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21CV389877
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SANTA CLARA**
11

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

15 Plaintiff,

16 v.
17

18 SONIC AUTOMOTIVE, INC., a
19 Delaware corporation; SONIC -
20 STEVENS CREEK B, INC., a California
corporation; and DOES 1-100, inclusive,

21 Defendants.
22

CASE NO. 21CV389877

**PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") REPRESENTATIVE
COMPLAINT**

23
24
25
26 Plaintiff MATTHEW MUNOZ ("Plaintiff"), an individual, on behalf of Plaintiff and all
27 other similarly aggrieved employees ("Aggrieved Employees"), hereby files this Complaint
28 against Defendants SONIC AUTOMOTIVE, INC., SONIC - STEVENS CREEK B, INC.,

(collectively referred to hereinafter as “Defendants”) and DOES 1-100, inclusive. Plaintiff is informed and believes and thereon alleges as follows:

THE PARTIES

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

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

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

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

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

1 6. At all relevant times, Defendants were and are legally responsible for all of the unlawful
2 conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are
3 responsible for each of the unlawful acts or omissions complained of herein under the doctrine
4 of respondent superior. The conduct of Defendants' managers and supervisors was at all relevant
5 times undertaken as employees of Defendants, acting within the scope of their employment or
6 authority in all of the unlawful activities described herein.

7 7. Plaintiff is informed and believes, and thereon alleges that at all relevant times,
8 Defendants operated as a single integrated enterprise with common ownership and centralized
9 human resources as set forth herein. As a result, Defendants utilized the same unlawful wage and
10 hour policies and practices across all of their dealerships and subjected all Aggrieved Employees
11 to these same policies and practices regardless of the dealerships where they worked.

12 8. Plaintiff is informed and believes, and thereon alleges that at all relevant times,
13 Defendants were the joint employers of Plaintiff and/or the Aggrieved Employees upon whose
14 behalf Plaintiff brings these representative claims, in that Defendants, exercised sufficient control
15 over Plaintiff and the Aggrieved Employees' wages, hours and working conditions, and/or
16 suffered or permitted Plaintiff and the Aggrieved Employees to work, so as to be considered the
17 joint employers of Plaintiff and the Aggrieved Employees. Specifically, based upon information
18 and belief, Plaintiff alleges that Defendants created a uniform set of written policies and
19 procedures concerning, inter alia, commission, piece rate, hourly and overtime pay, time-keeping
20 practices, meal and rest periods that were distributed to, applied to, and controlled the wages,
21 hours and working conditions of Plaintiff and the Aggrieved Employees, and further that
22 Defendants uniformly compensated and controlled the wages of Plaintiff and the Aggrieved
23 Employees in a uniform manner. Defendants collectively represented to Plaintiff and the
24 Aggrieved Employees that each was an "at-will" employee of Defendants, and that Defendants
25 collectively retained the right to terminate Plaintiff's and the Aggrieved Employees' employment
26 with or without cause. Upon information and belief, Defendants further collectively represented
27 to the Aggrieved Employees in writing the details of their compensation any commission pay
28 agreements, and the manner in which he or she was to take meal and rest periods, the procedures

1 required by Defendants collectively for recordation of hours worked and the policies applicable
2 to Plaintiff and the Aggrieved Employees by which Defendants collectively would evaluate the
3 wage rate of Plaintiff and the Aggrieved Employees.

4 9. Thus, Defendants collectively exercised the right to control the wages, hours and
5 working conditions of Plaintiff and the Aggrieved Employees. Based on information and belief,
6 Defendants informed Plaintiff and the Aggrieved Employees in writing of the uniform standards
7 by which Plaintiff and the Aggrieved Employees would have to abide in their employment with
8 Defendants. Further, based upon information and belief, Defendants collectively set forth
9 guidelines concerning Plaintiff's and the Aggrieved Employees' personal appearance at work
10 with which each was required to comply as a condition of his employment. As such, Defendants
11 collectively held the right to control virtually every aspect of Plaintiff's and the Aggrieved
12 Employees' employment, including the instrumentality that resulted in the illegal conduct for
13 which Plaintiff seeks relief in this Complaint.

