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 12 as an aggrieved employee, and on behalf of all other
 13 aggrieved employees

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9
 10 **FOR THE COUNTY OF LOS ANGELES**

11 SARAH N. SAPIEN, as an aggrieved
 12 employee, and on behalf of all other aggrieved
 13 employees under the Labor Code Private
 Attorneys' General Act of 2004,

14 *Plaintiff,*

15 v.

16 DCH DEL NORTE, INC., a California
 17 corporation; DCH CA LLC, a California
 18 limited liability company; DCH (OXNARD),
 19 INC., a California corporation; DCH SIMI
 20 VALLEY INC., a California corporation; DCH
 21 CALIFORNIA MOTORS INC., a California
 22 corporation; DCH CALABASAS-A, LLC, a
 23 California limited liability company; DCH
 24 MISSION VALLEY LLC, a California limited
 liability company; DCH RIVERSIDE-S, INC.,
 a California corporation; DCH THOUSAND
 OAKS-F, INC., a California corporation;
 LITHIA MOTORS, INC., an Oregon
 corporation; and DOES 1 through 100,
 inclusive,

25 Defendants.

FILED
 Superior Court of California
 County of Los Angeles

03/02/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: S. Tresvamt Deputy

CASE NO.: 21STCV47072

**FIRST AMENDED REPRESENTATIVE
 ACTION COMPLAINT**

**COMPLAINT UNDER THE LABOR
 CODE PRIVATE ATTORNEYS'
 GENERAL ACT OF 2004 FOR CIVIL
 PENALTIES UNDER LABOR CODE
 SECTIONS 210, 226.3, 558, 1174.5, 1197.1
 and 2699**

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
 \$25,000.00]

COMES NOW plaintiff SARAH N. SAPIEN (“Plaintiff”), as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys’ General Act of 2004, and alleges as follows:

JURISDICTION AND VENUE

1. This is a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against DCH DEL NORTE, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“DCH”); DCH CA LLC, a California limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California (“DCH CA”); DCH (OXNARD), INC., a California corporation and any of its respective subsidiaries or affiliated companies within the State of California (“DCH OXNARD”); DCH SIMI VALLEY INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“DCH SIMI”); DCH CALIFORNIA MOTORS INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“DCH CALIFORNIA”); DCH CALABASAS-A, LLC, a California limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California (“DCH CALABASAS”); DCH MISSION VALLEY LLC, a California limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California (“DCH MISSION VALLEY”); DCH RIVERSIDE-S, INC., a California corporation, a California limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California (“DCH RIVERSIDE”); DCH THOUSAND OAKS-F, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“DCH THOUSAND OAKS”); LITHIA MOTORS, INC. (“LITHIA MOTORS”); and DOES 1 through 100, as further defined below, (collectively, “Defendants”), as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section

1 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of
2 speech on behalf of all employees of Defendants working within the Civil Penalty Period
3 (collectively, “Aggrieved Employees”).

4 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
5 of Civil Procedure section 410.10.

6 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
7 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
8 causes of action complained of herein arose, and the county in which Defendants, or some of them,
9 reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiffs and Aggrieved
10 Employees in Los Angeles County, and because Defendants employ numerous Aggrieved
11 Employees in Los Angeles County.

12 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
13 Defendants during the applicable statutory period and suffered one or more of the Labor Code
14 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
15 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
16 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
17 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
18 employees of Defendants during the Civil Penalty Period.

19 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
20 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
21 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
22 PAGA allegations described herein is not required.

23 6. During the period beginning one (1) year preceding the provision of notice to the
24 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
25 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
26 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 432.6, 510, 512, 558, 1102.5, 1174, 1174.5, 1194,
27 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

28 / / /

1 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
2 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
3 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
4 specified in Labor Code section 2699.3.

5 8. On or around October 20, 2021, Plaintiff provided written notice pursuant to Labor
6 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
7 (excluding Lithia Motors) violation of various, including the herein-described, provisions of the
8 Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants,
9 and each of them.

10 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
11 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
12 calendar days of the October 20, 2021 postmarked date of the herein-described notice sent by
13 Plaintiff to the LWDA and Defendants.

14 10. On or around December 27, 2021, Plaintiff provided written amended notice
15 pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested,
16 of Defendants' (including Lithia Motors) violation of various, including the herein-described,
17 provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt
18 requested to Defendants, and each of them.

