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Attorneys for Plaintiff ELIZER PINEDA, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

ELIZER PINEDA, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff,

v.

GOLDEN WEST TIRE CENTERS, LLC, a California Limited Liability Company; and
DOES 1-10, inclusive.

Defendants

CASE NO. **CVRI 2203246**
COMPLAINT FOR:

1. **MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
2. **MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
3. **OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
4. **WAGE STATEMENT VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
5. **FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 *et seq.***

6. FAILURE TO PAY WAGES UPON SEPARATION PURSUANT TO LABOR CODE § 2698 *et seq.*
7. FAILURE TO PROVIDE ADEQUATE SEATING AND RESTING FACILITIES PURSUANT TO LABOR CODE § 2698 *et seq.*
8. REQUIREMENT TO PURCHASE COMPANY PRODUCTS PURSUANT TO LABOR CODE § 2698 *et seq.*

Demand for Jury Trial

COMES NOW Plaintiff ELIZER PINEDA (“PINEDA” or “Plaintiff”), in a Representative capacity only, on behalf of all aggrieved employees, and alleges for his complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the state of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) may **not** be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff’s injuries occurred in the County of Riverside, State of California.
3. Plaintiff is informed and believe and thereon allege that at all relevant times mentioned herein, Defendant GOLDEN WEST TIRE CENTERS, LLC, referred to herein as “Defendants” or “GOLDEN” was and is a California Limited Liability Company doing business throughout the state, including the County of Riverside, state of California.

1 4. Plaintiff is presently unaware of the true names, capacities and liability of defendants named
2 herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to
3 amend this complaint to allege their true names and capacities after the same have been
4 ascertained.

5 5. Plaintiff is informed and believes and thereon allege that each of the fictitiously named
6 Defendants is responsible in some manner for the wrongs and damages as herein alleged, and
7 in so acting was functioning as the agent, servant, partner, and employee of the co-Defendants,
8 and in doing the actions mentioned below, was acting within the course and scope of his or her
9 authority as such agent, servant, partner, and employee with the permission and consent of the
10 co-Defendants. Plaintiff's injuries as herein alleged were proximately caused by said
11 Defendants. Wherever it is alleged herein that any act or omission was done or committed by
12 any specially named Defendant or Defendants, Plaintiff intends thereby to allege and does
13 allege that the same act or omission was also done and committed by each and every Defendant
14 named as a DOE, both separately and in concert with the named Defendants.

15 6. Plaintiff is informed and believes and thereon allege that Defendants, and each of them,
16 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
17 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
18 legal entities which were licensed to do and/or were doing business in the County of Riverside,
19 state of California at all times relevant to the subject matter of this action.

20 **FACTUAL BACKGROUND**

21 7. In or about September 30, 2021, Plaintiff PINEDA commenced working for Defendants as a
22 non-exempt employee. He continued working for Defendants until November 11, 2021.
23 Throughout Plaintiff's employment with Defendants, Plaintiff performed his job in a capable
24 and competent manner and was commended for doing so.

25 8. Throughout the term of his employment, Plaintiff and all other aggrieved employees were, and
26 currently are, denied the benefits and protections of the Labor Code due to Defendants'
27 institutionalized pay practices, standard as to all of Defendants' California-based non-exempt
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employees.

9. On March 30, 2022, counsel for Plaintiff prepared and electronically submitted a letter to the California Labor & Workforce Development Agency (“LWDA”) via the California Department of Industrial Relations’ “PAGA Filing” website. A copy of the letter was mailed to the Defendants via USPS Certified Mail. (Please see **Exhibit 1**, a true and correct copy of this letter and automated return receipt from the LWDA.) On May 27, 2022, counsel for Plaintiff prepared and electronically submitted an amended letter to the California Labor & Workforce Development Agency (“LWDA”) via the California Department of Industrial Relations’ “PAGA Filing” website. A copy of the letter was mailed to the Defendants via USPS Certified Mail. (Please see **Exhibit 2**, a true and correct copy of this letter and automated return receipt from the LWDA.) These letters contained the specific provisions of the California Labor Code violated by Defendants, as well as the facts and theories in support of Plaintiff’s claims.
10. The statutory time period for the LWDA to investigate and/or respond, and for the employers to respond, has concluded.