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

17 **JURISDICTION AND VENUE**

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

23 **FACTUAL AND LEGAL ALLEGATIONS**

24 12. During the one year and sixty-five-day period preceding filing of this Complaint,
25 Plaintiff was employed at all relevant times by Defendants as a non-exempt employee in the
26 State of California. Defendants, at all relevant times, exercised control over Plaintiff and the
27 other Aggrieved Employees (as defined below) and suffered and/or permitted them to work.

1 13. Plaintiff worked for Defendants as a non-exempt shipping and receiving clerk from
2 approximately March 30, 2021, until the separation of Plaintiff's employment, on or about July
3 23, 2021. Plaintiff's job duties included, but were not limited to, locating/running auto parts for
4 the service technicians. Plaintiff's official schedule was typically eight (8) to nine (9) hours per
5 day, five (5) days per week. Plaintiff was paid on an hourly basis, but only for time counted by
6 Defendants as hours worked.

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

24 15. **Meal Breaks.** Plaintiff was not provided timely, off-duty, uninterrupted thirty-minute
25 meal periods. Plaintiff was suffered and permitted to take meal periods that were late, short,
26 interrupted and or on-duty due to pressure to meet work deadlines, lack of relief workers
27 available, and or the need to tend to incoming/outgoing shipments. Defendants required Plaintiff
28 to remain on duty during meal periods and or interrupted/cut short Plaintiff's meal periods by

1 requiring Plaintiff to tend to work tasks during his meal periods. Defendants required Plaintiff to
2 clock out at least thirty minutes per shift for these shortened/interrupted and or on-duty meal
3 periods. This policy and practice for meal periods whereby Plaintiff and Aggrieved Employees
4 were not relieved of all duties resulted in Plaintiff and Aggrieved Employees not being
5 compensated for all hours worked. Defendants failed to pay Plaintiff and Aggrieved Employees
6 an additional hour of premium pay at their regular rate(s) of pay for each day Plaintiff and
7 Aggrieved Employees missed a meal period or received an improper meal period, or Defendants
8 did not pay the proper premium, for failure to incorporate all non-discretionary compensation,
9 including but not limited to, non-discretionary bonuses, commissions and or piece-rate
10 compensation, into the regular rate of pay for purposes of calculating the owed meal period
11 premium.

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

26 **17. Unpaid Sick Leave Wages.** On information and belief, Defendants either failed to pay
27 sick leave wages at all or improperly calculated the sick leave accrual and the rate of sick leave
28 pay owed to Plaintiff and the Aggrieved Employees by failing to base the accrued sick leave

1 hours on the correct number of hours worked and by failing to incorporate all non-discretionary
2 compensation, including but not limited to, non-discretionary bonuses and or commission and
3 or piece-rate compensation, for those Aggrieved Employees compensated with bonuses,
4 commissions and or piece-rate pay. On information and belief, Defendants failed to provide
5 notice of the correct sick leave amount balance available to Plaintiff and the Aggrieved
6 Employees on their wage statements or other written statement(s) of the sick leave balance(s).

7 **18. Inaccurate Wage Statements.** Defendants failed to furnish Plaintiff with complete and
8 accurate wage statements in compliance with Labor Code section 226. Defendants' wage
9 statements do not accurately reflect the total hours worked, as the total hours reflected on his
10 wage statements do not include time spent working pre- and post- shift and during unpaid meal
11 periods. As a result, Defendants' wage statements fail to reflect the true "total hours worked" by
12 Plaintiff, a requirement of Labor Code section 226. Moreover, based on information and belief,
13 Defendants' wage statements fail to display all hours worked at the applicable hourly pay rate,
14 in violation of Labor Code section 226; for example, based on information and belief,
15 Defendants' wage statements display a category for regular rate of pay and then a separate
16 "multiple" category listing 1.5 requiring Plaintiff to engage in extensive calculations to try to
17 ascertain what the applicable overtime rate of pay is for each overtime hour worked during the
18 pay period.

