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Attorneys for Plaintiffs and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**

MARK CERVANTEZ, MICHELLE  
WILLIAMS AND JERMELL JACKSON,  
individually and on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

GENUINE PARTS COMPANY, a Georgia  
Corporation, doing business as NAPA AUTO  
PARTS; and DOES 1-50, inclusive,

Defendants.

CASE NO.: 22STCV00981

*Assigned to the Hon. Gregory Keosian*

**DECLARATION OF MEHRDAD  
BOKHOUR IN SUPPORT OF MOTION TO  
APPROVE PAGA SETTLEMENT**

Hearing Information:

Date: September 14, 2023  
Time: 10:00 a.m.  
Dept.: 61

**Reservation ID: 924102938000**

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1           7. I am admitted to practice before all California state courts, and the United States  
2 District Court of California for the Central District, Eastern District, and Southern District and  
3 have litigated class action and Private Attorneys General Act (“PAGA”) representative action  
4 cases in various courts in California.

5           8. In addition to the instant case, I have served as class counsel in a variety of wage  
6 and hour class actions. I have developed extensive litigation experience in complex employment  
7 litigations matters, particularly in California wage and hour class actions representing employees.  
8 My firm has the experience, resources, and means necessary to allow us to provide adequate  
9 representation as Plaintiffs’ Counsel to all aggrieved employees in this litigation. Currently, my  
10 firm is acting as counsel in at least twenty-five wage-and-hour class actions and co-counsel in at  
11 least twenty other wage-and-hour class actions. I am experienced and qualified to evaluate the  
12 PAGA claims and viability of the defenses. I have extensive experience in prosecuting  
13 employment litigation and have focused my practice primarily on cases regarding wage and hour  
14 class actions and representative PAGA actions.

15           9. Plaintiffs brought the operative claims against Defendant on behalf of all other  
16 similarly situated current and former non-exempt employees of Defendants in California at any  
17 time from March 24, 2020 to May 31, 2023 (the “Aggrieved Employees”).

18           10. First, Plaintiffs alleged that Defendant failed to pay all minimum wages, pay all  
19 overtime wages and properly calculate the regular rate of pay for purposes of overtime, sick pay and  
20 premium compensation.

21           11. Further, Plaintiffs alleged that Defendant failed to keep accurate records and  
22 accurately record and pay for all minutes and hours worked off the clock resulting in minimum  
23 wage and overtime violations.

24           12. Next, Plaintiffs claimed that they and the Aggrieved Employees were denied  
25 compliant meal periods and rest breaks due Defendant’s meal and rest period policies and practices  
26 and demands and nature of nature of the work. .

27           13. Finally, Plaintiffs alleged that Defendant failed to reimburse necessary business  
28 expenses; failed to pay reporting time and/or on-call wages; failed to provide suitable seating; failed

1 to pay timely wages due during employment and at separation of employment; failed to provide  
2 accurate itemized wage statements; engaged in unlawful deduction; and therefore, owes civil  
3 penalties under PAGA.

4 14. Following informal discovery and a robust exchange of data and documents, the  
5 Parties participated in private mediation before Tripper Ortman, Esq, an experienced wage and hour  
6 mediator. Through the mediator's and the parties' efforts in mediation, the parties were able to  
7 reach a settlement of the action.

8 15. Defendant is engaged in the distribution of automotive and industrial replacement  
9 parts with operations including in California. Plaintiffs were employed by Defendant as non-exempt  
10 hourly employees.

11 16. After retaining counsel, Plaintiffs submitted notice letters to the California Labor &  
12 Workforce Development Agency ("LWDA") and Defendant regarding the alleged violations.

13 17. After retaining counsel, Plaintiffs submitted a notice letter to the California Labor &  
14 Workforce Development Agency ("LWDA") and Defendants regarding the alleged violations.

15 18. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiffs' letters to the  
16 LWDA.

17 19. Defendants retained counsel and vowed to vehemently oppose the claims.  
18 Additionally, Defendant quickly corrected many of its practices. Despite the disputed nature of the  
19 claims, the Parties nevertheless agreed to table formal discovery and attempt an early resolution.

20 20. In preparation for the mediation, the Parties exchanged documents and information  
21 that allowed both sides to calculate the potential damages and evaluate potential risk. During this  
22 process, Plaintiffs and counsel analyzed, researched, and investigated the potential issues, including  
23 matters related to the calculation of damages, trial, and appellate issues and risks. During this  
24 exchange of information, pursuant to Plaintiffs counsel's informal requests, Defendant produced  
25 documents and pay records that enabled Plaintiffs to conduct an analysis of the alleged unpaid  
26 wages, meal/rest break violations and other claims. To that end, Plaintiffs' counsel obtained,  
27 through informal discovery, a random sampling of time and payroll records, data, and policies,  
28 among other documents and information, to aid in the preparation of Plaintiffs' evaluation of the

1 claims and formulation of a damages model.

2 21. Following extensive discussions, as well as negotiations and the exchange of informal  
3 discovery, the Parties engaged in a full session of mediation on February 16, 2023, with Tripper  
4 Ortman, Esq. serving as the mediator. Mr. Ortman has extensive experience in wage and hour class  
5 and PAGA actions. Through the mediator's and the Parties efforts in mediation, the Parties were  
6 able to reach a settlement of the Action. Thereafter, the Parties memorialized the terms of the  
7 settlement in a long-form Settlement Agreement, which is now presented to this Court for approval.

8 22. Attached hereto as **Exhibit B** is a true and correct copy of the fully executed PAGA  
9 Settlement Agreement.

10 23. Based upon my experience and after factoring in the risks explained below, I believe  
11 that the proposed settlement is fair and reasonable. As such and for the reasons set forth below, I  
12 believe that the PAGA Settlement Agreement (the "Settlement Agreement" and/or the  
13 "Settlement") should be approved.

14 24. This experience is helpful in assessing the reasonableness of settlements such as the  
15 one at issue here. Based on my years of experience representing plaintiffs in wage and hour cases,  
16 including PAGA representative and class actions, the settlement herein is fair, adequate and  
17 reasonable under the facts and law applicable to this case.

#### 18 **SETTLEMENT CONSIDERATIONS**

19 25. I have performed substantial work and diligently investigated and prosecuted this  
20 case to a successful conclusion. I believe this Settlement to be fair, reasonable, and adequate.

21 26. In evaluating the fairness and reasonableness of this proposed Settlement, my co-  
22 counsel and I had to consider both the potential maximum and Defendant's various defenses. This  
23 is significant because in a PAGA action, the Court has the same discretion "to assess a civil  
24 penalty" that the Labor Commissioner would have, as well as complete discretion to "award a lesser  
25 amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and  
26 circumstances of the particular case, to do otherwise would result in an award that is unjust,  
27 arbitrary and oppressive, or confiscatory." Lab. Code § 2699(e)(2). Such considerations include  
28 Defendant's defenses to the alleged claims.

1           27. In the end, Defendant urged that the trial court would exercise its discretion to  
2 substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiffs'  
3 claims. As a result, Plaintiffs' Counsel made appropriate discounts for the associated risks.

4           28. The following chart reflects the estimated payments from the Settlement Agreement:

|                                               | Amount              |
|-----------------------------------------------|---------------------|
| <b>Settlement Amount</b>                      | \$1,300,000.00      |
| Attorneys' Fees                               | \$433,290.00        |
| Actual Litigation Costs                       | \$24,139.70         |
| Administrator Costs                           | \$20,000.00         |
| Plaintiffs' Enhancement Award                 | \$30,000.00         |
| <b>Net Settlement Amount (PAGA Penalties)</b> | <b>\$792,570.30</b> |
| 75% to the LWDA                               | \$594,427.72        |
| 25% to Aggrieved Employees                    | \$198,142.58        |
| <b>Balance</b>                                | <b>\$0</b>          |

12           29. As such, the LWDA will receive approximately \$594,427.72 (75 percent of the  
13 PAGA Penalties) and the Aggrieved Employees will collectively receive approximately  
14 \$198,142.58 (25 percent), which will be paid on a pro-rata basis according to the number of pay  
15 periods worked during the PAGA Period. The average payment to the Aggrieved Employees is  
16 approximately \$65.

17           30. Plaintiffs' primary claims (unpaid minimum and overtime wages, meal/rest  
18 violations, and derivative claims for wage statement violations and waiting time penalties) yielded a  
19 maximum potential penalty of \$8,903,500 based on approximately 89,035 violative pay periods for  
20 each Labor Code violation. Therefore, in total, Plaintiffs alleged that Defendant would be liable for  
21 a maximum penalty of \$8,903,500.

22                   **THE ATTORNEYS' FEES AND LITIGATION COSTS REQUESTED**

23           31. Moreover, as part of the Settlement, the Parties have agreed that Plaintiffs will  
24 request Plaintiffs' Counsel Payment in an amount not to exceed one third of the settlement amount.  
25 Here, Plaintiffs' Counsel is seeking one-third (33.33%) of the amount, thus \$433,290 (one-third of  
26 the Total Settlement Payment), subject to court approval, plus actual litigation costs in the amount  
27 of \$24,139.70.  
28

1           32.     This request is fair, reasonable, and adequate to compensate Plaintiffs' Counsel for  
2 the substantial work they have put into this case and the risk they assumed by taking it in the first  
3 place. Additionally, it is consistent with the contingency-fee agreement entered into by the named  
4 Plaintiff. The attorneys' fees award is intended to reimburse Plaintiffs' Counsel for all  
5 uncompensated work that they have already done and for all the work they will continue to do in  
6 carrying out and overseeing the administration of the Settlement, communicating with PAGA  
7 Settlement Members regarding their Individual Payment checks, and communicating with the  
8 Settlement Administrator regarding the administration of the Settlement, if it is approved.

9           33.     My firm took this case on a contingent-fee basis, against a business represented by a  
10 reputable defense firm. When we take contingent cases, we must pay careful attention to the  
11 economics involved, or one bad case can destroy years of work. Accordingly, when we take  
12 contingent cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal  
13 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the  
14 number of hours in a day is limited. Because of this, when we take on one particular matter, we are  
15 unable to take on other matters. When my firm became involved in this case, we realized the time  
16 commitment that it would entail, and we were forced to turn down matters that we otherwise should  
17 have been able to handle.

18           34.     The requested attorneys' fees are reasonable for the services provided to the LWDA  
19 and the PAGA Settlement Members and for the benefits they are to receive.

20           35.     Moreover, the case involved significant risks of non-payment of attorneys' fees and  
21 non-recovery of litigation costs if the Settlement was not granted approval, or if Plaintiffs did not  
22 prevail. California courts consider the risks counsel takes in litigating a case where they may not  
23 prevail on the merits in granting attorneys' fees awards. *See Graham v. Daimler Chrysler Corp.*  
24 (2004) 34 Cal.4th 553, 583.

25           36.     This results in a total lodestar amount of \$172,850 resulting in a reasonable  
26 multiplier of only 1.28, which is summarized in the following table, and in the declaration of Class  
27 Counsel. The hourly rates above are comparable to those of other attorneys with equal or similar  
28 experience.

37. The total lodestar is summarized in the following table:

**Lodestar Summary**

| Attorney             | Experience | Hourly Rate | Hours            | Total     |
|----------------------|------------|-------------|------------------|-----------|
| Mehrdad Bokhour      | 11         | \$600       | 102 <sup>1</sup> | \$61,200  |
| Christina M. Lucio   | 16         | \$650       | 120.7            | \$78,455  |
| James R. Hawkins     | 25         | \$900       | 86.9             | \$78,210  |
| Hawkins (paralegals) |            | \$200       | 22.8             | \$4,560   |
| Joshua Falakassa     | 10         | \$575       | 82               | \$47,150  |
| <b>TOTAL</b>         |            |             |                  | \$269,575 |

38. The actual litigation costs incurred in this case by Plaintiffs' Counsel to date amount to no less than \$24,139.60, with 5,553.05 incurred by the James Hawkins APLC and \$18,606.55 expended by Bokhour Law Group, P.C. The following table sets forth the specific costs incurred by my firm to date:

| <b>BOKHOUR LAW GROUP, P.C.</b> |                                     |                      |
|--------------------------------|-------------------------------------|----------------------|
| <b><u>Type</u></b>             | <b><u>Description</u></b>           | <b><u>Charge</u></b> |
| Process                        | Service of Process Fee              | \$156.10             |
| Mediation                      | Mediation Fees                      | \$13,000             |
| Expert Data                    | Review and analysis of time records | \$2,275.00           |
| Filing Fees                    | PAGA Complaint & other filings      | \$3,100.55           |
| EWDA Filing                    | PAGA Filing Fee                     | \$75                 |
| <b>TOTAL</b>                   |                                     | <b>\$18,606.55</b>   |

39. Based on my years of experience representing plaintiffs in wage and hour cases, including PAGA representative and class actions, I believe that the Parties' proposed Settlement is fair, adequate and reasonable under the facts and law applicable to this case.

40. The proposed settlement has been submitted in accordance with Labor Code § 2699(1)(2) to the Labor and Workforce Development Agency. Attached hereto as **Exhibit "C"** is a true and correct copy of confirmation of such submission of the proposed settlement to the Labor and Workforce Development Agency.

<sup>1</sup> Includes an estimated 10-15 hours of additional work in preparation for and attending the hearing, as well as work that is anticipated to be performed after the hearing with counsel, administrator, employees, and the court.

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

3 Executed this 23rd day of August 2023 at Los Angeles, California.

4 /s/ Mehrdad Bokhour  
5 Mehrdad Bokhour, Esq.

