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21
22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF SOLANO**

24 FRANK WILLIAMS III, an individual, on
25 behalf of himself and all others similarly
26 situated,

27 Plaintiff,

28 v.

29 VALLEJO NISSAN, INC., a California
30 Corporation; and DOES 1 TO 50,

31 Defendants.

ENDORSED FILED

Clerk of the Superior Court

FEB 25 2022

By _____

DEPUTY CLERK

R. PULIDO

Case Number: FCS057382

**[Proposed] Order Granting Plaintiff Leave to
File First Amended Complaint**

Complaint Filed: November 9, 2021

Trial Date: None Set

Received FEB 14 2022

Clerk of the Superior Court

BY FAX

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1 **[PROPOSED] ORDER**

2 Pursuant to the stipulation of the parties and good cause appearing, the Court orders as follows:

3 1. Plaintiff is granted leave to file and serve a First Amended Complaint, in the form
4 attached as **Exhibit A**, and Plaintiff's First Amended Complaint is deemed filed as of the date that this
5 order is signed by the Court.

6 2. Defendant shall file a responsive pleading to the First Amended Complaint within thirty
7 (30) days of being served with a copy of this order approving and entering this stipulation and the First
8 Amended Complaint.

9 **IT IS SO ORDERED.**

10
11 **FEB 23 2022**

WENDY G. GETTY

12 Judge of the Superior Court, County of Solano
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EXHIBIT A

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Attorneys for Plaintiff and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

FRANK WILLIAMS III, an individual, on
behalf of the State of California, as a private
attorney general,

PLAINTIFF,

v.

VALLEJO NISSAN, INC, a California
Corporation, and DOES 1 to 50, inclusive,

DEFENDANTS.

CASE NO. FCS057382

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEY GENERAL ACT
(LABOR CODE § 2699 *et seq.*)

1 Plaintiff FRANK WILLIAMS III, on behalf of himself, the State of California, and all
2 other aggrieved employees within the State of California, complains and alleges of defendants
3 VALLEJO NISSAN, INC., and DOES 1 to 50 (collectively “Defendants”) and each of them, as
4 follows:

5 **I. INTRODUCTION**

6 1. This is a PAGA representative action brought pursuant to Labor Code § 2698, et
7 seq., on behalf of the State of California and: *all individuals who are or were employed by*
8 *Defendant in California who were paid on a commission draw and/or commission-only basis*
9 during the PAGA Period (the “Aggrieved Employees”).

10 2. The “PAGA Period” as used herein is defined as the period from November 8,
11 2020 and continuing into the present and ongoing.

12 **II. JURISDICTION AND VENUE**

13 3. This Court has subject matter jurisdiction over any and all causes of action
14 asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of
15 Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
16 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
17 arises under the laws of the State of California or is subject to adjudication in the courts of the
18 State of California.

19 4. This Court has personal jurisdiction over Defendants because Defendants have
20 caused injuries in the County of Solano and State of California through their acts, and by their
21 violation of the California Labor Code and California state common law.

22 5. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
23 Civil Procedure § 395. Defendants operate within California and does business within Solano
24 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all
25 “employees” within the State of California and Solano County.

26 **III. PARTIES**

27 6. Plaintiff FRANK WILLIAMS III is a resident of California and at all times
28 pertinent hereto worked for Defendants in Solano County.

1 7. Plaintiff and all Aggrieved Employees are, and at all times pertinent hereto, have
2 been classified as employees by Defendants.

3 8. Upon information and belief, Plaintiff and all Aggrieved Employees are covered
4 by California Industrial Welfare Commission Occupational Wage Order No. 7-2001.

5 9. Defendant VALLEJO NISSAN, INC. (“Vallejo Nissan”) is a California
6 corporation operating within the State of California. Upon information and belief, Vallejo Nissan
7 employed Plaintiff and similarly situated persons as employees within California. Defendant has
8 done and does business throughout the State of California including Solano County.

9 10. The true names and capacities, whether individual, corporate, associate, or
10 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
11 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
12 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
13 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
14 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
15 capacities of the Defendants designated hereinafter as DOES when such identities become
16 known.

17 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
18 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
19 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
20 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
21 employer and/or joint employer of Plaintiff and the other Aggrieved Employees.