19 **19. Timely Wages at Termination.** Upon separation of employment, Defendants failed to
20 furnish Plaintiff with a final paycheck containing all earned and unpaid wages, as the check did
21 not include all wages for time spent working pre- and post- shift and during unpaid meal periods,
22 nor all wages calculated at the correct wage rate. Defendants willfully failed to timely pay all
23 wages upon separation of employment.

24 **20. Background Checks.** Based on information and belief, Defendants required Plaintiff
25 to submit to an unlawful criminal and/or financial background check as a condition of obtaining
26 and/or holding employment in violation of Labor Code sections 1024.5 and/or 432.7. Based on
27 further information and belief, Defendants also required Plaintiff to agree in writing to unlawful
28 background checks not in conformity with the requirements of Investigative Consumer Reporting

1 Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and the Fair Credit Reporting Act,
2 15 U.S.C. sections 1681, et seq. ("FCRA").

3 **PAGA**

4 21. Plaintiff brings this complaint under the Private Attorneys General Act of 2004, Labor
5 Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of
6 California, regarding violations of the Labor Code as to all similarly aggrieved individuals
7 employed by Defendants in the State of California as a non-exempt employee. This action is
8 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

9 22. Under Labor Code section 2699.3, the LWDA must give written notice by certified
10 mail to the parties that it intends to investigate the alleged violations within 65 days of the date
11 of Plaintiff's written notice. Plaintiff has complied with the administrative exhaustion procedures
12 for bringing suit specified in Labor Code sections 2699.3 and 2699.5. Plaintiff gave timely
13 written notice by certified mail to Defendants of the violation of various provisions of the
14 California Labor Code as alleged in this complaint and filed notice of the violations online with
15 the Labor and Workforce Development Agency ("LWDA"). Plaintiff filed his notice with the
16 LWDA on August 30, 2021 and served Defendants via certified mail. The LWDA assigned
17 Plaintiff the following case number: LWDA-CM-842983-21.

18 23. The LWDA did not provide notice of its intention to investigate Plaintiff's claims on
19 behalf of the State of California and the Aggrieved Employees after expiration of the 65-day
20 waiting time period, or at any time. Defendants also failed to cure within the time allotted by
21 PAGA. Consequently, Plaintiff has exhausted all administrative remedies and Plaintiff's right to
22 file the instant lawsuit then duly accrued.

23 24. From one-year prior to Plaintiff's filing of the required PAGA notice with the Labor
24 Workforce and Development Agency, and continuing through the present, as alleged herein,
25 Defendants violated Labor Code sections 201-202, 216, 221-223, 226, 226.2, 226.7, 245-248.5,
26 432.5, 432.7, 510, 512, 1024.5, 1174, 1194, 1197, 1198, 1199, 2802, and 2810.5, and all relevant
27 sections of the applicable Wage Orders, as to Plaintiff and all Aggrieved Employees employed
28 by Defendants who worked as non-exempt employees. These violations subject Defendants to

1 civil penalties as set forth in the foregoing statutes as well as other provisions of the Labor
2 Code, including without limitation Labor Code sections 203, 210, 225.5, 226, 226.3, 256,
3 1174.5, 1197.1 and 2699.