REPRESENTATIVE ALLEGATIONS

11. As more specifically set forth below, Plaintiff brings this action in a representative capacity on behalf of all current and former aggrieved employees of Defendants. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code due to Defendants’ standard practices. Throughout their employment, Plaintiff and all other aggrieved employees were and are denied full and accurate compensation, including overtime compensation, in violation of, *inter alia*, Labor Code sections 510, 1194, and 1197. Plaintiff and the other aggrieved employees were and are denied Meal and Rest Periods and Meal and Rest Period payments, in violation of, *inter alia*, Labor Code sections 226.7 and 512. Defendants failed to furnish accurate itemized wage statements in violation of, *inter alia*, Labor Code section 226. Defendants failed to reimburse Plaintiff and other aggrieved employees for necessary business expenditures in violation of, *inter alia*,

1 Labor Code section 2802. Defendants failed to provide all compensation due at termination
2 of employment in violation of, *inter alia*, Labor Code sections 201 through 203.

3 12. Plaintiff brings this action on the grounds that he and other current and former aggrieved
4 employees of Defendants were and are improperly denied the mandated wages resulting from
5 the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The
6 number of current and former aggrieved employees is believed to exceed One Hundred (100)
7 members.

8 13. The approximately One Hundred (100) employees are comprised of Defendants' current or
9 former California-based non-exempt employees.

10 14. The questions of law and fact common to all aggrieved employees arising from Defendants'
11 actions include, among others, the following:

- 12 a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and
13 double time wages due and owing to them;
- 14 b. Whether Defendants failed to pay its employees all compensation due and owing at
15 termination of employment;
- 16 c. Whether Defendants failed to provide its employees with statutorily-compliant Meal
17 and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and
18 226.7, in that Defendants' written policies are not compliant with California law, and
19 Defendants do not allow its employees duty-free breaks on occasion;
- 20 d. Whether Defendants failed to properly provide Meal and Rest Period Premiums in
21 accordance with law;
- 22 e. Whether Defendants failed to properly calculate and pay its employees overtime
23 compensation and Meal and Rest Period Premiums in accordance with law by failing
24 to properly calculate, into the Regular Rate of Pay, the value of all employee benefits
25 and other non-discretionary compensation; and
- 26 f. Whether Defendants failed to properly reimburse its employees for necessary business
27 expenditures for, *inter alia*, cell phone costs and other work supplies, in violation of
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Labor Code section 2802.

15. At all times mentioned herein, Defendants were subject to the Labor Codes and Industrial Welfare Commission Wage Orders of the state of California, including, but not limited to, California Labor Code section 2698 *et seq.*
16. At all times mentioned herein, Defendants are and were an “employer” as that term is used within the relevant sections of the California Labor Code.
17. Plaintiff has exhausted his administrative remedies and pre-filing requirements pursuant to California Labor Code section 2699.3, and has also fulfilled all notice requirements under the statute. (Please See **Exhibit 1 and 2**). The statutory time period for the LWDA to investigate and/or respond, and for the employers to respond, has concluded, allowing Plaintiff to proceed with formal litigation.
18. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendants’ standard policies and practices. Said violations are set forth below.

