porter” in the service
22 department for DEFENDANTS and earned approximately \$15.00 per hour. PLAINTIFF was
23 subsequently terminated on or around March 24, 2020. DEFENDANTS rehired PLAINTIFF as
24 a non-exempt parts runner or shipping and receiving clerk from approximately March 30, 2021,
25 until the separation of PLAINTIFF’s employment, on or about July 23, 2021 and earned
26 approximately \$19.00 per hour. PLAINTIFF’s job duties included, but were not limited to,
27 locating/running auto parts for the service technicians. PLAINTIFF’s official schedule was
28

1 typically eight (8) to nine (9) hours per day, five (5) days per week. PLAINTIFF was paid on an
2 hourly basis, but only for time counted by DEFENDANTS as hours worked.

3 **24. Unpaid Minimum and Overtime Wages.** PLAINTIFF was not paid for all hours
4 worked. PLAINTIFF and Aggrieved Employees were required to perform work prior to clocking
5 in and after clocking out and during uncompensated meal periods. For example, upon arrival at
6 the worksite, PLAINTIFF and Aggrieved Employees were required to log into DEFENDANTS'
7 network and go through an online verification process prior to being allowed to clock in for their
8 shifts, a process that took approximately ten minutes, resulting in significant off-the-clock work
9 per workday for PLAINTIFF and Aggrieved Employees. At the end of the workday, PLAINTIFF
10 and Aggrieved Employees were required to inspect all the doors in the building facility after
11 having clocked out for the end of their shifts, resulting in approximately five (5) to ten minutes
12 of off-the-clock work per workday. Defendants implemented an automatic deduction policy and
13 practice for meal periods, described in further detail below. This regular performance of off-the-
14 clock work resulted in DEFENDANTS underpaying both minimum wages and overtime wages
15 owed to PLAINTIFF, as well as record-keeping violations. Aggrieved Employees who were paid
16 on a piece rate or commissioned basis were also not paid separately for rest breaks and all non-
17 productive time and were not paid at the correct regular rate of pay, resulting in underpayment
18 of both minimum wages and overtime wages, as well as record-keeping violations.

19 **25. Meal Breaks.** PLAINTIFF was not provided timely, off-duty, uninterrupted thirty-
20 minute meal periods. PLAINTIFF was suffered and permitted to take meal periods that were late,
21 short, interrupted and or on-duty due to pressure to meet work deadlines, lack of relief workers
22 available, and or the need to tend to incoming/outgoing shipments. DEFENDANTS required
23 PLAINTIFF to remain on duty during meal periods and or interrupted/cut short PLAINTIFF's
24 meal periods by requiring PLAINTIFF to tend to work tasks during his meal periods.
25 DEFENDANTS required PLAINTIFF to clock out thirty minutes per shift for these
26 shortened/interrupted and or on-duty meal periods. This policy and practice for meal periods
27 whereby PLAINTIFF and Aggrieved Employees were not relieved of all duties resulted in
28 PLAINTIFF and Aggrieved Employees not being compensated for all hours worked.

1 DEFENDANTS failed to pay PLAINTIFF and Aggrieved Employees an additional hour of
2 premium pay at their regular rate(s) of pay for each day PLAINTIFF and Aggrieved Employees
3 missed a meal period or received an improper meal period, or DEFENDANTS did not pay the
4 proper premium, for failure to incorporate all non-discretionary compensation, including but not
5 limited to, non-discretionary bonuses, commissions and or piece-rate compensation, into the
6 regular rate of pay for purposes of calculating the owed meal period premium. For example,
7 during the pay period from July 9, 2021 to July 23, 2021, PLAINTIFF had three shifts where
8 PLAINTIFF's meal periods were less than 30-minutes (July 13, July 14, and July 17 each showed
9 29 minute meal periods). PLAINTIFF was not compensated for this time and was not paid an
10 additional hour of premium pay at his regular rate of pay.