4 25. Plaintiff is an “aggrieved employee” as that term is defined under the Labor Code
5 section 2699(c), as Plaintiff was employed by Defendants during the applicable statutory
6 limitations period and suffered one or more of the Labor Code violations set forth herein.
7 Accordingly, Plaintiff seeks to recover on behalf of himself and all Aggrieved Employees, the
8 civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

9 26. Plaintiff has standing to bring a PAGA action on behalf of the defined Aggrieved
10 Employees, as he was employed by Defendants and affected by one or more of the alleged
11 violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A
12 PAGA plaintiff has authority to seek penalties for all known violations committed by the
13 employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

14 **THE “AGGRIEVED EMPLOYEES”**

15 27. Plaintiff brings this action on behalf of Plaintiff and all similarly aggrieved employees.
16 The Aggrieved Employees shall be defined as follows: “All non-exempt workers – whether paid
17 hourly, on a commission basis, and or piece-rate basis – employed in California by Defendants
18 at any time from one year and sixty-five days prior to the filing of the initial complaint, through
19 the present.”

20 **FIRST CAUSE OF ACTION**
21 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**
22 **LABOR CODE SECTIONS 2698, ET SEQ.**
23 **(AGAINST ALL DEFENDANTS)**

24 28. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

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

1 30. Effective January 1, 2016, the California minimum wage was \$10.00 per hour. Pursuant
2 to Cal. Labor Code § 1182.12, effective January 1, 2017, the California minimum wage rate for
3 employers with 26 employees increased to \$10.50 per hour. On January 1, 2018, this rate was
4 increased to \$11.00 per hour. On January 1, 2019, this rate was increased to \$12.00 per hour. On
5 January 1, 2020, this rate was increased again to \$13.00 per hour. Finally, on January 1, 2021,
6 this rate was increased again to \$14.00 per hour and is scheduled to increase to \$15.00 per hour
7 on January 1, 2022.

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

11 32. At all times relevant to this complaint, Defendants were employers who employed 26
12 or more employees.

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

19 34. Plaintiff and the Aggrieved Employees were non-exempt employees who regularly
20 worked time for which they were not compensated, resulting in unpaid minimum and overtime
21 wages.

22 35. Plaintiff and the Aggrieved Employees were not paid for all hours worked because
23 Defendants directed, suffered, or permitted Plaintiff and Aggrieved Employees to perform work
24 off-the-clock, with such hours worked not recorded. Defendants also required employees to
25 record unpaid meal periods, despite Plaintiff and Aggrieved Employees not being relieved of all
26 duties and employer control during the thirty (30) minutes during which they were required to
27 clock out. This practice resulted in Plaintiff and the Aggrieved Employees not being paid for all
28 time worked, with regular off-the-clock work – including during the meal period - resulting in

1 the underpayment of minimum and overtime wages owed to Plaintiff and the Aggrieved
2 Employees, as well as record-keeping violations.

3 36. Defendants also failed to compensate Aggrieved Employees who were compensated on
4 a piece rate or commissioned basis separately for non-piece-rate/non-commission-generating
5 activities, including but not limited to, rest periods, meetings, training, scheduling, among other
6 job activities integral and indispensable to their employment. This failure to separately
7 compensate for non-piece-rate/commission-generating activities violates California's wage laws.

8 37. Labor Code section 226.2 requires an employer to pay employees compensated on a
9 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any
10 piece-rate pay. This statute further requires an employer to include on the wage statements for
11 these employees the total hours of compensable rest and recovery period, the total hours for other
12 non-productive time, the rates of compensation for these hours, and the gross wages paid for
13 these hours. In addition, the statute requires that employees shall be compensated for rest and
14 recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly
15 rate determined by dividing the total compensation for the workweek, exclusive of compensation
16 for rest and recovery periods and any premium compensation for overtime, by the total hours
17 worked during the workweek, exclusive of rest and recovery periods, or (ii) The applicable
18 minimum wage. Per case law, Labor Code section 226.2 also applies to employees compensated
19 on a commission basis. During the PAGA period, Defendants failed to comply with Labor Code
20 section 226.2. Specifically, Defendants failed to compensate Aggrieved Employees who were
21 paid on a piece rate and or commission basis separately for the rest periods and nonproductive
22 time, and/or failed to pay them for this time at the correct rates. Defendants further failed to
23 include the information on Aggrieved Employees' wage statements required by this statute.