FIRST CAUSE OF ACTION
Meal and Rest Period Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 as though fully set forth herein.
20. Labor Code section 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.
- Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.
21. Under applicable California law, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than

- 1 10 hours per day without providing the employee with a second meal period of not less than
2 30 minutes.” Lab. Code § 512(a); see also I.W.C. Wage Order 4, codified as 8 Cal. Code Regs.
3 § 11040 (11)(A).
- 4 22. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal
5 Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code
6 Regs. § 11040 (11).
- 7 23. California law requires employers to provide nonexempt employees with a 10-minute Rest
8 Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11040
9 (12).
- 10 24. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage
11 Order must pay the employee one additional hour of pay at the employee’s regular rate of pay
12 for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal.
13 Code Regs. § 11040 (11), (12).
- 14 25. Defendants failed to provide compliant Meal Periods or requisite Meal Period penalty
15 payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order
16 4, codified as Title 8, California Code of Regulations, section 11040 (7) and (11).
- 17 26. For example, Defendants do not possess a legal Meal Period policy, and make no attempt to
18 ensure that their employees are either timely or wholly provided Meal Periods in compliance
19 with California law. The employees would often either miss a Meal Period entirely, be
20 provided a short or untimely Meal Period, or be provided only one Meal Period, even where
21 they were working in excess of 10 hours a day. Defendants would pressure their employees to
22 either skip or cut short a Meal Period to address customers or other workload concerns.
23 Defendants routinely did not provide adequate staffing, which contributed to these Meal Period
24 violations. Finally, Defendants failed to provide Meal Period penalty payments to employees
25 on such occasions.
- 26 27. Defendants failed to provide compliant Rest Periods or requisite Rest Period penalty payments,
27 in violation of, *inter alia*, Labor Code sections 226.7, and I.W.C. Wage Order 4. These
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1 violations are due, in part, to the fact that Defendants do not possess a legal Rest Period policy
2 or practice, as its purported Rest Period policy lacks required language, including failing to
3 provide for breaks for every four hours “*or major fraction thereof*,” resulting in employees
4 failing to receive all Rest Periods legally due. Defendants do not provide Rest Periods, as
5 defined by California law. Defendants would pressure their employees to either skip or cut
6 short a Rest Period to address customers or other workload concerns. Defendants routinely did
7 not provide adequate staffing, which contributed to these Rest Period violations. Finally,
8 Defendants have never provided a Rest Period penalty payment to any employee.

9 28. Moreover, Defendants’ policies and practices preclude “duty-free” Meal and Rest Periods.
10 Specifically, employees were required to be “on-call” and to respond to the employer
11 immediately and remain on the premises at all times during Meal and Rest Periods. These
12 institutional and established practices of Defendants are illegal, in that Plaintiffs and all other
13 aggrieved employees were denied proper and/or timely Meal and Rest Periods.

14 29. Defendants willfully failed and refused to pay Plaintiffs and all other aggrieved employees one
15 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period
16 was not provided, as required by Labor Code section 226.7 and IWC Wage Order 4 (11), (12).

17 30. Any payments made by Defendants for missed or late Meal Periods or Rest Periods were not
18 paid at an employee’s regular rate in violation of Labor Code section 226.7 and the operative
19 I.W.C. Wage Orders. Instead, these payments were made at an employee’s base rate and did
20 not include the value of, *inter alia*, all actual compensation owed, and/or all employee benefits
21 such as, for example, non-discretionary compensation and other employee benefits.

22 31. As a direct result of Defendants’ failure to comply with the foregoing provisions of the Labor
23 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
24 proven at trial.

25 32. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
26 behalf of himself and all other aggrieved employees by and through Labor Code section
27 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
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1 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
2 Prayer For Relief.

3 33. Plaintiff seeks an award of statutory civil penalties for each aggrieved employee of Defendants
4 pursuant to Labor Code sections 2699(a).

5 34. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
6 section 2699(g)(1).

7 **SECOND CAUSE OF ACTION**
8 **Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.**
9 **Representative Action**
10 **(By Plaintiff against Defendants and DOES 1 through 10)**

11 35. Plaintiff hereby incorporates by reference paragraphs 1 through 34 as though fully set forth
12 herein.