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## **EXHIBIT A**



**BOKHOUR**  
LAW GROUP

MEHRDAD BOKHOUR  
Attorney at Law

1901 Avenue of the Stars | Suite 450  
Los Angeles | California 90067

tel 310 975 1493  
fax 310 675 0861

February 23, 2022

**SUBMITTED VIA LWDA'S PAGA CLAIM NOTICE ONLINE PORTAL**

**COPY SENT VIA CERTIFIED MAIL TO:**

GENUINE PARTS COMPANY  
2999 WILDWOOD PARKWAY  
ATLANTA, GA 30339

GENUINE PARTS COMPANY  
c/o CT CORPORATION SYSTEM  
330 N. BRAND BOULEVARD, SUITE 700  
GLENDALE, CA 91203

Re: Michelle Hester v. Genuine Parts Company dba Napa Auto Parts  
Notice of Intent to File Suit for California Labor Code § 2698 et seq. Penalties

To Whom It May Concern:

This office, along with Falakassa Law, P.C., represent Michelle Hester (hereinafter "Ms. Hester") and a proposed group of current and former non-exempt employees working for Genuine Parts Company dba Napa Auto Parts (hereinafter GPC) and any of their affiliated and/or predecessor or merged entities in the State of California for violations of the California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226 (e), 226.3, 226.7, 256, 510, 512, 516, 1174, 1174.4, 1194, 1194.2, 1197.1, 1199, 2802-2804, and all applicable Industrial Welfare Commission Wage Orders ("Wage Order").

This letter shall serve as notification under Labor Code § 2699.3 (hereinafter "PAGA Notice"). The \$75 filing fee made payable to the California Labor and Workforce Development Agency for the Private Attorneys General Act Notice ("PAGA Notice") was paid online and a copy of this PAGA Notice was submitted electronically to the Department of Industrial Relations.

Ms. Hester wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of the following group of "aggrieved employees":

All current and former non-exempt employees who work or worked for Genuine Parts Company in California, during the one year immediately preceding the filing of this PAGA Notice and continuing into the present and ongoing ("aggrieved employees")

GPC manufactures, distributes, and sells automotive parts across California. Ms. Hester was employed by GPC as a non-exempt delivery driver employee in the National City, California location starting on or about January 2016 until the present. Ms. Hester and other aggrieved employees were and are employed as non-exempt employees across GPC's California locations and include delivery drivers, warehouse associates, retail personnel, customer service, administrative staff, and other non-exempt positions throughout California.

At all relevant times, Ms. Hester and other aggrieved employees regularly worked various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek. Ms. Hester alleges that other aggrieved employees were also subjected to the same policies, procedures, and practices, working conditions, and corresponding wage and hour violations to which Ms. Hester was subjected during her employment with GPC.

First, from at least one year ago and continuing into the present, GPC has had a consistent policy of unfairly rounding Ms. Hester and other aggrieved employees' time entries. As a result of this practice, Ms. Hester and other aggrieved employees are not compensated for all the hours that they work and all the overtime hours they work, in violation of Cal. Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

The Court in *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907, held that rounding time policies can be lawful, "if the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked,' (29 C.F.R. § 785.48; see DLSE Manual, supra, §§ 47.1, 47.2.)."

Here, GPC's rounding time policy is not neutral on its face as Ms. Hester and other aggrieved employees are subject to discipline, including termination for being tardy in reporting to work, or returning from a meal or rest period. Moreover, because GPC is capable of tracking the time worked by aggrieved employees to the minute, the policy itself exists not for the convenience or benefit of the employees who are trying to report their time on timecards or otherwise, but for GPC's benefit. As a result, the policy is not neutral on its face, and over a period of time, Ms. Hester and other aggrieved employees were not properly paid for all hours worked in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

Accordingly, through PAGA and to the extent permitted by law, Ms. Hester and other aggrieved employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

Based upon these same factual allegations, Ms. Hester and the other aggrieved employees are entitled to penalties under Labor Code § 1199 and § 2698 *et seq.*

Next, at all relevant times, Ms. Hester and other aggrieved employees were not properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday

and/or forty (40) hours per workweek. While Ms. Hester and other aggrieved employees regularly worked overtime hours, they were not compensated at one and one-half times their regular rate of pay because GPC failed to include all forms of compensation, including but not limited to, commissions, non-discretionary bonuses and other forms of non-hourly compensation and/or remuneration when calculating the regular rate of pay used in payment of overtime wages.

Under the California Labor Code (as well as the FLSA), courts have consistently held that regularly paid non-discretionary bonuses (and other forms of pay) must be included in determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under California and federal law on the grounds, that Defendant improperly calculated overtime by excluding annual bonuses paid to employees from the "regular rate of compensation"].)

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

By their policy of requiring Ms. Hester and the other aggrieved employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 1/2) their regular rate of pay, and twice the regular rate for shifts more than twelve (12) hours, GPC willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. . . [and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Accordingly, through PAGA and to the extent permitted by law, Ms. Hester and other aggrieved employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

Based upon these same factual allegations, Ms. Hester and the other aggrieved employees are entitled to penalties under Labor Code § 1199 and § 2698 *et seq.*

Moreover, at all relevant times, Ms. Hester and other aggrieved employees were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. As a result of GPC's uniform meal period policies/practices and work demands, Ms. Hester and other aggrieved employees were often unable to take 30-minute uninterrupted first meal periods before the end of the fifth hour of work. Considering the demands of the job, Ms. Hester and other aggrieved employees would have their meal period delayed beyond the fifth hour of work and/or cut short due to the work requirements, including delivery schedules and other work demands. Further, when Ms. Hester and other aggrieved employees worked in excess of 10.0 hours in a shift, which was a regular occurrence, they were not allowed and permitted to take all mandated and timely second meal periods before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders.

Each time Ms. Hester and other aggrieved employees were not provided a legally compliant meal period, GPC also failed to provide meal period premiums for missed or non-compliant meal periods at the "regular rate of pay" as required by Labor Code § 226.7 and *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 ("*Ferra*").

Accordingly, due to GPC's uniform meal period policies/practices and work demands, Ms. Hester and other aggrieved employees were regularly denied legally compliant meal periods in violation of Labor Code §§ 226.7, 510, 516, and applicable IWC Wage Orders. As a result, Ms. Hester and other aggrieved employees would be entitled to penalties under Labor Code § 2698 *et seq.*

Next, at all relevant times, Ms. Hester and other aggrieved employees were not provided with 10 minutes of net rest period time for every 4 hours worked, or major fraction thereof due to GPC's rest period policies/practices and work demands. Ms. Hester, and other aggrieved employees, were often unable to take their first rest period before the end of their fourth hour of work. As a result, Ms. Hester and other aggrieved employees were and are routinely unable to take legally compliant (10) minute duty-free rest periods for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

By not relieving all non-exempt employees of all duties during rest periods, GPC failed to provide legally compliant rest periods. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."]. In *Augustus*, the California Supreme Court expressly rejected the employers' assertion that it could provide an on-duty rest

period to employees who worked as security guards and further explained “that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties.” *Id.* at 273.

Each time Ms. Hester and other aggrieved employees were unable to take compliant rest periods, GPC failed and continues to fail to adequately pay rest period premium payments at the “regular rate of pay” as required by Labor Code § 226.7 and *Ferra*.

Accordingly, due to GPC’s uniform rest period policies and practices and work demands, Ms. Hester and other aggrieved employees were also regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders, and would be entitled to penalties under Labor Code § 2698 *et seq.*

Moreover, at all relevant times, Ms. Hester and other aggrieved employees, at the direction of GPC and/or with GPC’s knowledge and acquiescence, have expended amounts in the discharge of their duties, and for work-related purposes. Amongst other things, GPC required Ms. Hester and other aggrieved employees to incur the costs associated with business use of their personal cell phones and did not provide any reimbursement of these costs. (See *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”))

Here, although Ms. Hester and other aggrieved employees used their personal cell phones and others charges in the discharge of their job duties with the knowledge or acquiescence of GPC, they were not reimbursed in any amount for expenses incurred. GPC’s failure to reimburse Ms. Hester and other aggrieved employees for expenses incurred in their discharge of their duties continues through the present day. Indeed, any reimbursement for cell phone expenses is absent from Ms. Hester’s wage statements during her employment. As such, GPC would also be liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

As a result of GPC’s failure to pay Ms. Hester and other aggrieved employees for all hours they were subject to the control of GPC, including all minimum and overtime wages, and failure to pay for meal and rest period premiums at the “regular rate of pay”, GPC issued wage statements which fail to accurately identify the gross wages earned, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

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

Thus, for the violations of Labor Code section 226 described above, Ms. Hester and other aggrieved employees may also recover Labor Code § 226.3 penalties for GPC's violations of Labor Code § 226(a). As such, the wage statements GPC issued to Ms. Hester and other aggrieved employees are in violation of Labor Code § 226 (a). Thus, Ms. Hester is an aggrieved employee within the meaning of PAGA and GPC has violated Labor Code §226(a) with respect to Ms. Hester and other aggrieved employees. Consequently, because GPC failed to comply with Labor Code § 226(a) and applicable Wage Orders, Ms. Hester and other aggrieved employees would be entitled to recover penalties under Labor Code §§ 226(e) and 2698 *et seq.*

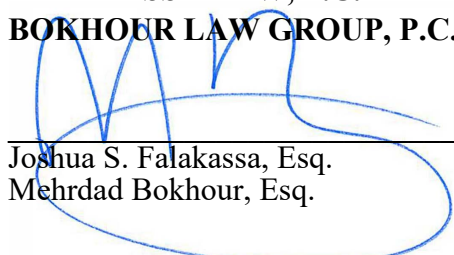
Finally, because of, GPC's failure to pay all minimum and overtime wages, and meal and rest period premiums at the "regular rate of pay", GPC also failed and continues to fail to pay aggrieved employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders. Thus, aggrieved employees would be entitled to recover penalties under Labor Code §§ 201-203, 256, and 2698 *et seq.*

Pursuant to Labor Code § 2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the date of this notice whether your office intends to investigate the violations alleged herein above. We understand that if we do not receive a response from your office within sixty-five (65) calendar days of this PAGA Notice, Ms. Hester may thereafter pursue her interests and the interests of similarly aggrieved employees with a civil complaint against GPC for its violations of the California Labor Code and applicable Wage Orders.

While it is our intent to pursue a PAGA representative and/or Class Action lawsuit for unpaid wages and civil penalties under Labor Code § 2699, it is our firms' policy to attempt to negotiate an early resolution of all matters where possible and beneficial to all aggrieved employees. If GPC is interested in attempting to resolve this matter, please contact me or have your lawyer contact our office so that we can discuss an informal discovery plan and the possibility of early mediation on or before **April 29, 2022.**

Respectfully submitted,

**FALAKASSA LAW, P.C.**  
**BOKHOOR LAW GROUP, P.C.**



Joshua S. Falakassa, Esq.  
Mehrdad Bokhour, Esq.

**JAMES *JH* HAWKINS**  
A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618  
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

April 12, 2022

**Via Online Filing (LWDA) and Certified Mail (Employers)**

California Labor and Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Genuine Parts Company  
2999 Wildwood Parkway  
Atlanta, GA 30339  
Certified Mail Receipt:  
7021 2720 0003 1232 5634

Agent for Service of Process for  
Genuine Parts Company:  
CT Corporation System  
330 N. Brand Blvd., Suite 700  
Glendale, CA 91203  
Certified Mail Receipt:  
7021 2720 0003 1232 5641

RE: AMENDED NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*  
LWDA-CM850658-21

To Whom It May Concern:

On November 1, 2021, Plaintiff Mark Cervantez initially sent notice pursuant to California Labor Code §2699.3 providing that Mark Cervantez contends that, Genuine Parts Company, a Georgia Corporation doing business as NAPA Auto Parts, (“Defendant” or “NAPA”) has violated and continues to violate, provisions of the California Labor Code and Industrial Welfare Commission wage orders (“IWC Wage Orders”).

On January 11, 2022, Plaintiff Mark Cervantez filed a representative complaint against Defendant. A true and correct copy of the file stamped complaint is attached hereto. Mr. Cervantez incorporates all of the claims set forth in his original LWDA notice and complaint attached hereto as if fully set forth herein.

The purpose of this letter is to supplement the prior notice to add an additional representative and add additional facts, theories, and claims. Plaintiff Jermell Jackson asserts that he has also experienced violations by Defendant Genuine Parts Company, including without

AMENDED NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

April 11, 2022

limitation those previously asserted by Mr. Cervantez. Mr. Jackson provides additional allegations, claims, and facts as set forth herein. Plaintiff Jackson provides this notice to the LWDA as required by statute that he intends to commence an action against his former employer, Defendant Genuine Parts Company, a Georgia Corporation doing business as NAPA Auto Parts, (“Defendant” or “NAPA”) for their violation of the provisions of the California Labor Code and IWC Wage orders.

As previously indicated, Plaintiff Cervantez was employed by Defendants as an hourly, non-exempt employee. Plaintiff began his employment with Defendants on or about June 25, 2019, and continued such employment through December 18, 2020. He worked at Defendants’ retail location in the City of Glendora, California. Plaintiff Cervantez was employed by Defendants in the position of Delivery Driver.

Plaintiff Jermell Jackson was employed by Defendants as an hourly, non-exempt employee at the distribution center in Ontario, California. Plaintiff began his employment with Defendant in or about 2017, and continued such employment through November 16, 2021. He worked at Defendants’ location in the City of Ontario, California. Plaintiff Jackson was employed by Defendants in the position of Dock Loader, which duties included, but were not limited to, loading materials on 16-wheeler trucks.