24 38. Defendants also violated California's overtime wage laws by failing to incorporate all
25 non-discretionary compensation, including but not limited to, non-discretionary bonuses,
26 commission and or piece rate pay, into the regular pay rate used to calculate the overtime rate of
27 pay. This miscalculation of the regular pay rate and correct overtime rate of pay resulted in the
28

1 miscalculation and, on information and belief, the underpayment of owed overtime wages, as
2 well as record-keeping violations.

3 **39. Meal Breaks.** Under Labor Code §§ 226.7, 512, and the applicable IWC Wage Orders,
4 Defendants were required to provide Plaintiff and the Aggrieved Employees with one thirty (30)
5 minute meal break free from all duties for all shifts greater than five (5) but less than ten (10)
6 hours in length, and a second thirty (30) minute meal break free from all duties for all shifts of
7 ten (10) hours or more. The first meal period must be provided before the end of the fifth hour
8 of work and the second meal period before the end of the tenth hour of work. Employers covered
9 by the Wage Orders have an obligation to both (a) relieve their employees for at least one meal
10 period for shifts over five hours, and (b) to record having done so. If the employer fails to
11 properly record a compliant meal period, it is presumed no meal period was provided. Plaintiff
12 and the Aggrieved Employees were not provided timely, off-duty, uninterrupted thirty-minute
13 meal periods.

14 **40.** Plaintiff and other Aggrieved Employees were suffered and permitted to late, shortened
15 and or on-duty meal periods due to, including but not limited to, pressure from supervisors to
16 meet deadlines/make sales, lack of relief workers available, and or the need to tend to
17 incoming/outgoing shipments. Defendants required the Aggrieved Employees to remain on duty
18 during meal periods and or interrupted/cut short the Aggrieved Employees' meal periods by
19 requiring them to tend to work tasks during their meal periods. Defendants required the
20 Aggrieved Employees to clock out thirty minutes per shift for these shortened/interrupted and or
21 on-duty meal periods. This policy and practice for meal periods resulted in Plaintiff and the
22 Aggrieved Employees not being compensated for all hours worked as well as record-keeping
23 violations. Based on information and belief, second meal periods were not provided to the
24 Aggrieved Employees when they worked more than ten hours. Defendants had actual and/or
25 constructive knowledge that Plaintiff and the Aggrieved Employees were not receiving timely,
26 compliant, uninterrupted meal periods, resulting in off-the-clock work, yet Defendants failed to
27 pay the Aggrieved Employees an additional hour of premium pay at their respective regular
28 rate(s) of pay for each day a meal period was missed or improper. Defendants either failed to pay

1 any premium pay for these denied meal periods or did not pay the proper premium, for failure to
2 incorporate all non-discretionary remuneration, including but not limited to, non-discretionary
3 bonuses, commission and or piece-rate compensation, into the regular rate of pay for purposes
4 of calculating the owed meal period premium.

5 **41. Rest Breaks.** Plaintiff and other Aggrieved Employees did not receive compliant net
6 ten (10)-minute rest periods for every four (4) hours worked (or major fraction thereof), as
7 required by Labor Code 226.7 and the applicable IWC Wage Orders. Plaintiff and other
8 Aggrieved Employees regularly worked more than three-and-one-half (3½) hours without being
9 authorized or permitted to take a paid net ten (10) minute rest period. Defendants required
10 Plaintiff and other Aggrieved Employees to continuously work without authorizing or providing
11 paid rest periods. Any purported rest periods would be interrupted, cut short, on duty, and or late
12 due to the nature and constraints of the Aggrieved Employees' job duties and or commentary
13 from Defendants pressuring them to skip rest breaks completely/take non-compliant rest breaks.
14 Plaintiff and other Aggrieved Employees were unable to avail themselves of their rest breaks for
15 various reasons, including but not limited to, pressure to meet deadlines and or make sales, lack
16 of relief workers available, and or the need to tend to incoming/outgoing shipments. Moreover,
17 based on information and belief, Plaintiff and other Aggrieved Employees were required to
18 remain on the worksite premises during any purported rest periods and thus remained under
19 employer control, rendering any provided rest periods noncompliant with California law.
20 Defendants had no policy in place nor instruction as to the taking or timing of rest periods.
21 Plaintiff and other Aggrieved Employees were never paid a rest period premium for any
22 missed/improper rest period.