11 **26. Rest Breaks.** PLAINTIFF did not receive compliant net ten (10)-minute rest periods
12 for every four (4) hours worked (or major fraction thereof). PLAINTIFF regularly worked more
13 than three-and-one-half (3½) hours without being authorized or permitted to take a paid net ten
14 (10) minute rest period. DEFENDANTS required PLAINTIFF to continuously work without
15 authorizing or providing paid rest periods. Any purported rest periods would be interrupted, cut
16 short, on duty, and or late due to the nature and constraints of PLAINTIFF 's job duties and or
17 commentary from supervisors pressuring PLAINTIFF to skip rest breaks completely/take non-
18 compliant rest breaks. PLAINTIFF was prohibited from availing himself of his rest breaks for
19 various reasons, including but not limited to, pressure to meet deadlines, lack of relief workers
20 available, and or the need to tend to incoming/outgoing shipments. Moreover, based on
21 information and belief, PLAINTIFF was required to remain on the worksite premises during any
22 purported rest periods and thus remained under employer control, rendering any provided rest
23 periods noncompliant with California law. DEFENDANTS had no policy in practice as to the
24 taking of timely, off-duty rest periods. PLAINTIFF was never paid a rest period premium for
25 any missed/improper rest period. This occurred throughout PLAINTIFF's employment with
26 DEFENDANTS, including on the following dates PLAINTIFF had a qualifying shift during the
27 statutory period: March 30, 2021 through April 3, 2021, April 6, 2021 through April 8, 2021,
28 April 10, 2021, April 12, 2021 through April 17, 2021, April 19, 2021 through April 24, 2021,

1 April 27, 2021 through May 1, 2021, May 4, 2021 through May 8, 2021, May 11, 2021 through
2 May 15, 2021, May 18, 2021 through May 22, 2021, May 25, 2021 through May 29, 2021, June
3 1, 2021 through June 5, 2021, June 9, 2021 through June 12, 2021, June 15, 2021 through June
4 19, 2021, June 22, 2021 through June 26, 2021, June 29, 2021 through July 3, 2021, July 5, 2021
5 through July 10, 2021, July 13, 2021 through July 17, 2021, and July 20, 2021 through July 2,
6 2021.

7 **27. Unpaid Sick Leave Wages.** On information and belief, DEFENDANTS improperly
8 calculated the sick leave accrual and the rate of sick leave pay owed to PLAINTIFF and the
9 Aggrieved Employees by failing to base the accrued sick leave hours on the correct number of
10 hours worked and by failing to incorporate all non-discretionary compensation, including but not
11 limited to, non-discretionary bonuses and commission and or piece-rate compensation, for those
12 Aggrieved Employees compensated with commissions and or piece-rate pay. On information and
13 belief, DEFENDANTS failed to provide notice of the correct sick leave amount balance available
14 to PLAINTIFF and the Aggrieved Employees on their wage statements or other written
15 statement(s) of the sick leave balance(s).

16 **28. Inaccurate Wage Statements.** DEFENDANTS failed to furnish PLAINTIFF with
17 complete and accurate wage statements in compliance with Labor Code section 226.
18 DEFENDANTS' wage statements do not accurately reflect the total hours worked, as the hours
19 are not totaled on his wage statements and those hours reflected on his wage statements do not
20 include time spent working pre- and post- shift and during unpaid meal periods. As a result,
21 DEFENDANTS' wage statements fail to reflect the true total hours PLAINTIFF worked, a
22 requirement of Labor Code section 226. DEFENDANTS' wage statements further fail to include
23 an applicable overtime rate for time spent working overtime hours each pay period. Moreover,
24 based on information and belief, DEFENDANTS' wage statements fail to display all hours
25 worked at the applicable hourly pay rate, in violation of Labor Code section 226; for example,
26 DEFENDANTS' wage statements display a category for regular rate of pay and then a separate
27 "multiple" category listing 1.5 requiring PLAINTIFF to engage in extensive calculations to try
28 to ascertain what the applicable overtime rate of pay is for each overtime hour worked during the

1 pay period. These violations occur on each wage statement PLAINTIFF received, including but
2 not limited to, on the following payment dates: April 15, 2021, April 30, 2021, May 14, 2021,
3 May 28, 2021, June 15, 2021, June 30, 2021, July 15, 2021, July 23, 2021.