22 **IV. FACTUAL BACKGROUND**

23 12. Plaintiff and the Aggrieved Employees are, and were at all times pertinent hereto,
24 classified as commissioned sales employees by Defendants. Defendants own and operate a car
25 dealership in the County of Solano, and Plaintiff and the Aggrieved Employees are tasked with
26 selling cars for a commission.

27 13. Defendants hired employees including Plaintiff and the Aggrieved Employees who
28 are paid both on a commission draw and commission/non-discretionary bonus wage basis. Upon

1 information and belief, Plaintiff and the Aggrieved Employees are covered by California
2 Industrial Welfare Commission Occupational Wage Order No. 7-2001.

3 14. Labor Code § 226.7 provides “an employer shall not require an employee to work
4 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
5 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Moreover, under
6 IWC Wage Order 7-2001 an employer must authorize and permit all employees to take ten (10)
7 minute duty free rest periods for every major fraction of four (4) hours worked. *See Augustus v.*
8 *ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods
9 employers must relieve employees of all duties and relinquish control over how employees spend
10 their time” including allowing employees to leave the premises.).

11 15. Plaintiff and the Aggrieved Employees consistently worked shifts more than four
12 (4) hours or a major fraction thereof, including shifts in excess of eight (8) hours. Based upon
13 information and belief, Plaintiff and the Aggrieved Employees also worked shifts in excess of ten
14 (10) and twelve (12) hours during the course of their employment with Defendants. Accordingly,
15 at all times relevant hereto Plaintiff and the Aggrieved Employees were entitled to rest periods.

16 16. During the relevant time period, Defendants failed to implement a lawful rest
17 period policy that informed Plaintiff and the Aggrieved Employees of their right to receive lawful
18 rest periods for shifts that were more than at least a major fraction of four hours worked.
19 Specifically, Defendants failed to advise Plaintiff and the Aggrieved Employees of their right to
20 take separately and hourly paid duty-free ten (10) minute rest periods when working on a
21 commission and/or commission draw basis and failed to separately compensate Plaintiff and the
22 Aggrieved Employees for the non-productive/non-selling time associated with their rest periods.
23 *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017) (adopting *Bluford* and
24 its progeny in the context of commission based compensation plans and holding “that such
25 compensation plans must separately account and pay for rest periods to comply with California
26 law.”); *see also Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 872 (2013), *reh'g denied*
27 (June 18, 2013), *review denied* (Aug. 28, 2013) (“rest periods must be separately compensated in
28 a piece-rate system. Rest periods are considered hours worked and must be compensated.”)

1 (citing *Armenta v. Osmose, Inc.* 135 Cal.App.4th 314, 323 (2005).

2 17. Since Defendants did not offer employees the opportunity to receive a compliant
3 and appropriately separately and hourly compensated rest period, “the court may not conclude
4 employees voluntarily chose to skip...breaks.” *Alberts v. Aurora Behavioral Health Care*, 241
5 Cal. App. 4th 388, 410 (2015) (“[i]f an employer fails to provide legally compliant meal or rest
6 breaks, the court may not conclude employees voluntarily chose to skip those breaks.”); *accord*
7 *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal. 4th 1004, 1033 (2012) (“No issue of waiver ever arises for
8 a rest break that was required by law but never authorized; if a break is not authorized, an
9 employee has no opportunity to decline to take it.”).¹

10 18. In addition, Plaintiff and the Aggrieved Employees were not compensated with
11 one (1) hours’ worth of pay at their regular rate of compensation when they were not provided
12 with a compliant rest period. *See Seckler v. Kindred Healthcare Operating Group, Inc.*, No.
13 SACV 10-01188 DDP, 2013 WL 812656, at *6 (C.D. Cal. Mar. 5, 2013) (certifying a class of
14 employees who were “paid for at least one missed meal period payment at the base rate instead of
15 the regular rate to which they were entitled.”); *accord Studley v. Alliance Healthcare Servs., Inc.*
16 No. SACV1000067CJCANX, 2012 WL 12286522, at *4 and 7, fn. 4 (C.D. Cal. July 26, 2012).