13 36. Defendants failed to provide all compensation, including minimum wage and overtime
14 compensation, to their employees in violation of, *inter alia*, Labor Code sections 1194 and 510
15 and the I.W.C. Wage Orders, codified as Title 8, California Code of Regulations, section
16 11040 (3). This illegal action is due, in part, to Defendants' policies of (1) altering (and
17 deducting) the work-time reported by its employees prior to payment, (2) failing to properly
18 retain accurate Time Records, in violation of California law, and (3) failing to provide
19 compensation for all time worked by the employees, or in control of the employer. Defendants
20 would instruct Plaintiff, and other employees, to report their scheduled (as opposed to actual)
21 work hours, resulting in a loss of compensation. Additionally, Defendants would often require
22 Plaintiff and other employees, to work extended hours (beyond their scheduled hours and
23 during Meal Periods), without compensation. Defendants also failed to provide all
24 compensation for time worked before employees were on the clock, but still under Defendants'
25 control.

26 37. As a result of Defendants' failure to comply with the provisions of the Labor Code, Plaintiff
27 and all other aggrieved employees have been damaged in an amount to be proven at trial.

28 38. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on

1 behalf of himself and all other aggrieved employees by and through Labor Code section
2 2699.3, and as Plaintiffs has complied with all pre-filing requirements, Plaintiff may recover
3 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
4 Prayer For Relief.

5 39. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
6 pursuant to Labor Code sections 2699(a).

7 40. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
8 section 2699(g)(1).

9 **THIRD CAUSE OF ACTION**
10 **Overtime Violations Pursuant to Labor Code § 2698 et seq.**
11 **Representative Action**
 (By Plaintiff against Defendants and DOES 1 through 10)

12 41. Plaintiff hereby incorporates by reference paragraphs 1 through 40 as though fully set forth
13 herein.

14 42. Defendants failed to pay Plaintiff and all other aggrieved employees all compensation,
15 including Overtime Compensation, due in violation of, among other statutes, Labor Code
16 section 510. These violations occurred due to Defendants' illegal policies, referenced above,
17 whereby employees experienced monetary under-compensation on workdays where overtime
18 compensation was due pursuant to California law. Additionally, Defendants failed to calculate
19 the correct regular rate of pay for purposes of paying overtime compensation, as Defendants
20 do not include the value of non-discretionary compensation and other employee benefits when
21 determining the overtime rate of pay owed to employees. The systematic failure to provide
22 proper overtime compensation is a violation of California law.

23 43. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
24 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
25 proved at trial.

26 44. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
27 behalf of himself and all other aggrieved employees by and through Labor Code section
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1 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
2 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
3 Prayer For Relief.

4 45. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
5 pursuant to Labor Code sections 2699(a).

6 46. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
7 section 2699(g)(1).

8 **FOURTH CAUSE OF ACTION**
9 **Wage Statement Violations Pursuant to Labor Code § 2698 et seq.**
10 **Representative Action**
11 **(By Plaintiff against Defendants and DOES 1 through 10)**

12 47. Plaintiff hereby incorporates by reference paragraphs 1 through 46 as though fully set forth
13 herein.

14 48. Defendants failed to provide Plaintiff and all other aggrieved employees with accurate itemized
15 wage statements in violation of, among other statutes, Labor Code section 226. These
16 violations include, but are not limited to, Defendants' failure to accurately identify all
17 applicable regular and overtime (including double-time) rates of pay in violation of section
18 226(a)(9), and providing inaccurate representations of both "gross" and "net wages."
19 Defendants also failed to accurately list "all applicable hourly rates in effect during the pay
20 period and the corresponding number of hours worked at each hourly rate," in violation of
21 226(a)(9). Defendants also failed to provide an accurate showing of the "total hours worked,"
22 in violation of Labor Code section 226(a)(2). For example, Defendants had notice of
23 employees working outside of their scheduled and/or reported hours, as well as within Meal
24 and Rest Periods, but did not provide compensation. Defendants also failed to provide an
25 accurate name and address for the legal entity that is the employer, in violation of Labor Code
26 section 226(a)(8).