4 **29. Timely Wages at Termination.** Upon separation of employment, DEFENDANTS
5 failed to furnish PLAINTIFF with a final paycheck containing all earned and unpaid wages, as
6 the check did not include all wages for time spent working pre- and post- shift and during unpaid
7 meal periods, nor all wages calculated at the correct wage rates. DEFENDANTS willfully failed
8 to timely pay all wages upon separation of employment.

9 **30. Background Checks.** Based on information and belief, DEFENDANTS required
10 PLAINTIFF to submit to an unlawful criminal and/or financial background check as a condition
11 of obtaining and/or holding employment in violation of Labor Code sections 1024.5 and/or
12 432.7. Based on further information and belief, DEFENDANTS also required PLAINTIFF to
13 agree in writing to unlawful background checks not in conformity with the requirements of
14 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq. (“ICRAA”),
15 and the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. (“FCRA”).

16 **PAGA**

17 **31.** PLAINTIFF brings this complaint under the Private Attorneys General Act of 2004,
18 Labor Code sections 2698, et seq., (“PAGA”), as a representative action on behalf of the State
19 of California, regarding violations of the Labor Code as to all similarly aggrieved individuals
20 employed by DEFENDANTS in the State of California as a non-exempt employee. This action
21 is brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

22 **32.** Under Labor Code section 2699.3, the LWDA must give written notice by certified
23 mail to the parties that it intends to investigate the alleged violations within 65 days of the date
24 of PLAINTIFF’s written notice. PLAINTIFF has complied with the administrative exhaustion
25 procedures for bringing suit specified in Labor Code sections 2699.3 and 2699.5. PLAINTIFF
26 gave timely written notice by certified mail to DEFENDANTS of the violation of various
27 provisions of the California Labor Code as alleged in this complaint and filed notice of the
28 violations online with the Labor and Workforce Development Agency (“LWDA”). PLAINTIFF

1 filed his notice with the LWDA on August 30, 2021 and served DEFENDANTS via certified
2 mail. The LWDA assigned PLAINTIFF the following case number: LWDA-CM-842983-21.
3 PLAINTIFF filed an amended notice with the LWDA on or around November 9, 2021, adding,
4 among other things, Defendant FIRST AMERICA AUTOMOTIVE, INC., and served all
5 DEFENDANTS via certified mail.

6 33. The LWDA did not provide notice of its intention to investigate PLAINTIFF's claims
7 on behalf of the State of California and the Aggrieved Employees after expiration of the 65-day
8 waiting time period, or at any time. DEFENDANTS also failed to cure within the time allotted
9 by PAGA. Consequently, PLAINTIFF has exhausted all administrative remedies and
10 PLAINTIFF's right to file the instant lawsuit then duly accrued.

11 34. From one-year prior to PLAINTIFF's filing of the required PAGA notice with the
12 Labor Workforce and Development Agency, and continuing through the present, as alleged herein,
13 DEFENDANTS violated Labor Code sections 201-202, 216, 221-223, 226, 226.2, 226.7, 245-
14 248.5, 432.5, 432.7, 510, 512, 1024.5, 1174, 1194, 1197, 1198, 1199, 2802, and 2810.5, and all
15 relevant sections of the applicable Wage Orders, as to PLAINTIFF and all Aggrieved Employees
16 employed by DEFENDANTS who worked as non-exempt employees. These violations subject
17 DEFENDANTS to civil penalties as set forth in the foregoing statutes as well as other
18 provisions of the Labor Code, including without limitation Labor Code sections 203, 210,
19 225.5, 226, 226.3, 256, 1174.5, 1197.1 and 2699.