The group of aggrieved employees that Plaintiffs seeks to represent is a group of non-exempt employees working in Defendants’ locations in the State of California during the relevant time period (“Aggrieved Employees”) as tolled by Emergency Rule 9. This notice is timely as it is provided within one year of the violations. In addition, the statute of limitation for the claim under the Private Attorney Generals Act of 2004 (and the relevant time period), is tolled by operation of law under Emergency Rule 9 due to COVID-19 pandemic.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5<sup>th</sup> 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff Jackson has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees working for Defendants at their locations in the State regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

Plaintiff Jackson claims that Defendants implemented legally non-compliant policies and practices which led to Defendants’ (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to authorize and permit legally compliant rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) knowing and intentional failure to comply with itemized wage statement provisions; (8) failure to reimburse necessary expenses; (9) failure to provide suitable seating; (10) failure to pay reporting time pay; (11) breach of contract/failure to pay wages at the contracted rate; and (12) breach of covenant of good faith and fair dealing.

During all relevant periods, the California Labor Code sections 204, 1194, 1197, 1198, and

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wage orders required that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all hours worked. Employers are required to pay at least minimum wage for each hour worked. Labor Code section 1194(a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. The IWC Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." At all times relevant, Plaintiffs and Aggrieved Employees consistently worked hours for which they were not paid because Defendants frequently required Plaintiffs and Aggrieved Employees to work off the clock. Plaintiffs and the Aggrieved Employees were not paid for all hours worked because employees were required to work off the clock. Plaintiffs are informed and believe that Defendants were aware that Plaintiffs and the Aggrieved Employees were working off the clock and that they should have been paid for this time. However, such time was not paid in violation of the law.

Plaintiff Jackson and Aggrieved Employees in Defendants' dock locations were required to work off-the-clock through pre/post shift activities including, but not limited to, operating forklifts, setting up palettes, and screenings for COVID-19. Plaintiff Jackson and Aggrieved Employees were not paid for this off-the-clock time; however, Defendants were aware that Plaintiff Jackson and Aggrieved Employees were working off the clock and should have been paid.

During the relevant periods, Defendant required Plaintiffs and the Aggrieved Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek. Both the California Labor Code section 1194, 1197, 510, 1198, and the pertinent wage order 4-2001, and 7-2001 required that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times that employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required to be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh (7<sup>th</sup>) day of a workweek is required to be compensated at the rate of no less than twice the regular rate of pay of an employee. Defendants failed to incorporate all forms of compensation, including without limitation non-discretionary bonuses, differentials, and incentives, into the regular rate for overtime purposes. Thus, employees were undercompensated in violation of the law.

In addition, as set forth above, Plaintiffs and the Aggrieved Employees were required to work a significant number of hours off the clock. Many of these hours were overtime hours and should have been paid at the overtime rate. Defendants knew or should have known Plaintiffs and the Aggrieved Employees were undercompensated as a result of these practices.

Plaintiffs and the aggrieved employees were regularly required to work shifts in excess of five hours without being provided a lawful first meal period. Plaintiffs claim that Defendants violated Labor Code section 512 and 226.7, and IWC Wage Order 7-2001 for failing to provide timely, uninterrupted meal periods. Pursuant to Labor Code section 512 and the Wage Order, no

April 11, 2022

employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all his or her duties. Here, Defendants failed to provide Plaintiffs and all other aggrieved employees meal periods of not less than thirty (30) minutes. Due to work demands, staffing shortages, Defendant's policies and practices, including the requirement to carry work-related radios or communication devices, and scheduling requirements, Plaintiffs and the aggrieved employees were often interrupted or not provided legally compliant meal periods in violation of the law. Plaintiffs are also informed and believes that Defendant unlawfully changed time records in some instances to reflect breaks that were not taken. Moreover, as a matter of Defendant's policy and practice, second meal periods were not provided to Plaintiffs and the Aggrieved Employees on shifts over 10 hours and shifts over 12 hours. Defendant failed to provide such meal periods without a lawful waiver.

Plaintiff alleges that Defendants failed to authorize and permit rest periods. This failure violates Labor Code §226.7 and Section 12(A) of Wage Order 7, which provides that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked. This action is further brought under Labor Code §226.7(b) and Section 12(B) of Wage Order 7, which provides that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of pay for each workday that a rest period was not authorized and permitted. Plaintiffs and the aggrieved employees were systematically not authorized and permitted to take legally compliant net ten (10) minute rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198, and IWC Wage Order 7. Employees were not authorized and permitted to take a net ten-minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices, staffing and communication device policies and practices, and imposed work demands that frequently required employees to forego their breaks or return before a net ten minutes of rest. To the extent, any rest periods were taken they were not compliant because employees were essentially required to remain on duty.

In addition, aggrieved employees were required to remain on premises during rest periods, and certain aggrieved employees were required to carry communications devices during meal and rest periods. Defendant's exercise of control over the aggrieved employees during periods of rest is inconsistent with the mandates of the Labor Code and Wage Order, as set forth in *Augustus v. ABM*, 2 Cal. 5th 257, 261 (2016). The law is clear that rest periods must be "duty free" and to provide a compliant rest period, employers must "relieve their employees of all duties" during their breaks and must "relinquish any control over how employees spend their break time." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 261 (2016).

In addition, as a matter of policy and practice, Defendant failed to authorize and permit the taking of third rest periods on shifts over ten hours by Plaintiff and the aggrieved employees. Defendant failed to provide such rest periods without a lawful waiver.

Defendants further violated the law by failing to compensate Plaintiffs and the aggrieved employees with one additional hour of pay at their regular rate of pay when lawful meal periods or rest periods were not lawfully provided in violation of Labor Code §§ 226.7 and 512, 1198 and the applicable Industrial Welfare Commission Wage Orders.

AMENDED NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

April 11, 2022

In relevant part, Labor code section 226(a) requires: An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendants failed to provide accurate, lawful itemized wage statements to Plaintiffs and the Aggrieved Employees in part because of the violations set forth in Plaintiff's attached complaint, including the failure to pay one hour of premium pay at the employee's regular rate of pay for non-provided meal and rest breaks. In addition, the wage statements failed to indicate the relevant pay periods for certain additional compensation earned. Further, wage statements also omitted Total Hours worked from wage statements, and some pay rates, differentials, and hours are missing from wages statements. By way of example only, Plaintiff Jackson's wage statements showed an inaccurate hourly rate of pay for his base rate, as the amount Defendants were paying Plaintiff Jackson were not the rates shown on his wage statements.

Plaintiffs also contend that Defendants failed to keep accurate records as required by Wage Order 9-2001, Labor Code 1174, and 1198. IWC Wage Order 7-2001 requires in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rate of pay...." Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the complaint, including without limitation failing to keep records of meal periods and all wages earned at the proper rates. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

Under California Labor Code §2802, an employee is entitled to be reimbursed by his or her employer "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Here, Defendants failed to reimburse Mr. Jackson and the aggrieved employees for all expenses incurred in the discharge of his duties, including but not limited to mileage, cell phone usage, protective gear (including without limitation knee pads and gloves), and uniforms. Because Defendants have violated California Labor Code § 2802, Defendants are liable for civil penalties.

In part, as a result of the above specified violations, Defendants have also failed to pay all wages owed at the time of separation as required by Labor Code sections 201-203. All aggrieved employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to unpaid straight time wages, sick pay, minimum wage,

AMENDED NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

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overtime compensation and compensation for non-provided meal periods, but to date have not received such compensation, therefore entitling them to civil penalties under PAGA for violations of Labor Code sections 201-203. Plaintiffs further alleges that, regardless of any underlying failure to pay wages or premiums, he and the Aggrieved Employees were not paid all earned wages on the date of termination as a matter of Defendants' pattern and practice.

In addition to the violation specified above and in the attached Complaint, Plaintiffs allege that Defendants failed to pay sick leave pay to Plaintiffs and the Aggrieved Employees at the proper rate. Labor Code 246(i) provides: An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified. Labor Code section 246(1) provides: "For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick leave for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." In this case, Plaintiffs allege that Defendant failed to pay sick leave at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, shift differentials, and other wages into account in calculating the regular rate. This constitutes a violation of Labor Code.

In addition to the claims brought initially by Plaintiff Cervantez, Plaintiff Jackson brings the following claims: (1) failure to pay reporting time wages; (2) failure to pay on-call wages; (3) failure to provide suitable seating; (4) unlawful deductions.

Plaintiff Jackson alleges Defendants failed to pay reporting time wages to Plaintiff and the Aggrieved Employees. Section 5 of Wage Order 7-2001 and 9-2001 provides: "(A) each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours and who are [] deprived of that amount because of inadequate scheduling or lack of proper notice by employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4<sup>th</sup> 556 (2012). Plaintiff Jackson and, upon information and belief, the Aggrieved Employees were often sent home within the first 2 hours of their scheduled shifts, but were systematically not compensated reporting time pay for these scheduled shifts. Defendant's failure to pay Plaintiff and the Aggrieved Employees reporting time pay constitutes a violation of the Labor Code as well as IWC Wage Orders.

AMENDED NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

April 11, 2022

Plaintiff further alleges that Defendant violated Labor Code section 1198 and wage order 7 by failing to pay reporting time pay for on-call time. During the relevant time period, Plaintiff and the aggrieved employees were expected to work certain on-call shifts. Defendant required employees to keep the day open in case they needed to be called in. Plaintiff and the aggrieved employees were not paid anything extra for being on call, and were not paid anything if they were not called in.

In addition, Plaintiff Jackson alleges that Defendants failed to provide suitable seating to aggrieved employees in Dock Worker positions. Wage Order 7-2001 and 9-2001 provides: "All working employees shall be provided with suitable seating when the nature of the work reasonably permits the use of seats." Defendants failed to provide employees throughout the State of California, including Plaintiff Jackson, with seats—despite the fact that certain tasks performed by the Dock Workers reasonably permits the use of seats, including time spent scanning pallets. Defendants would use disciplinary actions in order to discourage Plaintiff and the Aggrieved Employees from using seats when their duties reasonable permitted the use of seats. Labor Code section 1198 makes it unlawful to employ an employee under conditions of labor that are prohibited by the applicable Wage Order. By failing to provide Plaintiff and the other current and former Dock Workers with suitable seats in violation of Wage Order 7-2001 and 9-2001, Defendants also violated Labor Code section 1198.

Further, Plaintiff Jackson alleges that Defendants unlawfully deducted from Plaintiff and the Aggrieved Employee's wages. California Labor Code §223 provides that "where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract." By way of example, during the relevant time period, Defendants routinely and systematically paid Plaintiff Jackson a wage less than the contractually agreed rate of pay. Defendants deductions from Plaintiff's wages and, upon information and belief, the Aggrieved Employees', constitutes a violation of the California Labor Code.

All Labor Code provisions in the Complaint alleged to have been violated pertain to all entities and individuals named in the Complaint, even if not expressly specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

Enclosures:

Notice Pursuant to Labor Code Sections 2698 *et seq.*

Class For Damages For: PAGA

**JAMES *JH* HAWKINS**  
A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618  
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

September 24, 2021

**Via Online Filing (LWDA) and Certified Mail (Employers)**

California Labor and Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Genuine Parts Company  
2999 Wildwood Parkway  
Atlanta, GA 30339  
Certified Mail Receipt: 7018 1130 0001  
8270 3039

Agent for Service of Process for  
Genuine Parts Company:  
CT Corporation System  
330 N. Brand Blvd., Suite 700  
Glendale, CA 91203  
Certified Mail Receipt: 7018 1130 0001  
8270 3046

RE: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Mark Cervantez, individually and on behalf of all others similarly situated, gives NOTICE of his intent to commence a civil action pursuant to California Labor Code Section 2698, *et seq.* Plaintiff hereby gives written notice electronically to the Labor and Workforce Development Agency, and by certified mail to Defendants Genuine Parts Company, a Georgia Corporation doing business as NAPA Auto Parts, (“Defendant”) via their agent for service of process.

Plaintiff was employed by Defendants as an hourly, non-exempt employee. Plaintiff began his employment with Defendants on or about June 25, 2019, and continued such employment through December 18, 2020. He worked at Defendants’ retail location in the City of Glendora, California. Plaintiff was employed by Defendants in the position of Delivery Driver.

The group of aggrieved employees that Plaintiff seeks to represent is a group of non-exempt employees working in Defendants’ locations in the State of California during the relevant time period (“Aggrieved Employees”) as tolled by Emergency Rule 9. 1 This notice is timely as it

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1 This group is referred to as the “Class Member” group in the Complaint (with the relevant time period modified to account for the PAGA statute of limitations).

September 24, 2021

is provided within one year of the violations. In addition, the statute of limitation for the claim under the Private Attorney Generals Act of 2004 (and the relevant time period), is tolled by operation of law under Emergency Rule 9 due to COVID-19 pandemic.

Plaintiff has attached his Complaint, and incorporates the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants in the Complaint.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5<sup>th</sup> 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees working for Defendants at their retail locations in the State regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

Plaintiff claims that Defendants implemented legally non-compliant policies and practices which led to Defendants' (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to authorize and permit legally compliant rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) knowing and intentional failure to comply with itemized wage statement provisions; (8) failure to reimburse necessary expenses; and (9) violation of the Unfair Competition Law.