19 11. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
20 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
21 calendar days of the December 27, 2021 postmarked date of the herein-described amended notice
22 sent by Plaintiff to the LWDA and Defendants.

23 **PAGA REPRESENTATIVE ALLEGATIONS**

24 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of
26 California in violation of California state wage and hour laws as a result of, without limitation,
27 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per
28 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime

1 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually
2 worked; engaging, suffering, or permitting employees to work off the clock, including, without
3 limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to
4 complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including
5 answering calls from dispatch and others), to clock out for meal periods and continue working, to
6 don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the
7 clock, to make phone calls or drive off the clock; failing to include all forms of remuneration,
8 including non-discretionary bonuses, incentive pay, commissions, meal allowances, and other forms
9 of remuneration into the regular rate of pay for the pay periods where overtime was worked and the
10 additional compensation was earned for the purpose of calculating the overtime rate of pay;
11 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
12 less hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment
13 of Plaintiff and other Aggrieved Employees.

14 13. At all relevant times mentioned herein, Defendants had and have a practice or policy
15 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
16 worked or otherwise under Defendants' control as a result of, without limitation, failing to
17 accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
18 employees to work off the clock, including, without limitation, by requiring employees: to come
19 early to work and leave late work without being able to clock in for all that time, to suffer under
20 Defendants' control due to long lines for clocking in, to complete pre-shift tasks before clocking in
21 and post-shift tasks after clocking out (including answering calls from dispatch and others), to clock
22 out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms
23 and/or safety equipment off the clock, to attend company meetings off the clock, to make phone
24 calls or drive off the clock; detrimental rounding of employee time entries, editing and/or
25 manipulation of time entries to show less hours than actually worked; and failing to pay split shift
26 premiums, to the detriment of Plaintiff and other Aggrieved Employees.

27 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,

1 timely, and complete meal period for days on which the employee worked in excess of five (5) and
2 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
3 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
4 not providing timely meal periods; failing to provide first and second meal periods; providing short
5 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
6 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
7 periods; and auto-deducting meal periods that could not be auto-deducted by law or during which
8 employees worked, as required by California wage and hour laws

9 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
10 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
11 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
12 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
13 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
14 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
15 providing them in a timely fashion; and not permitting employees to leave the premises; and
16 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

17 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
18 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
19 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
20 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at each
22 hourly rate by the employee; the legal name of the employer; and other such information as required
23 by Labor Code section 226, subdivision (a). Specifically, Defendants intentionally failed to furnish
24 employees with itemized wage statements that accurately reflect the hours worked by Plaintiff and
25 other aggrieved employees and the rates of pay at which they were or should have been paid, thus
26 resulting in a failure to reflect gross and net wages earned and paid at each rate, as well.

27 17. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish

1 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
2 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
3 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
4 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
5 Aggrieved Employees.

6 18. At all relevant times mentioned herein, Defendants had and have a policy or practice
7 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
8 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
9 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
10 Code sections 201, 202, and 203.

11 19. At all relevant times herein, Defendants had and have a policy or practice of failing
12 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
13 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
14 and applicable Wage Orders.

15 20. At all relevant times mentioned herein, Defendants have had a policy or practice of
16 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
17 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
18 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
19 separately laundering mandatory uniforms, for the purchase of tools and safety equipment, for the
20 purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the
21 discharge of their duties of which included but was not limited to using GPS navigation, notifying
22 customers of Plaintiff's arrival for pick up, and passing along customers' concerns to Defendants,
23 or of their obedience to the directions of Defendants, as required by Labor Code 2802.

24 21. At all relevant times mentioned herein, Defendants have had a policy or practice of
25 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
26 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
27 Employees with the rates of pay and overtime rates of pay applicable to their employment;
28 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the

1 name, address, and telephone number of the workers' compensation insurance carrier; information
2 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
3 under Labor Code section 2810.5.

4 22. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
5 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
6 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
7 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
8 all other Aggrieved Employees.

9 23. At all relevant times mentioned herein, Defendants have had a policy or practice of
10 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
11 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
12 any calendar month shall be paid for between the 16th and 26th day of the month during which the
13 labor was performed, and labor performed between the 16th and the last day, inclusive of any
14 calendar month, shall be paid for between the 1st and 10th day of the following month."