20 35. PLAINTIFF is an "aggrieved employee" as that term is defined under the Labor Code
21 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable
22 statutory limitations period and suffered one or more of the Labor Code violations set forth
23 herein. Accordingly, PLAINTIFF seeks to recover on behalf of himself and all Aggrieved
24 Employees, the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

25 36. PLAINTIFF has standing to bring a PAGA action on behalf of the defined
26 Aggrieved Employees, as he was employed by DEFENDANTS and affected by one or more
27 of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
28 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations

1 committed by the employer – regardless of whether PLAINTIFF experienced all violations
2 personally. *Id.* at 760-761.

3
4 **THE “AGGRIEVED EMPLOYEES”**

5 37. PLAINTIFF brings this action on behalf of PLAINTIFF and all similarly aggrieved
6 employees. The “Aggrieved Employees” shall be defined as follows: “All non-exempt workers
7 – whether paid hourly, on a commission basis, and or piece-rate basis – employed in California
8 by DEFENDANTS at any time from one year and sixty-five days prior to the filing of the initial
9 complaint, through the present.”

10 **FIRST CAUSE OF ACTION**
11 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**
12 **LABOR CODE SECTIONS 2698, ET SEQ.**
13 **(AGAINST ALL DEFENDANTS)**

14 38. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

15 39. **Unpaid Minimum and Overtime Wages.** At all times relevant to this complaint, Cal.
16 Labor Code § 1194 and IWC Wage Order Nos. 4 were in full force and effect and required that
17 DEFENDANTS’ employees in California be paid for all hours worked, up to forty per week or
18 eight per day, at a regular time rate no less than the mandated minimum wage.

19 40. Effective January 1, 2016, the California minimum wage was \$10.00 per hour. Pursuant
20 to Cal. Labor Code § 1182.12, effective January 1, 2017, the California minimum wage rate for
21 employers with 26 employees increased to \$10.50 per hour. On January 1, 2018, this rate was
22 increased to \$11.00 per hour. On January 1, 2019, this rate was increased to \$12.00 per hour. On
23 January 1, 2020, this rate was increased again to \$13.00 per hour. Finally, on January 1, 2021,
24 this rate was increased again to \$14.00 per hour and is scheduled to increase to \$15.00 per hour
25 on January 1, 2022.

26 41. “Employer” means “any person who directly or indirectly, or through an agent or any
27 other person, employs or exercises control over the wages, hours, or working conditions of any
28 person.” Cal. Lab. Code § 1182.12(b)(3).

1 42. At all times relevant to this complaint, DEFENDANTS were employers who employed
2 26 or more employees.

3 43. Pursuant to Cal. Labor Code § 510 and IWC Wage Order Nos. 4 and 9, § 3, employees
4 in California must be paid overtime, equal to one and a half (1.5) times the employee's regular
5 rate of pay, for all hours worked in excess of forty (40) per week or eight (8) per workday and
6 must be paid double the regular hourly rate of pay for each hour worked beyond twelve (12)
7 hours per workday and for all hours worked in excess of eight (8) hours on the seventh
8 consecutive day of work in a work week, unless they are exempt.

9 44. PLAINTIFF and the Aggrieved Employees were non-exempt employees who regularly
10 worked time for which they were not compensated, resulting in unpaid minimum and overtime
11 wages.

12 45. PLAINTIFF and the Aggrieved Employees were not paid for all hours worked because
13 DEFENDANTS directed, suffered, or permitted PLAINTIFF and Aggrieved Employees to
14 perform work off-the-clock, with such hours worked not recorded. Defendants also required
15 employees to record unpaid meal periods, despite PLAINTIFF and Aggrieved Employees not
16 being relieved of all duties and employer control during the thirty (30) minutes during which
17 they were required to clock out. This practice resulted in PLAINTIFF and the Aggrieved
18 Employees not being paid for all time worked, with regular off-the-clock work – including during
19 the meal period - resulting in the underpayment of minimum and overtime wages owed to
20 PLAINTIFF and the Aggrieved Employees, as well as record-keeping violations.