17 19. During the PAGA Period, Plaintiff and the Aggrieved Employees were also not
18 compensated with one (1) hours’ worth of pay at their regular rate of compensation when they
19 were not provided with a compliant rest period or at the proper rate based upon Defendant’s
20 unlawful compensation policies detailed above. Instead, Plaintiff and the Aggrieved Employees
21 consistently worked shifts more than four (4) and eight (8) hours in a length, and did not receive
22 compliant rest periods.

23
24 ¹ Even an employer who maintains an otherwise compliant rest period policy, “reminded their employees of their
25 availability—and the importance—of taking breaks on a daily basis, and even went so far as to conduct regular audits
26 to ensure that employees were being offered rest breaks” will still be liable for rest period premiums if the employees
27 were not separately or properly compensated for the non-productive time associated with rest periods under a piece-
28 rate compensation system. *Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist. LEXIS 66842 (E.D. Cal. May 19,
2016) *aff’d* *Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 2016 WL 4440966, at *11 (E.D. Cal. Aug. 22,
2016); *rev. denied* by 9th Cir. Case No. 0:16-23f-80120 (9th Cir. Nov. 16, 2016); *Moss vs. USF Reddaway, Inc.*,
Case No. ED CV 15-01541 JAK (FFMx), Doc. 80 (C.D. Cal. June 30, 2017). As explained in *Vauquero*, employees
paid on a commission only and/or commission draw basis must be separately and hourly compensated for the non-
productive time associated with their rest periods.

1 20. Labor Code section 512 and the Applicable Wage Order require employers to
2 provide employees with a thirty-minute uninterrupted and duty-free meal period within the first
3 five hours of work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee
4 for a work period of more than five hours per day without providing the employee with a meal
5 period of not less than 30 minutes”]; Cal. Code of Regs., tit. 8, § 11070 [“No employer shall
6 employ any person for a work period of more than five (5) hours without a meal period of not less
7 than 30 minutes”].) Additionally, an employee who works more than ten hours per day is
8 entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, §
9 512, subd. (a) [“An employer shall not employ an employee for a work period of more than 10
10 hours per day without providing the employee with a second meal period of not less than 30
11 minutes”].)

12 21. “An on-duty meal period is permitted only when the nature of the work prevents
13 an employee from being relieved of all duty and the parties agree in writing to an on-duty paid
14 meal break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written
15 agreement must include a provision allowing the employee to revoke it at any time. (*Ibid.*)
16 Generally, the California Department of Industrial Relations, Division of Labor Standards
17 Enforcement (“DLSE”) and courts have “found that the nature of the work exception applies:
18 (1) where the work has some particular external force that requires the employee to be on duty at
19 all times, and (2) where the employee is the sole employee of a particular employer.” (*Id.* at p.
20 945, internal quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013)
21 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the
22 work prevents an employee from being relieved before requiring an employee to take an on-duty
23 meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

24 22. Here, Plaintiff and the Aggrieved Employees were never asked to sign any
25 enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of
26 their work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v.*
27 *The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did
28 not provide compliant off-duty meal periods within the first five hours of work for the Aggrieved

1 Employees.

2 23. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
3 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal
4 period’s duty-free nature its defining characteristic.”].) Relinquishing control over employees
5 during meal periods requires that employees be “free to leave the employer’s premises” and be
6 “permitted to attend to personal business.” (*Augustus v. ABM Security Services, Inc., supra*, 2
7 Cal.5th at p. 275.) Under Labor Code section 512, if an employer maintains a uniform policy that
8 does not authorize and permit the amount of meal time called for under the law (as specified in
9 the Labor Code and/or applicable IWC Wage Order), “it has violated the wage order and is
10 liable.” (*Brinker Restaurant Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033.)

11 24. During the applicable statutory periods here, the Aggrieved Employees were
12 denied legally-complaint and timely off-duty meal periods of at least thirty (30) minutes due to
13 Defendants’ unlawful meal period policy and practices. As a result of Defendants’ meal period
14 policies and practices, the Aggrieved Employees were not provided compliant first meal periods
15 before the end of their fifth hour of work. The Aggrieved Employees were also not provided
16 second meal periods for shifts in excess of ten hours. Defendants thus violated Labor Code
17 section 512 and the Applicable Wage Order by failing to advise, authorize, or permit the
18 Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of
19 their shifts.