During all relevant periods, the California Labor Code sections 204, 1194, 1197, 1198, and wage orders required that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all hours worked. Employers are required to pay at least minimum wage for each hour worked. Labor Code section 1194(a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. The IWC Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours for which they were not paid because Defendants frequently required Plaintiff and Aggrieved Employees to work off the clock. Plaintiff and the Aggrieved Employees were not paid for all hours worked because employees were required to work off the clock. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the Aggrieved Employees were working off the clock and that they should have been paid for this time. However, such time was not paid in violation of the law.

During the relevant periods, Defendant required Plaintiff and the Aggrieved Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek. Both the California Labor Code section 1194, 1197, 510, 1198, and the pertinent

September 24, 2021

wage order 4-2001, and 7-2001 required that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times that employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required to be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh (7<sup>th</sup>) day of a workweek is required to be compensated at the rate of no less than twice the regular rate of pay of an employee. Defendants failed to incorporate all forms of compensation, including without limitation non-discretionary bonuses, differentials, and incentives, into the regular rate for overtime purposes. Thus, employees were undercompensated in violation of the law.

In addition, as set forth above, Plaintiff and the Aggrieved Employees were required to work a significant number of hours off the clock. Many of these hours were overtime hours and should have been paid at the overtime rate. Defendants knew or should have known Plaintiff and the Aggrieved Employees were undercompensated as a result of these practices.

Plaintiff alleges he and the aggrieved employees were regularly required to work shifts in excess of five hours without being provided a lawful first meal period. Plaintiff claims that Defendants violated Labor Code section 512 and 226.7, and IWC Wage Order 7-2001 for failing to provide timely, uninterrupted meal periods. Pursuant to Labor Code section 512 and the Wage Order, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all his or her duties. Here, Defendants failed to provide Plaintiff and all other aggrieved employees meal periods of not less than thirty (30) minutes. Due to work demands, staffing shortages, Defendant's policies and practices, and scheduling requirements, Plaintiff and the aggrieved employees were often interrupted or not provided legally compliant meal periods in violation of the law. Plaintiff is also informed and believes that Defendant unlawfully changed time records in some instances to reflect breaks that were not taken. Moreover, as a matter of Defendant's policy and practice, second meal periods were not provided to Plaintiff and the Aggrieved Employees on shifts over 10 hours without a lawful waiver.

Plaintiff alleges that Defendants failed to authorize and permit rest periods. This failure violates Labor Code §226.7 and Section 12(A) of Wage Order 7, which provides that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked. This action is further brought under Labor Code §226.7(b) and Section 12(B) of Wage Order 7, which provides that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of pay for each workday that a rest period was not authorized and permitted. Plaintiff and the aggrieved employees were systematically not authorized and permitted to take legally compliant net ten (10) minute rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198, and IWC Wage Order 7. Employees were not authorized and permitted to take a net ten-minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices, staffing and policies and practices, and imposed work demands that frequently required employees to forego their breaks or return before a net ten minutes of rest. To the extent, any rest periods were taken they were not compliant because employees were essentially required to remain on duty.

In addition, aggrieved employees were required to carry communications devices. Defendant's exercise of control over the aggrieved employees during periods of rest is inconsistent with the mandates of the Labor Code and Wage Order, as set forth in *Augustus v. ABM*, 2 Cal. 5th 257, 261 (2016). The law is clear that rest periods must be "duty free" and to provide a compliant rest period, employers must "relieve their employees of all duties" during their breaks and must "relinquish any control over how employees spend their break time." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 261 (2016).

Defendants further violated the law by failing to compensate Plaintiff and the aggrieved employees with one additional hour of pay at their regular rate of pay when lawful meal periods were not lawfully provided in violation of Labor Code §§ 226.7 and 512, 1198 and the applicable Industrial Welfare Commission Wage Orders.

In relevant part, Labor code section 226(a) requires: An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendants failed to provide accurate, lawful itemized wage statements to Plaintiff and the Aggrieved Employees in part because of the violations set forth in Plaintiff's attached complaint, including the failure to pay one hour of premium pay at the employee's regular rate of pay for non-provided meal and rest breaks. In addition, the wage statements failed to indicate the relevant pay periods for certain additional compensation earned. Further, wage statements also omitted Total Hours worked from wage statements, and some pay rates, differentials, and hours are missing from wages statements.

Plaintiff also contends that Defendants failed to keep accurate records as required by Wage Order 7-2001, Labor Code 1174, and 1198. IWC Wage Order 7-2001 requires in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rate of pay...." Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the complaint, including without limitation failing to keep records of meal periods and all wages earned at the proper rates. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*  
September 24, 2021

Under California Labor Code §2802, an employee is entitled to be reimbursed by his or her employer “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Here, Defendants failed to reimburse Mr. Cervantez for all expenses incurred in the discharge of his duties, including but not limited to cell phone usage and GPS related expenses. Because Defendants have violated California Labor Code § 2802, Defendants are liable for civil penalties.

In part, as a result of the above specified violations, Defendants have also failed to pay all wages owed at the time of separation as required by Labor Code sections 201-203. All aggrieved employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to unpaid straight time wages, sick pay, minimum wage, overtime compensation and compensation for non-provided meal periods, but to date have not received such compensation, therefore entitling them to civil penalties under PAGA for violations of Labor Code sections 201-203. Plaintiff further alleges that, regardless of any underlying failure to pay wages or premiums, he and the Aggrieved Employees were not paid all earned wages on the date of termination as a matter of Defendants’ pattern and practice.

In addition to the violation specified above and in the attached Complaint, Plaintiff alleges that Defendants failed to pay sick leave pay to Plaintiff and the Aggrieved Employees at the proper rate. Labor Code 246(i) provides: An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified. Labor Code section 246(1) provides: “For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick leave for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.” In this case, Plaintiff alleges that Defendant failed to pay sick leave at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, shift differentials, and other wages into account in calculating the regular rate. This constitutes a violation of Labor Code.

All labor provisions in the Complaint alleged to have been violated pertain to all entities and individuals named in the Complaint, even if not expressly specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Gregory Keosian

James R. Hawkins (SBN 192925)  
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Attorneys for Plaintiff Mark Cervantez,  
on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

MARK CERVANTEZ, individually and  
on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

GENUINE PARTS COMPANY, a  
Georgia Corporation, doing business as  
NAPA AUTO PARTS; and DOES 1-50,  
inclusive,

Defendants.

Case No. **22STCV00981**

*Assigned for All Purposes To:*

Hon.

Dept.:

**COMPLAINT FOR DAMAGES FOR:**

**1) Civil Penalties Under Private  
Attorneys General Act, Labor Code  
Section 2698 et seq.**

COMES NOW, Plaintiff MARK CERVANTEZ (“Plaintiff”), individually and on behalf of others similarly situated, and asserts claims against defendants GENUINE PARTS COMPANY a Georgia Corporation, doing business as NAPA AUTO PARTS; and DOES 1-50, inclusive (collectively “Defendants” or “Genuine Parts”) as follows:

### **INTRODUCTION**

1. This is a representative action for recovery of penalties under the Private Attorneys’ General Act of 2004 (“PAGA”), Cal. Lab. Code section 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of themselves and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. Plaintiff brings this action pursuant to the PAGA on a representative basis on behalf of all non-exempt employees working in Defendants’ locations in the State of California (the “Aggrieved Employees”) from one year prior to the filing of the PAGA notice (as tolled by Emergency Rule 9) to the conclusion of this action.

3. Plaintiff brings this action on behalf of himself and the Aggrieved Employees to recover civil penalties and address Defendants’ violations of the California Labor Code and the IWC Wage Orders.

4. Pursuant to *Huff v. Securitas Security Services*, 21 Cal. App. 5<sup>th</sup> 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Cervantez has standing to pursue penalties on behalf of the state for violations affecting the aggrieved employees at Genuine Parts, regardless of their classification, job title, or locations in California.

5. In this case, Defendants violated various provisions of the California Labor Code and IWC Wage Order. Defendants’ violations include: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages owed during employment; (6) failure to timely pay wages owed upon separation from employment; (7) failure to reimburse necessary

1 expenses; (8) knowing and intentional failure to comply with itemized wage statement provisions;  
2 (9) failure to keep accurate records; and (10) failure to pay sick pay at the proper rate.

3 6. This action is timely because Plaintiff suffered from a violation or numerous  
4 violations of the California Labor Code within one year of the date on which a PAGA notice was  
5 sent to the LWDA via online submission. More than 65 days have passed, and no response has  
6 been received by the LWDA. A copy of the letter sent to the LWDA with enclosure is attached  
7 hereto as **Exhibit A**, thereby satisfies the notice requirement under the statute and permitting  
8 Plaintiff to proceed with this action in a representative capacity.

### 9 **JURISDICTION AND VENUE**

10 7. This Court has jurisdiction over this action pursuant to the California Constitution  
11 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except  
12 those given by statute to other courts. The statutes under which this action is brought do not give  
13 jurisdiction to any other court.

14 8. Further, there is no federal question at issue, as the issues herein are based solely on  
15 California statutes and law, including the Labor Code, IWC Wage Orders, the California Code of  
16 Civil Procedure, the California Civil Code, and the California Business and Professions Code.

17 9. Venue is proper in this Court because one or more of the Defendants reside, transact  
18 business, or have offices in this County, Plaintiff is a resident of this County, and the acts or  
19 omissions alleged herein took place in this County.

### 20 **PARTIES**

21 10. Defendant Genuine Parts Company is a Georgia Corporation doing business as  
22 NAPA Auto Parts in the state of California. It is based at 2999 Wildwood Parkway, Atlanta, GA  
23 30339.

24 11. Upon information and belief, Genuine Parts employs Non-Exempt Employees, like  
25 Plaintiff, throughout the State of California.

26 12. Plaintiff Mark Cervantez is and during the liability period has been, a resident of  
27 California.

28 13. Plaintiff was employed in an hourly, non-exempt position by Defendants during the

1 relevant time period.

2 14. Plaintiff and the members of the Aggrieved Group were employed as hourly paid  
3 employees by Defendants, either directly or indirectly, at locations in the State of California at any  
4 time during the relevant time (as tolled by Emergency Rule 9).

5 15. Whenever in this complaint reference is made to any act, deed, or conduct of  
6 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through  
7 one or more of Defendants' officers, directors, agents, employees, or representatives, who was  
8 actively engaged in the management, direction, control, or transaction of the ordinary business and  
9 affairs of Defendants.

10 16. The true names and capacities of Defendants, whether individual, corporate,  
11 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to  
12 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §  
13 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and  
14 capacities of the Defendants designated hereinafter as DOES when such identities become known.

15 17. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are  
16 the partners, agents, or principals and co-conspirators of Defendants and of each other; that  
17 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided  
18 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits  
19 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the  
20 liability of the Defendants as alleged herein.

21 18. Plaintiff is further informed and believes, and thereon allege, that at all times  
22 material herein, each Defendant was completely dominated and controlled by its co-Defendants  
23 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint  
24 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed  
25 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.  
26 Whenever and wherever reference is made to individuals who are not named as Defendants in this  
27 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times  
28 acted on behalf of Defendants named in this complaint within the scope of their respective

1 employments.

2 **FACTUAL ALLEGATIONS**

3 19. During the relevant time frame, Defendants compensated Plaintiff and the Non-  
4 Exempt Employees based upon an hourly wage.

5 20. Plaintiff and the Aggrieved Employees were, and at all times pertinent hereto,  
6 have been non-exempt employees within the meaning of the California Labor Code, and the  
7 implementing rules and regulations of the IWC California Wage Orders. They are subject to the  
8 protections of the IWC Wage Orders and the Labor Code.

9 21. During the relevant time, Plaintiff was employed by Defendants in an hourly, non-  
10 exempt position. He worked as a delivery driver for Defendants approximately 4 days per week,  
11 32+ hours per week.

12 22. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were  
13 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the  
14 requirements of California's wage and employment laws.

15 23. All Aggrieved Employees are similarly situated in that they are all subject to  
16 Defendants' uniform policies and systemic practices as specified herein.

17 24. Plaintiff and the Aggrieved Employees were required to clock in at the beginning  
18 of their shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their  
19 shifts. Plaintiff and the Aggrieved Employees were not paid for all hours worked because  
20 employees were required to work off the clock and because Defendants unlawfully rounded the  
21 hours worked by Plaintiff and the Aggrieved Employees such that they were not paid for all hours  
22 worked.

23 25. In addition, Plaintiff and the Aggrieved Employees worked in excess of eight (8)  
24 hours in day and/or over forty (40) hours in a workweek, but were not properly paid for such time  
25 at a rate of time and one-half the employee's regular rate of pay per hour.

26 26. Upon information and belief, Defendants failed to incorporate all forms of non-  
27 discretionary compensation into the regular rate, including differentials, bonuses, incentives, and  
28 other forms of non-discretionary remuneration. This resulted systemic underpayment of

overtime, meal and rest period premiums, and sick pay.

27. Plaintiff and the Aggrieved Employees were regularly required to work shifts in excess of five hours without being provided a lawful meal period and, on occasion, over ten hours in a day without being provided a second lawful meal period as required by law.

28. Indeed, during the relevant time, as a consequence of Defendants' scheduling practices, work demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally complaint uninterrupted 30-minute meal periods as required by law. Not only were Plaintiff's and the Aggrieved Employees' first meal breaks frequently not provided, untimely or short, but also Plaintiff and the Aggrieved Employees were not provided a second meal period when working shifts in excess of 10 hours and in excess of 12 hours.

29. On information and belief, Plaintiff and Aggrieved Employees did not waive their rights to a second meal period.

30. Despite the above-mentioned meal period violations, Defendants failed to compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees, one additional hour of pay at their regular rate as required by California law when meal periods were not timely or lawfully provided in a compliant manner.