21 46. DEFENDANTS also failed to compensate Aggrieved Employees who were
22 compensated on a piece rate or commissioned basis separately for non-piece-rate/non-
23 commission-generating activities, including but not limited to, rest periods, meetings, training,
24 scheduling, among other job activities integral and indispensable to their employment. This
25 failure to separately compensate for non-piece-rate/commission-generating activities violates
26 California's wage laws.

27 47. Labor Code section 226.2 requires an employer to pay employees compensated on a
28 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any

1 piece-rate pay. This statute further requires an employer to include on the wage statements for
2 these employees the total hours of compensable rest and recovery period, the total hours for other
3 non-productive time, the rates of compensation for these hours, and the gross wages paid for
4 these hours. In addition, the statute requires that employees shall be compensated for rest and
5 recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly
6 rate determined by dividing the total compensation for the workweek, exclusive of compensation
7 for rest and recovery periods and any premium compensation for overtime, by the total hours
8 worked during the workweek, exclusive of rest and recovery periods, or (ii) The applicable
9 minimum wage. Per case law, Labor Code section 226.2 also applies to employees compensated
10 on a commission basis.

11 48. During the PAGA period, DEFENDANTS failed to comply with Labor Code section
12 226.2. Specifically, DEFENDANTS failed to compensate Aggrieved Employees who were paid
13 on a piece rate and or commission basis separately for the rest periods and nonproductive time,
14 and/or failed to pay them for this time at the correct rates. DEFENDANTS further failed to
15 include the information on Aggrieved Employees' wage statements required by this statute.

16 49. DEFENDANTS also violated California's overtime wage laws by failing to incorporate
17 all non-discretionary compensation, including but not limited to, non-discretionary bonuses,
18 commission and or piece rate pay, into the regular pay rate used to calculate the overtime rate of
19 pay. This miscalculation of the regular pay rate and correct overtime rate of pay resulted in the
20 miscalculation and, on information and belief, the underpayment of owed overtime wages, as
21 well as record-keeping violations.

22 50. **Meal Breaks.** Under Labor Code §§ 226.7, 512, and the applicable IWC Wage Orders,
23 DEFENDANTS were required to provide PLAINTIFF and the Aggrieved Employees with one
24 thirty (30) minute meal break free from all duties for all shifts greater than five (5) but less than
25 ten (10) hours in length, and a second thirty (30) minute meal break free from all duties for all
26 shifts of ten (10) hours or more. The first meal period must be provided before the end of the
27 fifth hour of work and the second meal period before the end of the tenth hour of work. Employers
28 covered by the Wage Orders have an obligation to both (a) relieve their employees for at least

1 one meal period for shifts over five hours, and (b) to record having done so. If the employer fails
2 to properly record a compliant meal period, it is presumed no meal period was provided.
3 PLAINTIFF and the Aggrieved Employees were not provided timely, off-duty, uninterrupted
4 thirty-minute meal periods.

5 51. PLAINTIFF and other Aggrieved Employees were suffered and permitted to late,
6 shortened and or on-duty meal periods due to, including but not limited to, pressure from
7 supervisors to meet deadlines/make sales, lack of relief workers available, and or the need to tend
8 to incoming/outgoing shipments. DEFENDANTS required the Aggrieved Employees to remain
9 on duty during meal periods and or interrupted/cut short the Aggrieved Employees' meal periods
10 by requiring them to tend to work tasks during their meal periods. DEFENDANTS required the
11 Aggrieved Employees to clock out thirty minutes per shift for these shortened/interrupted and or
12 on-duty meal periods. This policy and practice for meal periods resulted in PLAINTIFF and the
13 Aggrieved Employees not being compensated for all hours worked as well as record-keeping
14 violations. Based on information and belief, second meal periods were not provided to the
15 Aggrieved Employees when they worked more than ten hours. DEFENDANTS had actual and/or
16 constructive knowledge that PLAINTIFF and the Aggrieved Employees were not receiving
17 timely, compliant, uninterrupted meal periods, resulting in off-the-clock work, yet
18 DEFENDANTS failed to pay the Aggrieved Employees an additional hour of premium pay at
19 their respective regular rate(s) of pay for each day a meal period was missed or improper.
20 DEFENDANTS either failed to pay any premium pay for these denied meal periods or did not
21 pay the proper premium, for failure to incorporate all non-discretionary remuneration, including
22 but not limited to, non-discretionary bonuses, commission and or piece-rate compensation, into
23 the regular rate of pay for purposes of calculating the owed meal period premium.