15 24. At all relevant times mentioned herein, Defendants had and have a policy or practice
16 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
17 and experience they obtained at Defendants for purposes of competing with Defendants, including,
18 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
19 a prospective employer, and from disclosing who else works at Defendants and under what
20 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
21 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
22 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
23 Code sections 232, 232.5, and 1197.5, subdivision (k).

24 25. Defendants had and have a policy or practice of preventing Plaintiff and/or other
25 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
26 to their managers or outside to private attorneys or government officials, among others, in violation
27 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
28 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies

1 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
2 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
3 of Labor Code section 232 and 232.5.

4 26. Defendants had and have a policy or practice of preventing Plaintiff and/or other
5 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
6 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
7 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
8 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
9 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
10 economic liberty.

11 27. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
12 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
13 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
14 Employees pursuant to PAGA.

15 **PARTIES**

16 **A. Plaintiff**

17 1. Plaintiff SARAH N. SAPIEN is a resident of the State of California. At all relevant
18 times herein, Plaintiff is informed and believes, and based thereon allege that Defendants employed
19 Plaintiff as a non-exempt employee, with duties that included, but were not limited to, following up
20 with customers regarding auto maintenance needs, showcasing vehicles, reviewing and processing
21 invoices, carrying out transactions with customers using cash registers, answering phones, as well
22 as creating and canceling appointments. Plaintiff is informed and believes, and based thereon alleges
23 that Plaintiff worked for Defendants from approximately September of 2015 through approximately
24 March of 2021. Defendants paid (or purported to pay) Plaintiff an hourly wage for her services.

25 **B. Defendants**

26 28. Plaintiff is informed and believes and based thereon alleges that defendant DCH is,
27 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
28 laws of the State of California and doing business in the County of Ventura, State of California.

1 29. Plaintiff is informed and believes and based thereon alleges that defendant DCH CA
2 is, and at all times relevant hereto was, a limited liability company organized and existing under and
3 by virtue of the laws of the State of California and doing business in the County of Riverside, State
4 of California.

5 30. Plaintiff is informed and believes and based thereon alleges that defendant DCH
6 OXNARD is, and at all times relevant hereto was, a corporation organized and existing under and
7 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
8 State of California.

9 31. Plaintiff is informed and believes and based thereon alleges that defendant DCH
10 SIMI VALLEY is, and at all times relevant hereto was, a corporation organized and existing under
11 and by virtue of the laws of the State of California and doing business in the County of Ventura,
12 State of California.

13 32. Plaintiff is informed and believes and based thereon alleges that defendant DCH
14 CALIFORNIA is, and at all times relevant hereto was, a corporation organized and existing under
15 and by virtue of the laws of the State of California and doing business in the County of Ventura,
16 State of California.

17 33. Plaintiff is informed and believes and based thereon alleges that defendant DCH
18 CALABASAS is, and at all times relevant hereto was, a limited liability company organized and
19 existing under and by virtue of the laws of the State of California and doing business in the County
20 of Los Angeles, State of California.

21 34. Plaintiff is informed and believes and based thereon alleges that defendant DCH
22 MISSION VALLEY is, and at all times relevant hereto was, a limited liability company organized
23 and existing under and by virtue of the laws of the State of California and doing business in the
24 County of San Diego, State of California.

25 35. Plaintiff is informed and believes and based thereon alleges that defendant DCH
26 RIVERSIDE is, and at all times relevant hereto was, a corporation organized and existing under and
27 by virtue of the laws of the State of California and doing business in the County of Riverside, State
28 of California.

36. Plaintiff is informed and believes and based thereon alleges that defendant DCH THOUSAND OAKS is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Ventura, State of California.

37. Plaintiff is informed and believes and based thereon alleges that defendant LITHIA MOTORS is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of Oregon and doing business in the County of Los Angeles, State of California.

38. Plaintiff is informed and believes that Defendants primarily operate auto dealerships throughout the State of California.

39. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall include Defendants, and any of their parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100 identified herein.