31. Plaintiff is informed and believes, and thereon alleges, that Defendants know, should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees were entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving accurately calculated compensation.

32. In addition, during the relevant time frame, Plaintiff and the Non-Exempt Employees were systematically not authorized and permitted to take one net ten-minute paid, rest period for every four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.

33. Defendants maintained and enforced scheduling practices, policies, and imposed work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful, paid rest periods of a net ten minutes for every four hours worked or major fraction thereof.

1 Such requisite rest periods were not timely authorized and permitted.

2 34. Despite the above-mentioned rest period violations, Defendants did not  
3 compensate Plaintiff, and on information and belief, did not pay Aggrieved Employees one  
4 additional hour of pay at their regular rate as required by California law, including Labor Code  
5 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were  
6 not authorized and permitted.

7 35. In addition, Plaintiff and the Aggrieved Employees were required to carry work-  
8 related cellular phones or other communications devices during meal and rest periods, and were  
9 required to remain available. Meal and rest periods were frequently interrupted as a consequence.

10 36. Moreover, Plaintiff and the Aggrieved Employees were required to incur necessary  
11 expenses in the discharge of their duties, including for cellular phone usage, but were not  
12 reimbursed for such costs.

13 37. Defendants also failed to provide accurate, lawful itemized wage statements to  
14 Plaintiff and the Aggrieved Employees in part because of the above specified violations.

15 38. Defendants have also made it difficult to determine applicable rates of pay and  
16 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-  
17 exempt Employees, including Plaintiff, during the liability period because they did not implement  
18 and preserve a lawful record-keeping method to record all hours worked, and non-provided rest  
19 and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section  
20 211(c), California Labor Code section 226, and applicable California Wage Orders.

21 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
22 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours  
23 thereof for resignations without prior notice as the case may be) they had a duty to accurately  
24 compensate Plaintiffs and Aggrieved Employees for all wages owed including straight time,  
25 overtime, meal and rest period premiums, and that Defendants had the financial ability to pay such  
26 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part  
27 because of the above-specified violations.

28 40. Plaintiff and the Aggrieved Employees are covered by applicable California IWC

1 Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title  
2 8, section 11000 *et seq.*

3 ***FAILURE TO PAY MINIMUM WAGES***

4 41. Labor Code section 204 establishes the fundamental right of all employees in the  
5 State of California to be paid wages, including minimum wage, straight time and overtime, in a  
6 timely fashion for their work.

7 42. Labor Code section 1194(a) provides that notwithstanding any agreement to work  
8 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime  
9 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance  
10 of the full amount of this minimum wage or overtime compensation, including interest thereon,  
11 reasonable attorney's fees, and costs of suit.

12 43. Labor Code section 1197 provides: The minimum wage for employees fixed by the  
13 commission or by any applicable state or local law, is the minimum wage to be paid to employees,  
14 and the payment of a lower wage than the minimum so fixed is unlawful.

15 44. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer  
16 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC  
17 Wage Order(s).

18 45. The applicable wage orders and California Labor Code sections 1197 and 1182.12  
19 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by  
20 state law.

21 46. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not  
22 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid  
23 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount  
24 equal to the unpaid wages and interest accrued thereon.

25 47. During all relevant periods, the California Labor Code and wage orders required that  
26 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all  
27 hours worked.

28 48. The IWC Wage Orders define "hours worked" as "the time during which an

1 employee is subject to the control of an employer, and includes all the time the employee is suffered  
2 or permitted to work, whether or not required to do so.”

3 49. At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours  
4 for which they were not paid because Defendants frequently required Plaintiff and the Aggrieved  
5 Employees to work off the clock.

6 50. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the  
7 Aggrieved Employees were working off the clock and that they should have been paid for this time.

8 51. In addition, Defendants failed to pay at least minimum wage for all hours worked  
9 because, upon information and belief, Defendants rounded hours worked against Plaintiff and the  
10 Aggrieved Employees’ interests.

11 52. Defendant’s policy and practice of not paying all minimum wages violates  
12 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the  
13 applicable wage order 4-2001, 7-2001 and 9-2001.

14 ***FAILURE TO PAY OVERTIME OWED***

15 53. During all relevant periods, Defendant required Plaintiff and the Aggrieved  
16 Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty  
17 (40) hours per workweek.

18 54. During all relevant periods, both the California Labor Code sections 1194, 1197,  
19 510, 1198, and the pertinent wage order 4-2001, 7-2001 and 9-2001 required that all work  
20 performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work  
21 in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-  
22 half (1.5) times the employee’s regular rate of pay. Any work in excess of twelve (12) hours in one  
23 (1) day is required to be compensated at the rate of no less than twice the regular rate of pay for an  
24 employee. In addition, any work in excess of eight (8) hours on any seventh (7th) day of a  
25 workweek is required to be compensated at the rate of no less than twice the regular rate of pay of  
26 an employee.

27 55. During all relevant periods, Defendants had a uniform policy of requiring Plaintiff  
28 and the Aggrieved Employees to work in excess of eight (8) hours in a workday and/or in excess

1 of forty (40) hours in a workweek without compensating them at a rate of one and one-half (1.5)  
2 times their regular rate of pay. Upon information and belief, Defendants also failed to properly  
3 compensate Plaintiff and the Aggrieved Employees for hours worked in excess of twelve (12) hours  
4 in one (1) day, or eight (8) hours on the seventh (7th) day of a workweek.

5 56. The IWC Wage Orders define “hours worked” as “the time during which an  
6 employee is subject to the control of an employer, and includes all the time the employee is suffered  
7 or permitted to work, whether or not required to do so.”

8 57. At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours  
9 for which they were not paid because Plaintiff and the Aggrieved Employees were required to work  
10 off the clock—some of these hours were over eight (8) hours in one (1) workday or in excess of  
11 forty (40) hours in a workweek and should have been paid at the overtime rate.

12 58. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the  
13 Aggrieved Employees were working off the clock and that they should have been paid for this time.

14 59. In addition, upon information and belief, Defendants failed to incorporate all forms  
15 of compensation, including without limitation bonuses, differentials, and incentives, into the  
16 regular rate for overtime purposes.

17 60. As a result, Defendants failed to pay Plaintiff and the Aggrieved Employees earned  
18 overtime wages and such employees suffered damages as a result.

19 61. Defendants knew or should have known Plaintiffs and the Aggrieved Employees  
20 were undercompensated as a result of these practices.

21 ***FAILURE TO PROVIDE LAWFUL MEAL PERIODS***

22 62. Pursuant to Labor Code § 512, no employer shall employ an employee for a work  
23 period of more than five (5) hours without providing a meal break of not less than thirty (30)  
24 minutes in which the employee is relieved of all of his or her duties, except that when a work period  
25 of not more than six (6) hours will complete the day’s work the meal period may be waived by  
26 mutual consent of the employer and employee.

27 63. During the relevant time, Defendants failed to provide Plaintiff and Aggrieved  
28 Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes within

1 the first five hours of a shift.

2 64. As a consequence of Defendants' policies and practices, requirements, demands,  
3 coverage and staffing, Plaintiff and the Aggrieved Employees were often required to forego such  
4 meal periods, take shortened meal periods, and/or commence their meal periods into and beyond  
5 the sixth hour of their shifts.

6 65. In addition, Plaintiff and, upon information and belief, the Aggrieved Employees  
7 were required to carry work-related cellular phones or other communications devices during meal  
8 and rest periods, and were required to remain available. Meal and rest periods were frequently  
9 interrupted as a consequence.

10 66. Upon information and belief, Plaintiff and the Aggrieved Employees were not paid  
11 one hour of pay at their regular rate for each day that a meal period was not lawfully provided.

12 67. Moreover, as a matter of policy and practice, upon information and belief, the  
13 Aggrieved Employees were also not provided second meal periods on days when shifts exceeded  
14 ten hours (and twelve hours), nor were they provided premium wages in lieu of a second meal  
15 period. On information and belief, Plaintiff and the Aggrieved Employees did not waive their rights  
16 to a second meal period on shifts in excess of ten hours.

17 68. As a proximate result of the aforementioned violations, Plaintiff and the Aggrieved  
18 Employees have been damaged in an amount according to proof at time of trial.

19 ***FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS***

20 69. Pursuant to the IWC wage orders applicable to Plaintiff's and Aggrieved  
21 Employees' employment by Defendants, "Every employer shall authorize and permit all employees  
22 to take rest periods, which insofar as practicable shall be in the middle of each work period...  
23 [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten  
24 (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest  
25 period time shall be counted as hours worked, for which there shall be no deduction from wages."

26 70. Labor Code §226.7(a) prohibits an employer from requiring any employee to work  
27 during any rest period mandated by an applicable order of the IWC.

28

1       71.       Defendants were required to authorize and permit employees such as Plaintiff and  
2 Aggrieved Employees to take rest periods during shifts in excess of 3.5 hours, based upon the total  
3 hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction  
4 thereof, with no deduction from wages.

5       72.       Despite said requirements of the IWC wage orders applicable to Plaintiff's and  
6 Aggrieved Employee's employment with Defendants, Defendants failed and refused to authorize  
7 and permit Plaintiff and Aggrieved Employees to take lawful, net ten (10) minute rest periods for  
8 every four (4) hours worked, or major fraction thereof. Such rest breaks, when provided, were  
9 frequently untimely or less than net ten minutes because of the work requirements imposed by  
10 Defendants, and frequent calls during rest periods.

11       73.       In addition, as detailed above, Plaintiff and the Aggrieved Employees were required  
12 to carry work-related cellular phones or other communications devices during meal and rest  
13 periods, and were required to remain available. Meal and rest periods were frequently interrupted  
14 as a consequence.

15       74.       Defendants did not pay Plaintiff one additional hour of pay at his regular rate of pay  
16 for each day that a rest period violation occurred. On information and belief, the other members of  
17 the Aggrieved Group endured similar violations as a result of Defendants' rest period policies and  
18 practices and Defendant did not pay said Aggrieved Employees premium pay as required by law.

19       75.       By their failure to authorize and permit Plaintiff and the Aggrieved Employees to  
20 take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major  
21 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour  
22 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other  
23 Aggrieved Employees work(ed) work a third rest period for shifts in excess of ten (10) hours, and  
24 by their failure to provide compensation for such unprovided rest periods as alleged herein,  
25 Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable IWC  
26 Wage Order(s).

27                   ***FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING***  
28                   ***EMPLOYMENT***

1           76.     Labor Code section 204 requires that all wages are due and payable twice in each  
2 calendar month.

3           77.     The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became  
4 due and payable to each employee in each month that he or she was not provided with a meal period  
5 or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

6           78.     Defendants violated Labor Code § 204 by systematically refusing to pay wages due  
7 under the Labor Code.

8           79.     Labor Code section 210 (a) provides that “In addition to, and entirely independent  
9 and apart from, any other penalty provided in this article, every person who fails to pay the wages  
10 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and  
11 1197.5, shall be subject to a penalty as follow:

12           (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each  
13 employee.

14           (2) For each subsequent violation, or any willful or intentional violation, two hundred  
15 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount  
16 unlawfully withheld.

17                   ***FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION***

18           80.     Labor Code §§ 201 and 202 require Defendants to pay their employees all wages  
19 due within seventy-two (72) hours of separation of employment.

20           81.     Section 203 of the Labor Code provides that if an employer willfully fails to timely  
21 pay such wages the employer must, as a penalty, continue to pay the subject employee’s wages  
22 until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30  
23 days of wages.

24           82.     Plaintiff and Aggrieved Employees are entitled to compensation for all forms of  
25 wages earned, including but not limited to minimum wages, overtime, and premium meal and rest  
26 period compensation, but to date have not received such compensation, therefore entitling them to  
27 Labor Code § 203 penalties.

28           83.     In addition, irrespective of any derivative violation, Defendants failed to timely pay

1 Plaintiff and, upon information and belief, other Aggrieved Employees earned compensation at the  
2 time of termination despite their obligations under Labor Code 201 and 202.

3 84. More than thirty (30) days have passed since affected Aggrieved Employees have  
4 left Defendants' employ, and on information and belief, they have not received payment pursuant  
5 to Labor Code § 203.

6 ***FAILURE TO REIMBURSE NECESSARY EXPENSES***

7 85. Plaintiff repeats and incorporates herein by reference each and every allegation set  
8 forth above, as though fully set forth herein.

9 86. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Aggrieved  
10 Employees for necessary expenditures incurred in direct consequence of the discharge of his or  
11 her duties.

12 87. Plaintiff and the members of the Aggrieved Group were required to incur expenses  
13 in the performance of their assigned job duties.

14 88. Upon information and belief, the Defendants did not reimburse Plaintiff or the  
15 Plaintiff's Aggrieved Group for such expenses.

16 89. As a result of the unlawful acts of Defendants, Plaintiffs and the Plaintiffs'  
17 Aggrieved Employees have been deprived of un-reimbursed sums in amounts to be determined at  
18 trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon,  
19 attorneys' fees, and costs, pursuant to Labor Code §2802.

20 ***KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED***

21 ***EMPLOYEE WAGE STATEMENT PROVISIONS***

22 90. Labor Code section 226(a) reads in pertinent part: "Every employer shall,  
23 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either  
24 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately  
25 when wages are paid by personal check or cash, an accurate itemized statement in writing  
26 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...  
27 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the  
28 name of the employee and only the last four digits of his or her social security number or an

1 employee identification number other than a social security number, (8) the name and address of  
2 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the  
3 pay period and the corresponding number of hours worked at each hourly rate by the  
4 employee....”.