24 52. **Rest Breaks.** PLAINTIFF and other Aggrieved Employees did not receive compliant
25 net ten (10)-minute rest periods for every four (4) hours worked (or major fraction thereof), as
26 required by Labor Code 226.7 and the applicable IWC Wage Orders. PLAINTIFF and other
27 Aggrieved Employees regularly worked more than three-and-one-half (3½) hours without being
28 authorized or permitted to take a paid net ten (10) minute rest period. DEFENDANTS required

1 PLAINTIFF and other Aggrieved Employees to continuously work without authorizing or
2 providing paid rest periods. Any purported rest periods would be interrupted, cut short, on duty,
3 and or late due to the nature and constraints of the Aggrieved Employees' job duties and or
4 commentary from DEFENDANTS pressuring them to skip rest breaks completely/take non-
5 compliant rest breaks. PLAINTIFF and other Aggrieved Employees were unable to avail
6 themselves of their rest breaks for various reasons, including but not limited to, pressure to meet
7 deadlines and or make sales, lack of relief workers available, and or the need to tend to
8 incoming/outgoing shipments. Moreover, based on information and belief, PLAINTIFF and
9 other Aggrieved Employees were required to remain on the worksite premises during any
10 purported rest periods and thus remained under employer control, rendering any provided rest
11 periods noncompliant with California law. DEFENDANTS had no policy in place nor instruction
12 as to the taking or timing of rest periods. PLAINTIFF and other Aggrieved Employees were
13 never paid a rest period premium for any missed/improper rest period.

14 **53. Unpaid Sick Leave Wages.** DEFENDANTS failed to provide PLAINTIFF and the
15 Aggrieved Employees paid sick days in accordance with Labor Code sections 245 through 248.5,
16 further failing to put them on notice of their paid sick leave rights—or thereby putting their
17 entitlement to sick leave in a Labor Code section 2810.5 notice. DEFENDANTS failed to
18 maintain accurate records documenting the hours worked and paid sick days accrued and used
19 by employees in violation of Labor Code section 247.5, permitting the presumption that
20 PLAINTIFF and the Aggrieved Employees were entitled to the maximum number of hours
21 accruable at the time of their respective separations of employment. By failing to correctly
22 account for the true hours worked by PLAINTIFF and the Aggrieved Employees and by failing
23 to incorporate all non-discretionary compensation into the owed sick leave calculations,
24 DEFENDANTS unlawfully retained and continue to retain paid sick leave that should have been
25 paid and was not. Accordingly, DEFENDANTS have violated Labor Code sections 233 and 234
26 as to PLAINTIFF and the Aggrieved Employees. DEFENDANTS either failed to pay sick leave
27 at all or improperly calculated the sick leave accrual and the rate of sick leave pay owed to
28 PLAINTIFF and the Aggrieved Employees by failing to base the accrued sick leave hours on the

1 correct number of hours worked due to the off-the-clock work DEFENDANTS mandated as
2 described herein and by failing to incorporate all non-discretionary compensation, including but
3 not limited to, non-discretionary bonuses and commission and or piece-rate compensation, for
4 those Aggrieved Employees compensated with commissions and or piece-rate pay.
5 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
6 PLAINTIFF and the Aggrieved Employees on their wage statements or other written
7 statement(s) of the sick leave balance(s).

8 **54. Inaccurate Wage Statements.** California Labor Code § 226 and the applicable IWC
9 Wage Order provides that, at the time of each payment of wages, the employer must provide
10 each employee with an itemized statement showing, *inter alia*, gross wages earned, total hours
11 worked, all deductions taken, net wages earned, the inclusive dates for which the employee is
12 being paid, the employee's name and last four digits of their social security number, the name
13 and address of the legal entity that it is the employer, and all applicable hourly rates in effect
14 during the pay period and all hours worked at each rate.