20 25. Labor Code section 226.7 provides that “[a]n employer shall not require an
21 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
22 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab.
23 Code, § 226.7, subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage
24 Order further obligate employers to pay employees one additional hour of pay at the employee’s
25 regular rate of compensation for each workday that the meal period is not provided. (Lab. Code,
26 § 226.7, subd. (c); Cal. Code of Regs., tit. 8, § 11070 [“If an employer fails to provide an
27 employee a meal period in accordance with the applicable provisions of this order, the employer
28 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for

1 each workday that the meal period is not provided.”].)

2 26. Accordingly, for each day that Plaintiff and the Aggrieved Employees did not
3 receive compliant meal periods, they were and are entitled to receive meal period premiums
4 pursuant to Labor Code section 226.7 and the Applicable Wage Order. Defendants, however,
5 failed to pay Plaintiff and the Aggrieved Employees applicable meal period premiums for the
6 workdays that the employees did not receive a compliant meal period. Thus, Defendants have
7 violated Labor Code section 226.7 and the Applicable Wage Order.

8 27. Labor Code § 1197 states the California requirement that employees must be paid
9 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
10 wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the
11 legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
12 minimum wage.” Wage Order 7-2001, § 4 also obligates employers to pay each employee
13 minimum wages for all hours worked. Under Labor Code §226.7 and IWC Wage Order 7-2001,
14 rest periods must be compensated at the employee’s regular rate of compensation.

15 28. These minimum wage standards apply to each hour employees worked for which
16 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
17 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked. As
18 such, Defendants violated Labor Code §§ 1194 and 1197 as well as IWC Wage Order 7-2001
19 through its consistent policy of failing to pay Plaintiff and the Aggrieved Employees .

20 29. As a result, Plaintiff and the Aggrieved Employees were forced to work on a
21 regular and consistent basis without receiving compensation for all hours worked at the proper
22 rate.

23 30. Labor Code section 510 requires employers to compensate employees who work
24 more than eight hours in one workday, forty hours in a workweek, and for the first eight hours
25 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay
26 for an employee. (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates
27 employers to compensate employees at no less than twice the regular rate of pay when an
28 employee works more than twelve hours in a day or more than eight hours on the seventh

1 consecutive day of work. (Lab. Code, § 510, subd. (a).) These rules are also reflected in the
2 Applicable Wage Order.

3 31. In accordance with Labor Code section 1194 and the Applicable Wage Order,
4 Plaintiff and the Aggrieved Employees could not then agree and cannot now agree to work for a
5 lesser wage than the amount provided by Labor Code sections 510 or the Applicable Wage Order.

6 32. Here, Defendants have maintained a consistent policy of failing to pay overtime
7 wages at the proper amounts to Plaintiff and the Aggrieved Employees . For example, Plaintiff
8 and the Aggrieved Employees are and were paid base hourly wages plus additional compensation
9 for certain tasks and various bonuses. These additional payments, part commission, part piece-
10 rate compensation, part non-discretionary bonus, represent and represented a significant portion
11 of Plaintiff's regular rate of pay. Thus, Plaintiff and the Aggrieved Employees were not paid all
12 overtime wages owed at the proper rate.

13 33. These actions were and are in clear violation of California's overtime laws as set
14 forth in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order (Cal. Code of
15 Regs., tit. 8, § 11070.) As a result of Defendants' faulty policies and practices, the Aggrieved
16 Employees were not compensated for all hours worked or paid accurate overtime compensation.

17 34. Labor Code § 226(a)(1), (2), (4), (5), and (9) requires employers semimonthly or at
18 the time or each payment of wages, furnish each of his or her employees, an accurate itemized
19 statement in writing showing the gross wages earned, the total hours worked by the employee, all
20 deductions, the net wages earned, as well as all applicable hourly rates in effect during the pay
21 period and the corresponding number of hours worked at each hourly rate by the employee.