5 91. Further, the IWC Wage Orders require in pertinent part: Every employer shall  
6 keep accurate information with respect to each employee including the following: (3) Time  
7 records showing when the employee begins and ends each work period. Meal periods, split shift  
8 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the  
9 payroll period and applicable rates of pay....”

10 92. Labor Code section 1174 of the California also requires Defendants to maintain  
11 and preserve, in a centralized location, among other items, records showing the names and  
12 addresses of all employees employed and payroll records showing the hours worked daily by, and  
13 the wages paid to, its employees. On information and belief and based thereon, Defendants have  
14 knowingly and intentionally failed to comply with Labor Code section 1174, including by  
15 implementing the policies and procedures and committing the violations alleged in the preceding  
16 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is  
17 unlawful pursuant to Labor Code section 1175.

18 93. Defendants have failed to record many of the items delineated in applicable  
19 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section  
20 1174, including by virtue of the fact that each wage statement which failed to accurately  
21 compensate Plaintiff and Aggrieved Employees for all hours worked and for missed and non-  
22 provided meal and rest periods, or which failed to include compensation for all minimum wages  
23 earned or overtime hours worked, was an inaccurate wage statement. In addition, the wage  
24 statements inaccurately stated totals hours worked and hours worked at each hourly wage rate.

25 94. On information and belief, Defendants failed to implement and preserve a lawful  
26 record-keeping method to record all non-provided meal and rest periods owed to employees or all  
27 hours worked, as required for Non-Exempt Employees under California Labor Code section 226  
28 and applicable California Wage Orders. In order to determine if they had been paid the correct

1 amount and rate for all hours worked, Plaintiff and Aggrieved Employees have been, would have  
2 been, and are compelled to try to discover the required information missing from their wage  
3 statements and to perform complex calculations in light of the inaccuracies and incompleteness of  
4 the wage statements Defendants provided to them.

5 95. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC  
6 Wage Orders, Defendants did not and still do not furnish each of the members of the Aggrieved  
7 Group with an accurate itemized statement in writing accurately reflecting all of the required  
8 information. Here, Plaintiff asserts the Defendant omitted required information, failed to  
9 accurately include all applicable hourly rates on the wage statements and the corresponding  
10 number of hours worked at such rates or hours paid at such rates. In addition, Defendants have  
11 failed to provide accurate itemized wage statements as a consequence of the above-specified  
12 violations for failure to accurately pay all wages owed, accurately record all hours worked, and  
13 failure to pay meal and rest period premiums as required by law.

14 96. Moreover, upon information and belief, as a pattern and practice, in violation of  
15 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain  
16 accurate records pertaining to the total hours worked for Defendants by the members of the  
17 Aggrieved Group, including but not limited to, beginning and ending of each work period, meal  
18 period and split shift interval, the total daily hours worked, and the total hours worked per pay  
19 period and applicable rates of pay.

20 97. Plaintiffs and the members of the Aggrieved Group have suffered injury as a result  
21 of Defendants' failure to maintain accurate records for the members of the Aggrieved Group in  
22 that the members of the Aggrieved Group were not timely provided written accurate itemized  
23 statements showing all requisite information, such that the members of the Aggrieved Group were  
24 misled by Defendants as to the correct information regarding various items, including but not  
25 limited to total hours worked by the employee, net wages earned and all applicable hourly rates in  
26 effect during the pay period and the corresponding number of hours worked at each hourly rate.

27 98. Pursuant to Labor Code section 226, and in light of Defendants' violations  
28 addressed above, Plaintiff and the Wage Statement Aggrieved Employees are each entitled to

1 recover up to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys'  
2 fees.

3 ***FAILURE TO KEEP ACCURATE RECORDS***

4 99. IWC Wage Orders 4-2001, 7-2001, and 9-2001 requires in pertinent part: Every  
5 employer shall keep accurate information with respect to each employee including the following:  
6 (3) Time records showing when the employee begins and ends each work period. Meal periods,  
7 split shift intervals, and total daily hours worked shall be records...(5) Total hours worked in the  
8 payroll period and applicable rate of pay..."

9 100. Labor Code section 1174 also requires Defendants to maintain and preserve in a  
10 centralize location, among other items, records showing the names and addresses of all employees  
11 employed and payroll records showing the hours worked daily by, and the wages paid to, its  
12 employee.

13 101. On information and belief and based thereon, Defendants have knowingly and  
14 intentionally failed to comply with Labor Code section 1174, including by implementing the  
15 policies and procedures and committing the violations alleged in the complaint, including without  
16 limitation failing to keep records of meal periods and all wages earned at the proper rates.

17 102. Defendants' failure to comply with Labor Codde section 1174 is unlawful pursuant  
18 to Labor Code section 1175.

19 ***FAIURE TO PAY SICK PAY AT THE PROPER RATE***

20 103. Plaintiff further contends that Defendants failed to pay sick leave pay to Plaintiff  
21 and the Aggrieved Employees at the proper rate.

22 104. Labor Code §246(i) provides: An employee who, on or after July 1, 2015, works in  
23 California for the same employer for 30 or more days within a year from the commencement of  
24 employment is entitled to paid sick days as specified.

25 105. Labor Code section 246(l) provides: "For the purposes of this section, an employer  
26 shall calculate paid sick leave using any of the following calculations: (1) Paid sick leave for  
27 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the  
28 workweek in which the employee uses paid sick time, whether or not the employee actually

1 works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated  
2 by dividing the employee's total wages, not including overtime premium pay, by the employee's  
3 total hours worked in the full pay periods of the prior 90 days of employment."

4 106. In this case, Plaintiff alleges that Defendant failed to pay sick leave at the proper  
5 rate because it failed to take all forms of compensation, including incentives, bonuses, shifts  
6 differentials, and other wages into account in calculating the regular rate. This constitutes a  
7 violation of the Labor Code.

### 8 **CAUSES OF ACTION**

#### 9 **FIRST CAUSE OF ACTION**

#### 10 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF 2004,**

#### 11 **LABOR CODE SECTION 2698 ET SEQ.**

12 107. Plaintiff incorporates by reference each and every paragraph above, and realleges  
13 each and every allegation contained above as though fully set forth herein.

14 108. On November 1, 2021, Plaintiff gave written notice by online submission to the  
15 LWDA and by certified mail to Defendants of Defendants' violations of numerous provisions of  
16 the California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were  
17 paid as required by statute. A copy of the letter sent to the LWDA with enclosure is attached  
18 hereto as **Exhibit A**.

19 109. Plaintiff is an "aggrieved employee" as defined in Labor Code Section 2699(A), as  
20 he was employed by Defendants during the statutory period and suffered one or more of the  
21 Labor Code violations set forth herein. He seeks to recover of himself and all other current and  
22 former aggrieved employees of Defendants the civil penalties provided by PAGA, plus  
23 reasonable attorneys' fees and costs.

24 110. 65 days have passed, and no response has been received from the LWDA.  
25 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

26 111. Plaintiff has exhausted all administrative procedures required of them under the  
27 Labor Code §§2698, 2699, 2699.3, and as a result, is justified as a matter of right in bringing  
28 forward this cause of action.

1           112. Pursuant to Labor Code section 2699(a), Plaintiff seeks to recover civil penalties  
2 for which Defendants are liable due to numerous Labor Code violations as set forth in this  
3 Complaint.

4           113. Plaintiff seeks to recover the PAGA civil penalties through a representative action  
5 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.  
6 4<sup>th</sup> 969. Class certification of the PAGA claims is not required.

7           114. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiff seeks to recover  
8 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order  
9 violations as set forth in this Complaint.

10          115. Specifically, Plaintiff, on behalf of herself and the Aggrieved Employees, seek  
11 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 12           a. Defendants' failure to comply with the requirement of Labor Code §1182.12,  
13           1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every  
14           hour worked;
- 15           b. Defendants' failure to comply with the requirement of Labor Code §510, 1194,  
16           1197, 1198, and Wage Orders to accurately pay all wages earned including  
17           overtime wages;
- 18           c. Defendants' failure to comply with the requirement of Labor code §216 to pay  
19           wages after demand was made;
- 20           d. Defendants' failure to comply with the requirement of Labor Code §§204 and  
21           210 to pay, without condition and within the time set by the applicable article,  
22           all wages, or parts thereof;
- 23           e. Defendants' failure to comply with the requirement of Labor Code §225.5 to  
24           pay wages due;
- 25           f. Defendants' failure to comply with the requirement of Labor Code §§201 and  
26           202 to pay wages due to former employees;
- 27           g. Defendants' failure to comply with the requirement of Labor Code §203 to pay  
28           waiting time penalties to former employees;

- h. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to authorize and permit ten (10) minute rest breaks;
- i. Defendants' failure to comply with the requirement of Labor Code §§226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each statutorily required rest break that was not lawfully authorized and permitted;
- j. Defendants' failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minutes off duty meal periods;
- k. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful meal break that was not provided;
- l. Defendants' failure to provide accurate compliant wage statements under Labor Code section 226;
- m. Defendants' failure to reimburse necessary expenses under Labor Code §2802;
- n. Defendants' failure to pay sick leave at the proper rate in under Labor Code §246(l);
- o. Defendants' failure to maintain required records in violation of Labor Code §226, 1174, and Wage Orders for the above-specified violations, and failure to maintain accurate clock in and out times;

116. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code §210, for violations of Labor Code §204, Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred (\$200) per employee for violations in subsequent pay periods plus 25% of the amount

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unlawfully withheld.

- b. Pursuant to Labor Code §226.3, for violations of Labor Code §226(a) Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.
- c. Pursuant to Labor Code §558(a), “[a]ny employer or other person acting on behalf of an employer who violated, or causes to be violated, a section of this chapter or any provisions regulating hours and days of work in any order of the Industrial Welfare Commission,” including Labor Code §§ 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.
- d. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

1 e. Pursuant to Labor Code § 1174.5, for violations of Labor Code  
2 §1174(d), Defendants are subject to a civil penalty of five hundred  
3 dollars (\$500).

4 117. Further, as a result of the acts alleged hereinabove, Plaintiff seeks penalties under  
5 Labor Code §2698 et seq. and 2699 because of Defendants' violation of numerous provisions of  
6 the California Labor Code and IWC Wage Orders.

7 118. Under Labor Code §2699, Plaintiff and Aggrieved Employees are entitled to \$100  
8 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions  
9 of the California Labor Code.

10 119. Under Labor Code §2699, Plaintiff and Aggrieved Employees should be awarded  
11 twenty-five (25%) of all penalties due under California law, interest, attorneys' fees and costs.

12 120. Under Labor Code §2699, the State of California should be awarded seventy-five  
13 percent (75%) of the penalties due under California law.

14  
15 **PRAYER FOR RELIEF**

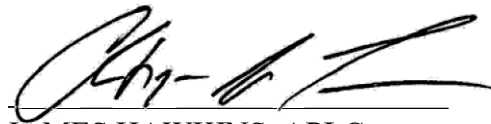
16 WHEREFORE, Plaintiff pray judgment against Defendants, jointly and severally, as  
17 follows:

- 18 1. For penalties according to proof, pursuant to Labor Code §§2698, et seq. for the  
19 violations specified above;
- 20 2. For penalties under Labor Code section 210, 266.3, 1174.5, 1197.1, 2802 and 2699(a)  
21 and (f);
- 22 3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, California Civil  
23 Code §§ 3287, 3288, and/or any other applicable provisions providing for pre-  
24 judgment interest;
- 25 4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§1194, 226,  
26 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions  
27 providing for attorneys' fees and costs; and  
28

1           5. For such other and further relief as the Court deems proper.  
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4                               Respectfully submitted,  
5

6  
7       Dated: January 6, 2022

A handwritten signature in black ink, appearing to read 'J. Hawkins', written over a horizontal line.

8           JAMES HAWKINS, APLC  
9           James R. Hawkins, Esq.  
          Christina M. Lucio, Esq.

10                           Attorneys for MARK CERVANTEZ, on behalf of himself  
11                           and all others similarly situated  
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## **EXHIBIT A**

**JAMES *JH* HAWKINS**  
A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618  
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

September 24, 2021

**Via Online Filing (LWDA) and Certified Mail (Employers)**

California Labor and Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Genuine Parts Company  
2999 Wildwood Parkway  
Atlanta, GA 30339  
Certified Mail Receipt: 7018 1130 0001  
8270 3039

Agent for Service of Process for  
Genuine Parts Company:  
CT Corporation System  
330 N. Brand Blvd., Suite 700  
Glendale, CA 91203  
Certified Mail Receipt: 7018 1130 0001  
8270 3046

RE: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Mark Cervantez, individually and on behalf of all others similarly situated, gives NOTICE of his intent to commence a civil action pursuant to California Labor Code Section 2698, *et seq.* Plaintiff hereby gives written notice electronically to the Labor and Workforce Development Agency, and by certified mail to Defendants Genuine Parts Company, a Georgia Corporation doing business as NAPA Auto Parts, (“Defendant”) via their agent for service of process.

Plaintiff was employed by Defendants as an hourly, non-exempt employee. Plaintiff began his employment with Defendants on or about June 25, 2019, and continued such employment through December 18, 2020. He worked at Defendants’ retail location in the City of Glendora, California. Plaintiff was employed by Defendants in the position of Delivery Driver.