23 **42. Unpaid Sick Leave Wages.** Defendants failed to provide Plaintiff and the Aggrieved
24 Employees paid sick days in accordance with Labor Code sections 245 through 248.5, further
25 failing to put them on notice of their paid sick leave rights—or thereby putting their entitlement
26 to sick leave in a Labor Code section 2810.5 notice. Defendants failed to maintain accurate
27 records documenting the hours worked and paid sick days accrued and used by employees in
28 violation of Labor Code section 247.5, permitting the presumption that Plaintiff and the

1 Aggrieved Employees were entitled to the maximum number of hours accruable at the time of
2 their respective separations of employment. By failing to correctly account for the true hours
3 worked by Plaintiff and the Aggrieved Employees and by failing to incorporate all non-
4 discretionary compensation into the owed sick leave calculations, Defendants unlawfully
5 retained and continue to retain paid sick leave that should have been paid and was not.
6 Accordingly, Defendants have violated Labor Code sections 233 and 234 as to Plaintiff and the
7 Aggrieved Employees. Defendants either failed to pay sick leave at all or 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 due to the off-the-clock work Defendants mandated as described herein and by
11 failing to incorporate all non-discretionary compensation, including but not limited to, non-
12 discretionary bonuses and commission and or piece-rate compensation, for those Aggrieved
13 Employees compensated with commissions and or piece-rate pay. Defendants failed to provide
14 notice of the correct sick leave amount balance available to Plaintiff and the Aggrieved
15 Employees on their wage statements or other written statement(s) of the sick leave balance(s).

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

23 44. Defendants knew or had reason to know Plaintiff and the Aggrieved Employees were
24 working during their meal breaks and otherwise working off-the-clock and not being paid for all
25 hours worked. Defendants knowingly and intentionally failed to provide Plaintiff and the
26 Aggrieved Employees with accurate, itemized wage statements as the wage statements provided
27 by Defendants do not accurately reflect, *inter alia*, the correct total hours worked. Due to
28 Defendants' unlawful practice for shortened/on-duty meal periods and other mandated off-the-

1 clock work as described herein, Defendants' wage statements fail to reflect the true total hours
2 the Aggrieved Employees worked, as required under Labor Code § 226. As a result of
3 Defendants' failure, Plaintiff and the Aggrieved Employees suffered injury. Accordingly,
4 Defendants have violated Cal. Labor Code § 226.

5 **45. Record Keeping.** California Labor Code sections 226 and 1174 require employers to
6 keep "accurate and complete" payroll records showing, among other things, the hours worked
7 daily by all non-exempt employees. Section 7 of all applicable IWC Wage Orders similarly
8 requires employers to keep time records showing, *inter alia*, when the employees begin and end
9 each work period and reflecting the true start and end times during which all owed meal periods
10 are provided each day. At all relevant times, Defendants have failed, and continue to fail, to keep
11 the required time records, as Defendants have failed to record the true start and end times of
12 Plaintiff's and the Aggrieved Employees' workdays and failed to record employee meal periods
13 as time worked. Defendants' failure to keep "accurate and complete" payroll records for Plaintiff
14 and the Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Section 7 of all
15 applicable IWC Wage Orders. These violations subject Defendants to civil penalties under the
16 Labor Code, including without limitation sections 1174.5 and 2699. Each violation of each Labor
17 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
18 penalty.