JOINT LIABILITY ALLEGATIONS

40. Plaintiff is informed and believes and based thereon alleges that at all times mentioned herein, each of the Defendants were wholly owned subsidiaries of Lithia Motors, Inc. and were all subject to the same policies and practices. Plaintiff is informed and believes that in or around the year of 2014, Lithia Motors, Inc. purchased 100% of the shares of DCH Auto Group,

1 Inc., which according to publicly available information, is home to approximately seventeen (17)
2 new and used car dealerships in California. Plaintiff is further informed and believes that each of
3 the Defendants share the same corporate officers and/or managers, including, Bryan De Boer, who
4 is listed as the Chief Executive Officer and/or Director for all named defendants. Based thereon,
5 Plaintiff is informed and believes that Defendants, or some of them, are horizontally integrated
6 enterprises.

7 41. Plaintiff is informed and believes, and based thereon alleges, that at all times
8 mentioned herein, each of the defendants was the agent, principal, employee, employer,
9 representative, joint venture or co-conspirator of each of the other defendants, either actually or
10 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
11 employment, joint venture, and conspiracy.

12 42. All of the acts and conduct described herein of each and every corporate defendant
13 was duly authorized, ordered, and directed by the respective and collective defendant corporate
14 employers, and the officers and management-level employees of said corporate employers. In
15 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
16 their said employees, agents, and representatives, and each of them; and upon completion of the
17 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
18 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
19 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
20 aforementioned corporate employees, agents and representatives.

21 43. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
22 thereon alleges that Defendants, and each of them, are joint employers.

23 **FIRST CAUSE OF ACTION**

24 **(Civil Penalties Under Labor Code § 210 – Against All Defendants)**

25 44. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
26 and incorporates each by reference as though fully set forth hereat.

27 45. At all relevant times herein, Labor Code section 204, requires and required that:
28 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for

1 between the 16th and 26th day of the month during which the labor was performed, and labor
2 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
3 between the 1st and 10th day of the following month.”

4 46. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
5 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
6 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
7 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
8 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
9 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
10 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

11 47. At all relevant times herein, Defendants have had a consistent policy or practice of
12 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
13 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
14 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
15 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
16 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
17 for each subsequent violation in connection with each payment that was made in violation of Labor
18 Code section 204.

19 **SECOND CAUSE OF ACTION**

20 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

21 48. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
22 and incorporates each by reference as though fully set forth hereat.

23 49. Defendants had and have a policy or practice of failing to comply with Labor Code
24 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
25 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
26 wages earned; the name and address of each employer with whom they have been placed to work;
27 all applicable hourly rates in effect during the pay period and the corresponding number of hours
28 worked at each hourly rate; the legal name of the employer; and other such information as required

1 by Labor Code section 226, subdivision (a).

2 50. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
3 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
4 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
5 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
6 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

7 51. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
8 this section are in addition to any other penalty provided by law.”

9 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
10 and have a policy or practice of failing to furnish non-exempt employees, including, without
11 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
12 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
13 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
14 name of the employer; and other such information as required by Labor Code section 226,
15 subdivision (a).

16 53. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
17 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
18 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
19 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
20 period for each subsequent violation.

21 **THIRD CAUSE OF ACTION**

22 **(Violation of Labor Code § 558 – Against All Defendants)**

23 54. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
24 and incorporates each by reference as though fully set forth hereat.

25 55. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
26 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
27 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
28 penalty as follows:

1 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
2 pay period for which the employee was underpaid in addition to an amount sufficient
3 to recover underpaid wages;

4 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
5 employee for each pay period for which the employee was underpaid in addition to
6 an amount sufficient to recover underpaid wages;

7 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

8 56. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
9 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
10 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum
11 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
12 their employment and after their employment separation; receive accurate, itemized wage
13 statements; be provided with the opportunity to inspect employment records; be provided with
14 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
15 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
16 of pay.

17 57. As a direct and proximate result of the herein-described Labor Code violations,
18 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
19 civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty dollars
20 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
21 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

22 **FOURTH CAUSE OF ACTION**

23 **(Violation of Labor Code § 1174.5 – Against All Defendants)**

24 58. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
25 and incorporates each by reference as though fully set forth hereat.

26 59. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
27 every person employing labor in California to “[a]llow any member of the commission or the
28 employees of the Division of Labor Standards Enforcement free access to the place of business or

1 employment of the person to secure any information or make any investigation that they are
2 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
3 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
4 or papers of the person.”

5 60. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
6 every person employing labor in California to “[k]eep a record showing the names and addresses of
7 all employees employed and the ages of all minors.”