15 55. DEFENDANTS knew or had reason to know PLAINTIFF and the Aggrieved
16 Employees were working during their meal breaks and otherwise working off-the-clock and not
17 being paid for all hours worked. DEFENDANTS knowingly and intentionally failed to provide
18 PLAINTIFF and the Aggrieved Employees with accurate, itemized wage statements as the wage
19 statements provided by DEFENDANTS do not accurately reflect, *inter alia*, the correct total
20 hours worked. Due to DEFENDANTS' unlawful practice for shortened/on-duty meal periods
21 and other mandated off-the-clock work as described herein, DEFENDANTS' wage statements
22 fail to reflect the true total hours the Aggrieved Employees worked, as required under Labor
23 Code § 226. As a result of DEFENDANTS' failure, PLAINTIFF and the Aggrieved Employees
24 suffered injury. Accordingly, DEFENDANTS have violated Cal. Labor Code § 226.

25 **56. Record Keeping.** California Labor Code sections 226 and 1174 require employers to
26 keep "accurate and complete" payroll records showing, among other things, the hours worked
27 daily by all non-exempt employees. Section 7 of all applicable IWC Wage Orders similarly
28 requires employers to keep time records showing, *inter alia*, when the employees begin and end

1 each work period and reflecting the true start and end times during which all owed meal periods
2 are provided each day. At all relevant times, DEFENDANTS have failed, and continue to fail, to
3 keep the required time records, as DEFENDANTS have failed to record the true start and end
4 times of PLAINTIFF 's and the Aggrieved Employees' workdays and failed to record employee
5 meal periods as time worked. DEFENDANTS' failure to keep "accurate and complete" payroll
6 records for PLAINTIFF and the Aggrieved Employees violates Labor Code sections 1174, 1198-
7 99, and Section 7 of all applicable IWC Wage Orders. These violations subject DEFENDANTS
8 to civil penalties under the Labor Code, including without limitation sections 1174.5 and 2699.
9 Each violation of each Labor Code section and Wage Order provision, for each aggrieved
10 employee, results in a separate civil penalty.

11 **57. Untimely Wages at Termination.** Labor Code section 201 requires employers to pay
12 all wages earned and unpaid at the time of discharge, immediately upon discharge, and Labor
13 Code section 202 extends those provisions to employees who resign. For all Aggrieved
14 Employees no longer employed by DEFENDANTS, DEFENDANTS have an ongoing failure to
15 pay such aggrieved employees all wages earned and unpaid at the time of discharge or
16 resignation, due to DEFENDANTS' failure to pay, *inter alia*, all owed minimum and overtime
17 wages and at the properly accrued rates. These violations subject DEFENDANTS to civil
18 penalties under the Labor Code, including without limitation Labor Code sections 203, 256 and
19 2699. Each violation results in a separate civil penalty, for each Aggrieved Employee for each
20 pay period during which the statutory provisions were violated.

21 **58. Refusal to Pay Wages Due.** Labor Code section 216 declares unlawful an employer's
22 refusal to pay wages due and payable and/or an employer's denial of the validity of any claim to
23 wages due. DEFENDANTS have violated this section by, *inter-alia*, failing to pay PLAINTIFF
24 and the Aggrieved Employees for all hours worked at the proper wage rate and by failing to pay
25 PLAINTIFF and the Aggrieved Employees an additional hour of premium wages for each meal
26 or rest period not provided/that was invalid. These violations subject DEFENDANTS to civil
27 penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for
28 each aggrieved employee, for each pay period during which the statute provisions were violated.

1 **59. Statutory Wages.** California Labor Code § 223 makes it unlawful for an employer to
2 secretly pay wages lower than required by statute while purporting to pay legal wages. As
3 described above, DEFENDANTS willfully and systematically denied PLAINTIFF and the
4 Aggrieved Employees minimum and overtime wage compensation for all hours worked which
5 resulted in the payment of less than statutorily required wages to them. DEFENDANTS acted
6 with the intent to deprive them of statutory wages, including, but not limited to, overtime wages
7 and minimum wages, to which they were entitled to under California law.