22 35. During the PAGA Period, Defendants failed to provide accurate itemized wage
23 statements setting forth the information required by Labor Code § 226(a) (1, 2, 4, 5, and 9). As a
24 result of the failure to pay Plaintiff and the Aggrieved Employees separately for the non-
25 productive time associated with their rest periods under their commission compensation plan,
26 meal and rest period premiums, minimum wages, and overtime wages—or at the proper rate--the
27 wage statements issued by Defendants do not indicate the correct amount of gross wages earned,
28 net wages earned, all deductions, all applicable hourly rate in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee in violation of Labor
2 Code § 226(a)(1, 5, and 9). Instead, Plaintiff and the Aggrieved Employees must review other
3 documents to determine if they have been paid correctly. As those documents do not cover the
4 same time period (as the commission statements are generated on a monthly basis), Plaintiff and
5 the Aggrieved Employees are unable to determine the validity of their pay on the face of the
6 document, in contravention of California law. See *Jaimez v. Daiohs USA, Inc.*, (2010) 181 Cal.
7 App. 4th 1286, 1306. As such, the wage statements issued to Plaintiff and the Aggrieved
8 Employees do not accurately indicate all deductions and included impermissible deductions in
9 violation of Labor Code §§ 212 and 213.

10 36. Separate and independent of the allegations detailed above, Defendants also
11 knowingly and intentionally failed to provide Plaintiff and the Aggrieved Employees with wage
12 statements in writing at the time of each payment or when the separately and hourly wages were
13 due. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees the separately
14 and hourly compensation associated with their non-productive time. Labor Code § 204 expressly
15 requires that “[a]ll wages...earned by any person in any employment are due and payable twice
16 during each calendar month, on days designated in advance by the employer as the regular
17 paydays.” Although Labor Code § 204.1 does permit new vehicle dealers commission wages only
18 once a month, no such limitation applies to non-discretionary bonuses (such as spiffs) or to the
19 separate and hourly compensation Defendants were required to pay Plaintiff and the Aggrieved
20 Employees . (“**Commission wages** paid to any person employed by an employer licensed as a
21 vehicle dealer by the Department of Motor Vehicles are due and payable once during each
22 calendar month.... Commission wages are compensation paid to any person for services rendered
23 in the sale of such employer’s property.”) (emphasis added). As such, as a matter of law the
24 number of pay periods at issue is at least twice a month, if not more.

25 37. As a result of Defendants unlawful overtime compensation, minimum wage, and
26 meal and rest period practices, Defendants regularly and consistently failed to pay Plaintiff and
27 the Aggrieved Employees not more than seven (7) calendar days following the close of the
28 payroll period on a regular and consistent basis. Therefore, Defendants failed to timely pay its

1 employee wages owed within seven (7) calendar days following the close of payroll in
2 accordance with Labor Code § 204.

3 38. Due to Defendants' failure to pay Plaintiff and the Aggrieved Employees
4 separately for rest periods, all meal and rest period premiums, minimum wages associated with
5 their non-productive time (or at the proper rate) and overtime wages (or at the proper rate),
6 Defendants failed to timely pay Plaintiff and the Aggrieved Employees for labor performed
7 between the 1st and 15th days between the 16th calendar day of the month during which the labor
8 was performed on a regular and consistent basis. Moreover, as a result of the conduct described in
9 detail above, Defendants also failed to pay Plaintiff and the Aggrieved Employees all wages
10 owed for Labor performed between the 16th and last day between the 1st and 10th day of the
11 following month on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, No. 16-
12 cv-00405-JST, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2,
13 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under
14 Labor Code §§ 203 and 204).

15 39. Labor Code § 210 provides that "in addition to, an entirely independent and apart
16 from, any other penalty provided in this article, every person who fails to pay the wages of each
17 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
18 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
19 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
20 each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of
21 the faulty rest period policies and practices described in detail above, Plaintiff and the Aggrieved
22 Employees are entitled to recover penalties under Labor Code § 210.

23 40. Under Labor Code §§ 201-202, an employer must provide an employee wages at
24 the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code §
25 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is
26 discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30
27 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

28 ///

1 41. As described in detail above, Defendants failed to pay Plaintiff and the Aggrieved
2 Employees whose employment concluded all minimum and overtime wages owed as well as
3 meal and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202
4 at the time of their termination/separation.

5 **V. CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **Penalties Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and**

8 **Other Provisions of the California Labor Code**

9 *(Plaintiff and the Aggrieved Employees Against All Defendants)*

10 42. Plaintiff realleges and incorporates by reference all previous paragraphs.