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

1 **47. Refusal to Pay Wages Due.** Labor Code section 216 declares unlawful an employer's
2 refusal to pay wages due and payable and/or an employer's denial of the validity of any claim to
3 wages due. Defendants have violated this section by, inter-alia, failing to pay Plaintiff and the
4 Aggrieved Employees for all hours worked at the proper wage rate and by failing to pay Plaintiff
5 and the Aggrieved Employees an additional hour of premium wages for each meal or rest period
6 not provided/that was invalid. These violations subject Defendants to civil penalties under Labor
7 Code section 225.5. Each violation results in a separate civil penalty, for each aggrieved
8 employee, for each pay period during which the statute provisions were violated.

9 **48. Statutory Wages.** California Labor Code § 223 makes it unlawful for an employer to
10 secretly pay wages lower than required by statute while purporting to pay legal wages. As
11 described above, Defendants willfully and systematically denied Plaintiff and the Aggrieved
12 Employees minimum and overtime wage compensation for all hours worked which resulted in
13 the payment of less than statutorily required wages to them. Defendants acted with the intent to
14 deprive them of statutory wages, including, but not limited to, overtime wages and minimum
15 wages, to which they were entitled to under California law.

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

27 **50. Background Checks.** The Labor Code places certain procedural and substantive limits
28 on employers' ability to conduct employee background checks and on how employers can use

1 the information they obtain through those background checks. Labor Code section 1024.5 states
2 that employers, except for financial institutions, may order a credit check only if the individual
3 works (or is applying to work) in certain positions, and Labor Code section 432.7 prohibits an
4 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and
5 even then, certain limitations apply. Additionally, the ICRAA, and the FCRA mandate several
6 requirements prior to and following an employee background check, including but not limited
7 to, identifying an appropriate reason for the background check, a separate consent form with
8 required disclosures and certain formatting requirements, additional forms such as a summary of
9 rights, as well as proper notice of adverse actions taken, among other statutory requirements.

10 51. Based on information and belief, Defendants required Plaintiff and the Aggrieved
11 Employees to submit to an unlawful criminal and/or financial background check as a condition
12 of obtaining and/or holding employment in violation of Labor Code sections 1024.5 and/or
13 432.7. Based on further information and belief, Defendants also required Plaintiff and the
14 Aggrieved Employees to agree in writing to unlawful background checks not in conformance
15 with the requirements of ICRAA and/or FCRA. These violations subject Defendants to civil
16 penalties under the Labor Code, including without limitation Labor Code sections 432.5, 432.7
17 and 2699. Each violation of each Labor Code section and Wage Order provision, for each
18 aggrieved employee, results in a separate civil penalty.

19 52. Under the provisions of PAGA and Labor Code sections 201-202, 216, 221-223, 226,
20 226.2, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 1024.5, 1174, 1194, 1197, 1198, 1199, 2802,
21 and 2810.5, and all relevant sections of the applicable Wage Orders, as well as all interpretations
22 of these laws by California Courts and administrative bodies, as well as any other law that is
23 enforceable through PAGA, Defendants are liable for all statutorily-specified penalties
24 recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed
25 herein, or for default PAGA penalties under Labor Code section 2699(f) for any violation of a
26 Labor Code section without a specified civil penalty.

1 53. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
2 Plaintiff is entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all
3 in an amount to be proved.

4
5 **PRAYER**

6 WHEREFORE, Plaintiff, prays for judgment against each Defendant, jointly and
7 severally, as follows:

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

11
12
13 Dated: November 3, 2021

CROSNER LEGAL, P.C.

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16 Michael R. Crosner
17 Zachary M. Crosner
18 Blake R. Jones
19 Attorneys for Plaintiff MATTHEW MUNOZ
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