8 **60. Unreimbursed Business Expenses.** Based on information and belief, DEFENDANTS
9 regularly failed to reimburse and indemnify Aggrieved Employees for business expenses,
10 including but not limited to, costs associated with being required to use their cell phones/other
11 mobile devices for work. Pursuant to Labor Code section 2802, Aggrieved Employees were
12 entitled to be reimbursed for all reasonable expenses associated with carrying out their
13 DEFENDANTS' instructions. Aggrieved employees were improperly required to pay for
14 business expenses that are supposed to be the responsibility of the employer, including but not
15 limited to, cell phone/data plan charges. DEFENDANTS' failure to provide aggrieved employees
16 with full reimbursement for all reasonable expenses associated with carrying out their duties
17 required that Aggrieved Employees subsidize DEFENDANTS' business expenses in violation
18 of Labor Code section 2802.

19 **61. Background Checks.** The Labor Code places certain procedural and substantive limits
20 on employers' ability to conduct employee background checks and on how employers can use
21 the information they obtain through those background checks. Labor Code section 1024.5 states
22 that employers, except for financial institutions, may order a credit check only if the individual
23 works (or is applying to work) in certain positions, and Labor Code section 432.7 prohibits an
24 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and
25 even then, certain limitations apply. Additionally, the ICRAA, and the FCRA mandate several
26 requirements prior to and following an employee background check, including but not limited
27 to, identifying an appropriate reason for the background check, a separate consent form with
28

1 required disclosures and certain formatting requirements, additional forms such as a summary of
2 rights, as well as proper notice of adverse actions taken, among other statutory requirements.

3 62. Based on information and belief, DEFENDANTS required PLAINTIFF and the
4 Aggrieved Employees to submit to an unlawful criminal and/or financial background check as a
5 condition of obtaining and/or holding employment in violation of Labor Code sections 1024.5
6 and/or 432.7. Based on further information and belief, DEFENDANTS also required
7 PLAINTIFF and the Aggrieved Employees to agree in writing to unlawful background checks
8 not in conformance with the requirements of ICRAA and/or FCRA. These violations subject
9 DEFENDANTS to civil penalties under the Labor Code, including without limitation Labor
10 Code sections 432.5, 432.7 and 2699. Each violation of each Labor Code section and Wage
11 Order provision, for each aggrieved employee, results in a separate civil penalty.

12 63. Under the provisions of PAGA and Labor Code sections 201-202, 216, 221-223, 226,
13 226.2, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 1024.5, 1174, 1194, 1197, 1198, 1199, and
14 2810.5, and all relevant sections of the applicable Wage Orders, as well as all interpretations of
15 these laws by California Courts and administrative bodies, as well as any other law that is
16 enforceable through PAGA, DEFENDANTS are liable for all statutorily-specified penalties
17 recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed
18 herein, or for default PAGA penalties under Labor Code section 2699(f) for any violation of a
19 Labor Code section without a specified civil penalty.

20 64. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
21 PLAINTIFF is entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs,
22 all in an amount to be proved.

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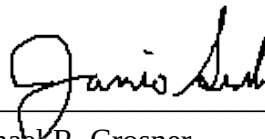
1 **PRAYER**

2 WHEREFORE, PLAINTIFF, prays for judgment against each DEFENDANT, jointly
3 and severally, as follows:

- 4 1. For civil penalties according to proof;
5 2. For reasonable attorney's fees and costs of suit; and
6 3. For such other and further relief as the Court deems just and proper.
7

8 Dated: January 14, 2022

CROSNER LEGAL, P.C.

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11 Michael R. Crosner
12 Zachary M. Crosner
13 Blake R. Jones
14 Jamie Serb
15 Attorneys for Plaintiff MATTHEW MUNOZ
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