11 43. Based on the above allegations incorporated by reference, Defendants violated
12 California Labor Code §§ 201, 202, 203, 204, 204.1, 210, 226, 226.3, 226.7, 510, 512, 1194,
13 1197, and 1199, and IWC Wage Order No. 7. As a result of the acts alleged above, Plaintiff seeks
14 penalties under California Labor Code §§ 2698–2699.6 because of Defendants’ violation of the
15 California Labor Code and applicable IWC Wage Orders.

16 44. Under California Labor Code §§ 2699(f)(2) and 2699.5, for each such violation,
17 Plaintiff and the Aggrieved Employees are entitled to penalties in an
18 amount to be shown at the time of trial subject to the following formula:

- 19 a. \$100 for the initial violation per employee per pay period; and
20 b. \$200 for each subsequent violation per employee per pay period.

21 These penalties shall be allocated seventy-five percent (75%) to the Labor and
22 Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected
23 employees. These penalties may be stacked separately for each of Defendants violations of the
24 California Labor Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx)
25 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the
26 plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ *i.e.*,
27 multiple PAGA penalties can be assessed for the same pay period for different Labor Code
28 violations.”); *See Lopez v. Friant & Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at

1 *1 (Ct. App. Sep. 26, 2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a
2 violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and
3 intentional’ requirements of section 226(e)(1) and acknowledging that a Plaintiff could recover
4 separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)).

5 45. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff
6 and all aggrieved employees with accurate itemized wage statements in compliance with Labor
7 Code § 226(a). Plaintiffs seek separate PAGA penalties for Defendant’s violations of Labor Code
8 §§ 226(a) and 226(e).

9 46. For violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided
10 by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates
11 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred
12 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars
13 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
14 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)
15 of Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the
16 Aggrieved Employees are entitled to recover penalties for violations of Labor Code § 226.3 and
17 seeks default PAGA penalties for each of Defendants’ numerous violations of Labor Code §
18 226(e).

19 47. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
20 Defendants’ conduct in refusing to provide accurate and itemized wage statements was knowing,
21 intentional, or willful.

22 48. Labor Code § 210 provides that “in addition to, and entirely independent and apart
23 from, any other penalty provided in this article, every person who fails to pay the wages of each
24 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
25 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
26 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
27 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
28 the faulty compensation policies and practices described in detail above, Plaintiff and the other

1 Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

2 49. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code § 2699.3. and will have fully exhausted his administrative remedies under PAGA
4 prior to proceeding with the PAGA claim. On or about November 8, 2021, Plaintiff filed his
5 PAGA Notice online with the Labor Workforce Development Agency (“LWDA”) and sent a
6 letter by certified mail to Defendants setting forth the facts and theories of the violations alleged
7 against Defendants, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff
8 submitted the \$75.00 filing fee with the LWDA by regular mail. Pursuant to Labor Code §
9 2699.3(a)(2)(A), no notice was and/or will have been received by Plaintiff from the LWDA
10 evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of
11 the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil action
12 pursuant to Labor Code § 2699.

13 **VI. Prayer for Relief**

14 Plaintiff prays for judgment for himself and for all others on whose behalf this suit is
15 brought against Defendants, as follows:

- 16 1. For penalties and other relief allowable under Labor Code § 2699, *et seq.* for
17 Plaintiff and all Aggrieved Employees because of Defendants’ violation of Labor
18 Code § 1198; and IWC Wage Order 7-2001;
- 19 2. A civil penalty against Defendants in the amount of \$100 for the initial violation
20 and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
21 California Labor Code for Plaintiff and all aggrieved employees.
- 22 3. An award of reasonable attorney’s fees against Defendants as specified in Labor
23 Code § 2699(g)(1), for all the work performed by the undersigned counsel in
24 connection with the PAGA claims;
- 25 4. An award of all costs incurred by the undersigned counsel for Plaintiff in
26 connection with Plaintiff’s and the Aggrieved Employees’ claims against
27 Defendants as provided for in Labor Code § 2699(g)(1); and

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5. Such other and further relief as this Court may deem proper and just.

Dated: February 11, 2022

MELMED LAW GROUP P.C.

By: Jonathan Melmed
JONATHAN MELMED
Attorney for Plaintiff and the Aggrieved Employees