8 61. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
9 every person employing labor in California to “[k]eep, at a central location in the state or at the
10 plants or establishments at which employees are employed, payroll records showing the hours
11 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
12 piece rate paid to, employees employed at the respective plants or establishments. These records
13 shall be kept in accordance with rules established for this purpose by the commission, but in any
14 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
15 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
16 earned.”

17 62. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
18 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
19 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
20 member of the commission or employees of the division to inspect records pursuant to subdivision
21 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

22 63. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
23 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
24 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
25 inspection of records as required by Labor Code subdivision (b).

26 64. As a direct and proximate result of the herein-described Labor Code violations,
27 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
28 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five

1 hundred dollars (\$500) per violation per Aggrieved Employee.

2 **FIFTH CAUSE OF ACTION**

3 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

4 65. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
5 and incorporates each by reference as though fully set forth hereat.

6 66. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
7 person acting either individually or as an officer, agent, or employee of another person, who pays
8 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
9 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
10 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
11 Section 203 as follows:

12 (1) For any initial violation that is intentionally committed, one hundred dollars
13 (\$100) for each underpaid employee for each pay period for which the
14 employee is underpaid. This amount shall be in addition to an amount
15 sufficient to recover underpaid wages, liquidated damages pursuant to Section
16 1194.2, and any applicable penalties imposed pursuant to Section 203.

17 (2) For each subsequent violation for the same specific offense, two hundred fifty
18 dollars (\$250) for each underpaid employee for each pay period for which the
19 employee is underpaid regardless of whether the initial violation is
20 intentionally committed. This amount shall be in addition to an amount
21 sufficient to recover underpaid wages, liquidated damages pursuant to Section
22 1194.2, and any applicable penalties imposed pursuant to Section 203.

23 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
24 Section 203, recovered pursuant to this section shall be paid to the affected
25 employee.”

26 67. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
27 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
28 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ wages for all hours

1 worked or otherwise under Defendants' control due to, without limitation, routinely failing to
2 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
3 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
4 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock.

5 68. As a direct and proximate result of the herein-described Labor Code violations,
6 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
7 recover civil penalties for Defendants' herein-described Labor Code violations in the amount one
8 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
9 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
10 subsequent violation.

11 **SIXTH CAUSE OF ACTION**

12 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

13 69. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
14 and incorporates each by reference as though fully set forth hereat.

15 70. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
16 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
17 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
18 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
19 action brought by an aggrieved employee on behalf of himself or herself and other current or former
20 employees pursuant to the procedures specified in Labor Code section 2699.3.

21 71. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
22 Code except those for which a civil penalty is specifically provided, the established civil penalty for
23 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
24 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
25 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
26 employee per pay period for each subsequent violation.

27 72. Plaintiff is informed and believes and based thereon alleges that Defendants, and
28 each of them, violated the Labor Code sections described herein, including, without limitation, for

1 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
2 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
3 employment and after employment separation; provide employees the opportunity to inspect
4 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
5 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
6 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
7 separation at the proper rate of pay; requiring that employees waiver their right to bring a claim in
8 court as prohibited by Labor Code section 432.6, and placing restraints on competition,
9 whistleblowing and freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil
10 penalties for each of these Labor Code violations in the amounts set forth in Labor Code section
11 2699, subdivision (f).

12 73. Moreover, Plaintiff and other Aggrieved Employees within the State of California
13 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
14 connection with their herein-described claims for civil penalties.

15 **REQUEST FOR JURY TRIAL**

16 74. Plaintiff hereby requests a trial by jury.

17 **PRAYER**

18 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for
19 judgment against Defendants as follows:

- 20 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
21 1174.5, 1197.1, and 2699;
- 22 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
23 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 24 C. Pre-judgment and post-judgment interest;
- 25 D. For costs of suit incurred herein; and
- 26 E. Such other and further relief as the Court deems just and proper.

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Dated: March 2, 2022

BIBIYAN LAW GROUP, P.C.

BY: /s/ Diego Aviles
DIEGO AVILES
DAVID D. BIBIYAN
Attorneys for Plaintiff SARAH N. SAPIEN,
as an aggrieved employee, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004,

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my mailing address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211.

On March 2, 2022, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT** to be served by electronic transmission via Case Anywhere to the parties and/or counsel who are registered to use Case Anywhere and set forth in the below service list:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 2, 2022 at Beverly Hills, California.

/s/ Emanuel Munquia
Emanuel Munquia