The group of aggrieved employees that Plaintiff seeks to represent is a group of non-exempt employees working in Defendants’ locations in the State of California during the relevant time period (“Aggrieved Employees”) as tolled by Emergency Rule 9. 1 This notice is timely as it

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1 This group is referred to as the “Class Member” group in the Complaint (with the relevant time period modified to account for the PAGA statute of limitations).

September 24, 2021

is provided within one year of the violations. In addition, the statute of limitation for the claim under the Private Attorney Generals Act of 2004 (and the relevant time period), is tolled by operation of law under Emergency Rule 9 due to COVID-19 pandemic.

Plaintiff has attached his Complaint, and incorporates the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants in the Complaint.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5<sup>th</sup> 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees working for Defendants at their retail locations in the State regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

Plaintiff claims that Defendants implemented legally non-compliant policies and practices which led to Defendants' (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to authorize and permit legally compliant rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) knowing and intentional failure to comply with itemized wage statement provisions; (8) failure to reimburse necessary expenses; and (9) violation of the Unfair Competition Law.

During all relevant periods, the California Labor Code sections 204, 1194, 1197, 1198, and wage orders required that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all hours worked. Employers are required to pay at least minimum wage for each hour worked. Labor Code section 1194(a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. The IWC Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours for which they were not paid because Defendants frequently required Plaintiff and Aggrieved Employees to work off the clock. Plaintiff and the Aggrieved Employees were not paid for all hours worked because employees were required to work off the clock. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the Aggrieved Employees were working off the clock and that they should have been paid for this time. However, such time was not paid in violation of the law.

During the relevant periods, Defendant required Plaintiff and the Aggrieved Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek. Both the California Labor Code section 1194, 1197, 510, 1198, and the pertinent

September 24, 2021

wage order 4-2001, and 7-2001 required that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times that employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required to be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh (7<sup>th</sup>) day of a workweek is required to be compensated at the rate of no less than twice the regular rate of pay of an employee. Defendants failed to incorporate all forms of compensation, including without limitation non-discretionary bonuses, differentials, and incentives, into the regular rate for overtime purposes. Thus, employees were undercompensated in violation of the law.

In addition, as set forth above, Plaintiff and the Aggrieved Employees were required to work a significant number of hours off the clock. Many of these hours were overtime hours and should have been paid at the overtime rate. Defendants knew or should have known Plaintiff and the Aggrieved Employees were undercompensated as a result of these practices.

Plaintiff alleges he and the aggrieved employees were regularly required to work shifts in excess of five hours without being provided a lawful first meal period. Plaintiff claims that Defendants violated Labor Code section 512 and 226.7, and IWC Wage Order 7-2001 for failing to provide timely, uninterrupted meal periods. Pursuant to Labor Code section 512 and the Wage Order, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all his or her duties. Here, Defendants failed to provide Plaintiff and all other aggrieved employees meal periods of not less than thirty (30) minutes. Due to work demands, staffing shortages, Defendant's policies and practices, and scheduling requirements, Plaintiff and the aggrieved employees were often interrupted or not provided legally compliant meal periods in violation of the law. Plaintiff is also informed and believes that Defendant unlawfully changed time records in some instances to reflect breaks that were not taken. Moreover, as a matter of Defendant's policy and practice, second meal periods were not provided to Plaintiff and the Aggrieved Employees on shifts over 10 hours without a lawful waiver.

Plaintiff alleges that Defendants failed to authorize and permit rest periods. This failure violates Labor Code §226.7 and Section 12(A) of Wage Order 7, which provides that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked. This action is further brought under Labor Code §226.7(b) and Section 12(B) of Wage Order 7, which provides that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of pay for each workday that a rest period was not authorized and permitted. Plaintiff and the aggrieved employees were systematically not authorized and permitted to take legally compliant net ten (10) minute rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198, and IWC Wage Order 7. Employees were not authorized and permitted to take a net ten-minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices, staffing and policies and practices, and imposed work demands that frequently required employees to forego their breaks or return before a net ten minutes of rest. To the extent, any rest periods were taken they were not compliant because employees were essentially required to remain on duty.

In addition, aggrieved employees were required to carry communications devices. Defendant's exercise of control over the aggrieved employees during periods of rest is inconsistent with the mandates of the Labor Code and Wage Order, as set forth in *Augustus v. ABM*, 2 Cal. 5th 257, 261 (2016). The law is clear that rest periods must be "duty free" and to provide a compliant rest period, employers must "relieve their employees of all duties" during their breaks and must "relinquish any control over how employees spend their break time." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 261 (2016).

Defendants further violated the law by failing to compensate Plaintiff and the aggrieved employees with one additional hour of pay at their regular rate of pay when lawful meal periods were not lawfully provided in violation of Labor Code §§ 226.7 and 512, 1198 and the applicable Industrial Welfare Commission Wage Orders.

In relevant part, Labor code section 226(a) requires: An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendants failed to provide accurate, lawful itemized wage statements to Plaintiff and the Aggrieved Employees in part because of the violations set forth in Plaintiff's attached complaint, including the failure to pay one hour of premium pay at the employee's regular rate of pay for non-provided meal and rest breaks. In addition, the wage statements failed to indicate the relevant pay periods for certain additional compensation earned. Further, wage statements also omitted Total Hours worked from wage statements, and some pay rates, differentials, and hours are missing from wages statements.

Plaintiff also contends that Defendants failed to keep accurate records as required by Wage Order 7-2001, Labor Code 1174, and 1198. IWC Wage Order 7-2001 requires in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rate of pay...." Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the complaint, including without limitation failing to keep records of meal periods and all wages earned at the proper rates. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

September 24, 2021

Under California Labor Code §2802, an employee is entitled to be reimbursed by his or her employer “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Here, Defendants failed to reimburse Mr. Cervantez for all expenses incurred in the discharge of his duties, including but not limited to cell phone usage and GPS related expenses. Because Defendants have violated California Labor Code § 2802, Defendants are liable for civil penalties.

In part, as a result of the above specified violations, Defendants have also failed to pay all wages owed at the time of separation as required by Labor Code sections 201-203. All aggrieved employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to unpaid straight time wages, sick pay, minimum wage, overtime compensation and compensation for non-provided meal periods, but to date have not received such compensation, therefore entitling them to civil penalties under PAGA for violations of Labor Code sections 201-203. Plaintiff further alleges that, regardless of any underlying failure to pay wages or premiums, he and the Aggrieved Employees were not paid all earned wages on the date of termination as a matter of Defendants’ pattern and practice.

In addition to the violation specified above and in the attached Complaint, Plaintiff alleges that Defendants failed to pay sick leave pay to Plaintiff and the Aggrieved Employees at the proper rate. Labor Code 246(i) provides: An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified. Labor Code section 246(1) provides: “For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick leave for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.” In this case, Plaintiff alleges that Defendant failed to pay sick leave at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, shift differentials, and other wages into account in calculating the regular rate. This constitutes a violation of Labor Code.

All labor provisions in the Complaint alleged to have been violated pertain to all entities and individuals named in the Complaint, even if not expressly specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

## **EXHIBIT B**

## **PAGA SETTLEMENT AGREEMENT**

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Mark Cervantez, Jermell Jackson, and Michelle Williams aka Michelle Hester (collectively, “Plaintiffs”) and defendant Genuine Parts Company d/b/a NAPA Auto Parts (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

### **1. DEFINITIONS.**

- 1.1. “Action” collectively means Plaintiffs’ various PAGA lawsuits alleging wage and hour violations against Defendant Genuine Parts Company d/b/a NAPA Auto Parts (i.e., *Mark Cervantez, individually and on behalf of himself and all others similarly situated v. Genuine Parts Company, et al.*, Los Angeles County Superior Court Case No. 22STCV00981, *Michelle Williams v. Genuine Parts Company, et al.*, San Diego Superior Court Case No. 37-2022-00016806-CU-OE-CTL, and *Jermell Jackson, individually and on behalf of all others similarly situated v. Genuine Parts Company, et al.*, San Bernardino Superior Court Case No. CIVSB2212961). The Parties will seek settlement approval in the action captioned *Mark Cervantez, individually and on behalf of himself and all others similarly situated v. Genuine Parts Company*, Los Angeles County Superior Court Case No. 22STCV00981, initiated on or about January 10, 2022.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means all non-exempt employees who worked for Defendant in California during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Los Angeles.
- 1.8. “Defense Counsel” means Lisa M. Szafranic, Esq. and Robin E. Largent of Martenson, Hasbrouck & Simon LLP.
- 1.9. “Effective Date” means: (i) sixty-one (61) days after approval of the Settlement and entry of a Judgment without any appeal, writ, or other appellate proceeding having been filed

therefrom; or (ii) if any appeal, writ, or other appellate proceeding opposing Final Approval has been filed within sixty-one (61) days after entry of Judgment, the Effective Date shall be five (5) business days after any appeal, writ, or other appellate proceedings opposing the Settlement have been finally and conclusively dismissed and the Settlement has been upheld with no right to pursue further remedies or relief.

- 1.10. "Gross Settlement Amount" means One Million Three Hundred Thousand Dollars (\$1,300,000) which is the total amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the Release/Service Payments to Named Plaintiffs, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.
- 1.11. "Individual PAGA Payment" means an Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. "Judgment" means the judgment entered by the Court based upon the Approval Order.
- 1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled to 75% of the PAGA Penalties recovered by Aggrieved Employees, under Labor Code section 2699, subd. (i).
- 1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the Service/Release Payments to Named Plaintiffs, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is the Net Settlement Amount to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16. "Operative Complaint" or "Amended Complaint" refers to the First Amended Complaint to be filed by PAGA Counsel (per the terms of this Agreement), in the lawsuit styled *Mark Cervantez, individually and on behalf of himself and all others similarly situated v. Genuine Parts Company, et al.*, pending in the Los Angeles County Superior Court Case No. 22STCV00981.
- 1.17. "PAGA Counsel" means James Hawkins, Esq. and Christina M. Lucio, Esq. of James Hawkins APLC, Mehrdad Bokhour, Esq. of Bokhour Law Group, P.C. and Joshua Falakassa, Esq. of Falakassa Law, PC, the attorneys representing the Plaintiffs in the Action.
- 1.18. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.
- 1.19. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

- 1.20. "PAGA Period" means the period from March 24, 2020 to May 31, 2023.
- 1.21. "PAGA" means the Private Attorneys General Act (Labor Code § 2698 *et seq.*).
- 1.22. "PAGA Notices" means Plaintiffs' respective letters to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.23. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (approximately \$197,927.50) and the 75% to LWDA (approximately \$593,782.50) in settlement of PAGA claims.
- 1.24. "Pay Period" means any pay period during which an Aggrieved Employee worked at least one day of the pay period and was not on vacation or leave of absence for the entire workweek.
- 1.25. "Plaintiffs" or "Named Plaintiffs" means Mark Cervantez, Jermell Jackson and Michelle Williams, the named plaintiffs in the Action.
- 1.26. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.27. "Released PAGA Claims" means the claims being released by the Plaintiffs and PAGA Counsel and as described in Paragraph 5 below.
- 1.28. "Release/Service Payments to Named Plaintiffs" means the payments in exchange for each of the Named Plaintiffs' respective service in this Action and the release of their individual claims upon execution of this Agreement.
- 1.29. "Released Parties" means: Defendant, its corporate divisions, subsidiaries and affiliates, and their respective officers, directors, employees (current and former), shareholders, attorneys, insurers, servants and agents, benefit plans, together with their predecessors, successors assigns and related entities and affiliates.
- 1.30. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.31. "Defendant" means Genuine Parts Company, the named defendant in the Action.

## **2. RECITALS.**

- 2.1. On January 10, 2022, Plaintiff Cervantez commenced this Action by filing a Complaint alleging a single cause of action against named defendant Genuine Parts Company for civil penalties under the PAGA.

On June 20, 2022, Plaintiff Jackson filed a Complaint alleging a single cause of action against Defendant for civil penalties under PAGA.

On November 14, 2022, Plaintiff Williams filed a Complaint alleging a single cause of action against

Defendant for civil penalties under PAGA.

As part of this Settlement, Plaintiff Cervantez agrees to file, within 10 days of execution of this Agreement, a First Amended Complaint consolidating the claims of all Named Plaintiffs and reflecting the scope of the claims settled and released herein (the “Operative Complaint.”).

Defendant denies the allegations in the Action and Operative Complaint, denies any failure to comply with the laws identified in the Action and Operative Complaint, and denies any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to Defendant and the LWDA by sending the PAGA Notices.
- 2.3. On February 16, 2023, the Parties participated in an all-day mediation presided over by Tripper Ortman, Esq., a well-respected and experienced wage and hour mediator which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiffs obtained, through informal discovery, a sampling of time and payroll records, data, and policies, among other documents and information, to aid in the preparation of Plaintiff’s evaluation of the claims and formulation of a damages model.
- 2.5 The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action (aside from the lawsuits filed by the Named Plaintiffs referenced herein) asserting claims that will be extinguished or affected by the Settlement.

### **3. TERMS OF SETTLEMENT – AMENDMENT OF THE COMPLAINT.**

- 3.1. The Parties have stipulated, for settlement purposes only, to the amendment of the Complaint to add additional PAGA allegations (and to incorporate PAGA allegations by Plaintiffs Jackson and Williams) (i.e., the “Operative Complaint”). The parties agreed to stipulate to the amendment for settlement purposes without prejudice to any arguments either party might make should the settlement not be approved, in which case the Amended Complaint would be withdrawn by Plaintiffs.

### **4. TERMS OF SETTLEMENT - MONETARY TERMS.**

- 4.1.Gross Settlement Amount. Defendant promises to pay \$1,300,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 4.2.Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Order:

- 4.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% of the Gross Settlement Amount which is currently estimated to be \$433,290.00 and PAGA Counsel Litigation Expenses Payment of not more than \$25,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiffs and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's counsel arising from any claim to any portion of any PAGA Counsel Fees Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 4.2.2. To Named Plaintiffs: From the Gross Settlement amount each of the Named Plaintiffs will receive \$10,000.00 (i.e., "Release/Service Payment") in exchange for their service in this Action and the release of their individual claims upon execution of this Agreement, subject to the approval of the Court. The Claims Administrator will issue to Plaintiffs an IRS Form 1099 (for 90% of each respective Release/Service Payment) and an IRS W-2 (for 10% of each respective Release/Service Payment). In the event the Court awards less than the amount of the request Release/Service Payment, and the Plaintiffs do not appeal the Release/Enhancement Payments or are unsuccessful in any appeal of the reduced Release/Enhancement Payments, the remaining amount will become part of the Net Settlement Fund for distribution to Aggrieved Employees.
- 4.2.3. To the Administrator: An Administration Expenses Payment not to exceed \$20,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses incurred by the Administrator in connection with this Settlement are less, or the Court approves an Administration Expenses Payment of less than \$20,000.00, the Administrator will allocate the remainder in the Net Settlement Amount.
- 4.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$791,710.00 to be paid from the Gross Settlement Amount, with 75% (\$593,782.50) allocated to the LWDA PAGA Payment and 25% (\$197,927.50) (the Net Settlement Amount) allocated to the Individual PAGA Payments.
- 4.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the Net Settlement Amount (\$197,927.50) by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

4.2.4.2.If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

## **5. SETTLEMENT FUNDING AND PAYMENTS.**

- 5.1. Aggrieved Employee Pay Periods. Based on a review of its records in preparation for the mediation in this matter, Defendant estimated there were then 3,125 Aggrieved Employees who worked a total 89,035 Pay Periods.
- 5.2. Aggrieved Employee Data. Within 15 days of the Effective Date, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if they discover that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.
- 5.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator 15 days after the Effective Date.
- 5.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will calculate the Individual PAGA Payments and mail checks for all Individual PAGA Payments, the Service/Release Payments to the Named Plaintiffs, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA Counsel Fees Payment and Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.
- 5.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 5.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding addresses. Within 7 days of receiving a returned check the Administrator must re-mail the check to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need

not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, if requested by the Aggrieved Employee prior to the void date.

5.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

5.4.4. The payment of Individual PAGA Payments or Service/Release Payments to the Named Plaintiffs shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

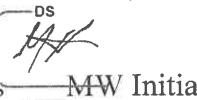
**6. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiffs and PAGA Counsel will release claims against all Released Parties as follows:

6.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge with prejudice Released Parties from (a) all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to, all claims that were, or reasonably could have been, alleged, based on the facts contained in the Action, Operative Complaint and the PAGA Notices, and (b) any and all known and unknown claims, transactions or occurrences arising out of or related to any employment relationship which may have existed prior to or on the date hereof between Plaintiffs and GPC and/or the termination of that relationship, including but not limited to, statutory, common law, tort and contract claims ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or that by applicable law cannot be waived. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them. Except that nothing herein requires release of Plaintiff Cervantez's arbitration against Defendant with the American Arbitration Association styled *Mark Cervantez v. Genuine Parts Company*, bearing claim number 01-22-0000-0722, which is the subject of a separate release already executed. Plaintiffs further acknowledge that they have received all payments and benefits that they are entitled to receive by virtue of any employment with GPC including, but not limited to, payment for any and all wages, salary, bonuses, overtime compensation, vacation, reporting time, sick pay, business expenses, rest and/or meal break pay, premiums or penalties, and/or personal days owed to them by GPC up to the moment of their execution of this Agreement. Plaintiffs additionally represent that they did not sustain any work-related injury for which they

have not already filed a workers' compensation claim.

Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

 MC Initials  MW Initials  JJ Initials

6.2. Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Action, Operative Complaint and the PAGA Notices.

6.3. Release by PAGA Counsel: PAGA Counsel release, on behalf of their present and former attorneys, employees, agents, successors and assigns, the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the facts stated in the Operative Complaint and the PAGA Notices.

7. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree that PAGA Counsel will draft and file an application or motion for approval of this Settlement that includes a communication to be provided to the Aggrieved Employees with each Individual PAGA Payment and file it after review and approval by Defense Counsel. The Parties will jointly seek to immediately vacate or stay all dates in the Action, pending approval by the Court of the Settlement, and will seek a date for the hearing on the motion for approval of this Settlement as soon as possible.

7.1. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the Parties' Agreement showing all modifications made to the Model Agreement ready for

filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator.

- 7.2. In their declarations, Plaintiffs and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 7.3. Responsibilities of Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 7.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

## **8. SETTLEMENT ADMINISTRATION.**

- 8.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. ("ILYM") to serve as the Administrator and verified that, as a condition of appointment, ILYM agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses Payment. The Parties, PAGA Counsel, and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

9. **AGGRIEVED EMPLOYEE SIZE ESTIMATES** Based on its records in preparation for mediation in this case, Defendant estimated that the Aggrieved Employees had then worked 89,035 Pay Periods.

10. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing Settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.1. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-Judgment and appellate proceedings, the right to file motions to vacate the Judgment, motions for a new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11. **ADDITIONAL PROVISIONS.**

11.1. No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserves the right to contest Defendant's defenses. The Settlement, this Agreement and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

11.2. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

11.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this

Agreement.

- 11.4. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying this Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution. In the event that the Court refuses to approve any economic term or term related to the scope of the claims released, Defendant, at its option, may void the Settlement. A reduction in the amount of PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment is not a basis to void the Settlement. In the event that the Court refuses to approve any term related to the scope of the release, the Parties agree to return to mediation in order to attempt to address the concerns of the Court, and upon reaching an agreement, submit a revised agreement to the Court.
- 11.5. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 11.6. No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel is providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 11.7. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 11.8. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 11.9. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 11.10. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 11.11. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

- 11.12. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Aggrieved Employee Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with this Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay the Gross Settlement Amount, Plaintiffs shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of the Gross Settlement Amount, Defendant makes a written request to PAGA Counsel for the return, rather than the destruction, of Aggrieved Employee Data.
- 11.13. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 11.14. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 11.15. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

|                                                                                                                                                                                      |                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Mehrdad Bokhour<br/> <i>mehrdad@bokhourlaw.com</i><br/> Bokhour Law Group, P.C.<br/> 1901 Avenue of the Stars, Suite 450<br/> Los Angeles, California 90067<br/> 310-975-1493</p> | <p>Joshua Falakassa<br/> <i>josh@falakassalaw.com</i><br/> Falakassa Law, PC<br/> 1901 Avenue of the Stars, Suite 450<br/> Los Angeles, California 90067<br/> 818-456-6168</p> |
| <p>Christina M. Lucio<br/> <i>christina@jameshawkinsaplc.com</i><br/> 9880 Research Drive, Suite 200<br/> Irvine, California 92618<br/> (949) 387-7200</p>                           |                                                                                                                                                                                |

To Defendant:

|                                                                                                                                                                        |                                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Lisa M. Szafranic<br/> <i>lmszafranic@martensonlaw.com</i><br/> Martenson, Hasbrouck &amp; Simon LLP<br/> 2573 Apple Valley Road NE<br/> Atlanta, Georgia 30319</p> | <p>Robin E. Largent<br/> <i>rlargent@martensonlaw.com</i><br/> Martenson, Hasbrouck &amp; Simon LLP<br/> 455 Capitol Mall, Suite 400</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|

|                |                                                |
|----------------|------------------------------------------------|
| (404) 909-8100 | Sacramento, California 95814<br>(916) 970-1438 |
|----------------|------------------------------------------------|

- 10.1 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email, which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 10.2 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: July \_\_, 2023

7/17/2023

DocuSigned by:  
  
76B4BC7DED3747B...

Plaintiff Michelle Williams

Dated: July \_\_, 2023

Plaintiff Mark Cervantez

Dated: July \_\_, 2023

Plaintiff Jermell Jackson

**JAMES HAWKINS, APLC**

Dated: July \_\_, 2023

Christina M. Lucio, Esq.  
Counsel for the PAGA Members

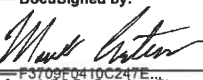
|                |                                                |
|----------------|------------------------------------------------|
| (404) 909-8100 | Sacramento, California 95814<br>(916) 970-1438 |
|----------------|------------------------------------------------|

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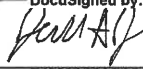
Dated: July \_\_, 2023

\_\_\_\_\_  
Plaintiff Michelle Williams

Dated: July 3, 2023

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\_\_\_\_\_  
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Plaintiff Mark Cervantez

Dated: July 20, 2023

DocuSigned by:  
  
\_\_\_\_\_  
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Plaintiff Jermell Jackson

**JAMES HAWKINS, APLC**

Dated: July 20, 2023

  
\_\_\_\_\_  
Christina M. Lucio, Esq.  
Counsel for the PAGA Members

**FALAKASSA LAW, P.C.**

DocuSigned by:  
*Joshua Falakassa*  
15A628B2C5A149C...

Dated: July \_\_, 2023

7/17/2023

Joshua S. Falakassa, Esq.  
Counsel for the PAGA Members

**BOKHOUR LAW GROUP, P.C.**

DocuSigned by:  
*Mehrdad Bokhour*  
D8D3643F271940F...

Dated: July \_\_, 2023

7/17/2023

Mehrdad Bokhour, Esq.  
Counsel for the PAGA Members

Dated: July \_\_, 2023

Defendant Genuine Parts Company d/b/a NAPA Auto Parts

**MARTENSON, HASBROUCK & SIMON LLP**

Dated: July \_\_, 2023

Lisa M. Szafranic  
Counsel for Defendant Genuine Parts Company d/b/a NAPA  
Auto Parts

**FALAKASSA LAW, P.C.**

DocuSigned by:  
*Joshua Falakassa*  
15A028B2C5A149C...

Dated: July \_\_, 2023  
7/17/2023

Joshua S. Falakassa, Esq.  
Counsel for the PAGA Members

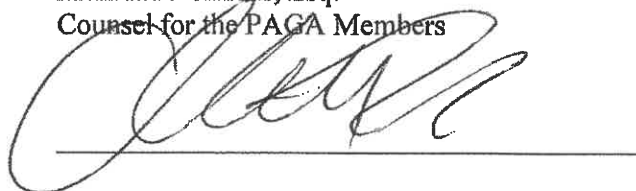
**BOKHOUR LAW GROUP, P.C.**

DocuSigned by:  
*Mehrdad Bokhour*  
D8D9843F271640F...

Dated: July \_\_, 2023  
7/17/2023

Mehrdad Bokhour, Esq.  
Counsel for the PAGA Members

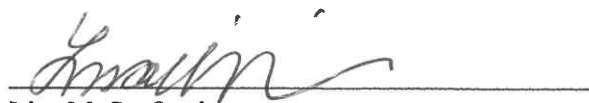
Dated: July \_\_, 2023



Defendant Genuine Parts Company d/b/a NAPA Auto Parts  
**CHRISTOPHER T. GALLA**  
Senior Vice President  
General Counsel

**MARTENSON, HASBROUCK & SIMON LLP**

*August 1,*  
Dated: ~~July~~ \_\_, 2023

  
Lisa M. Szafranic  
Counsel for Defendant Genuine Parts Company d/b/a NAPA  
Auto Parts

## **EXHIBIT C**



Mehrdad Bokhour <mehrdad@bokhourlaw.com>

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## Thank you for your Proposed Settlement Submission

1 message

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**DIR PAGA Unit** <lwdadonotreply@dir.ca.gov>  
To: mehrdad@bokhourlaw.com

Wed, Aug 23, 2023 at 7:13 PM

08/23/2023 07:13:22 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)



## Make a Reservation

MARK CERVANTEZ vs GENUINE PARTS COMPANY, et al.

Case Number: 22STCV00981 Case Type: Civil Unlimited Category: Other Employment Complaint Case  
Date Filed: 2022-01-10 Location: Stanley Mosk Courthouse - Department 61

### Reservation

|                                                               |                                                      |
|---------------------------------------------------------------|------------------------------------------------------|
| Case Name:<br>MARK CERVANTEZ vs GENUINE PARTS COMPANY, et al. | Case Number:<br>22STCV00981                          |
| Type:<br>Motion re: (Motion for PAGA Approval )               | Status:<br>RESERVED                                  |
| Filing Party:<br>MARK CERVANTEZ (Plaintiff)                   | Location:<br>Stanley Mosk Courthouse - Department 61 |
| Date/Time:<br>09/14/2023 10:00 AM                             | Number of Motions:<br>1                              |
| Reservation ID:<br>924102938000                               | Confirmation Code:<br>CR-EALZTULUCVRHUDQJ4           |

### Fees

| Description                        | Fee   | Qty | Amount  |
|------------------------------------|-------|-----|---------|
| Motion re: (name extension)        | 60.00 | 1   | 60.00   |
| Credit Card Percentage Fee (2.75%) | 1.65  | 1   | 1.65    |
| TOTAL                              |       |     | \$61.65 |

### Payment

|                             |                          |
|-----------------------------|--------------------------|
| Amount:<br>\$61.65          | Type:<br>Visa            |
| Account Number:<br>XXXX6358 | Authorization:<br>04547D |
| Payment Date:<br>1969-12-31 |                          |

Print Receipt

Reserve Another Hearing