27 49. Further, the Defendants' wage statement listings are confusing and employees cannot readily
28 ascertain their total hours worked, applicable rates, and all gross and net wages. As one

example, Defendants are apparently using a time calculating system other than “minutes”, but without explanation to the employees within the wage statement.

50. As a direct result of Defendants’ failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

51. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

52. Plaintiff seeks an award of statutory civil penalties for each aggrieved employee of Defendants pursuant to Labor Code sections 2699(a).

53. Plaintiff also seeks an award of reasonable attorneys’ fees and costs pursuant to Labor Code section 2699(g)(1).

FIFTH CAUSE OF ACTION
Failure to Reimburse Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

54. Plaintiff hereby incorporates by reference paragraphs 1 through 53 as though fully set forth herein.

55. Defendants failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Plaintiff and other non-exempt employees, including expenses for cell-phone costs, mileage and other necessary work supplies.

56. As a direct result of Defendants’ failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

57. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on

1 behalf of himself and all other aggrieved employees by and through Labor Code section
2 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
3 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
4 Prayer For Relief.

5 58. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
6 pursuant to Labor Code sections 2699(a) for each of these employees.

7 59. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
8 section 2699(g)(1).

9 **SIXTH CAUSE OF ACTION**
10 **Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.**
11 **Representative Action**
12 **(By Plaintiff against Defendants and DOES 1 through 10)**

13 60. Plaintiff hereby incorporates by reference paragraphs 1 through 59 as though fully set forth
14 herein.

15 61. Defendants failed to provide Plaintiff and other aggrieved employees with all wages earned and
16 unpaid at termination in violation of, among other statutes, Labor Code sections 201 through
17 203. These violations resulted from, among other unlawful actions, Defendants' willful failure
18 to provide accurate and complete compensation to aggrieved employees under Labor Code
19 sections 226.7, 510, 512, 1197, and 2802, as set forth above. Additionally, Defendants failed
20 to timely pay Plaintiff, and other aggrieved employees, all wages actually owed at the time of
21 termination, including but not limited to, all vacation pay owed.

22 62. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
23 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
24 proven at trial.

25 63. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
26 behalf of himself and all other aggrieved employees by and through Labor Code section
27 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
28 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
 Prayer For Relief.

1 64. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
2 pursuant to Labor Code sections 2699(a) for each of these employees.

3 65. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
4 section 2699(g)(1).

5 **SEVENTH CAUSE OF ACTION**
6 **Failure to Provide Adequate Seating and Resting Facilities Pursuant to**
7 **Labor Code § 2698 et seq.**
8 **Representative Action**
9 **(By Plaintiff against Defendants and DOES 1 through 10)**

10 66. Plaintiff hereby incorporates by reference paragraphs 1 through 65 as though fully set forth
11 herein.

12 67. Defendants failed to provide suitable seats to all working employees when the nature of the
13 work reasonably permitted the use of seats, in violation of Labor Code section 1198 and
14 California Code of Regulations, title 8, section 11040(14)(A). Plaintiff and other nonexempt
15 employees were required to stand throughout their work periods. Additionally, when GOLDEN
16 employees were not engaged in the active duties of their employment and/or the nature of the
17 work required standing, an adequate number of suitable seats were not placed in reasonable
18 proximity to the work area and/or GOLDEN employees were not permitted to use such seats
19 when it did not interfere with the performance of their duties, in violation of California Code
20 of Regulations, title 8, section 11040(14)(B). During rare occasions when Plaintiff was able
21 to take a Rest Period, Defendants did not provide an area with adequate seating, instead
22 Plaintiff and other nonexempt employees had to sit on make-shift seats erected from dirty tires
23 in the facilities storage room, in violation of California Code of Regulations, title 8, section
24 11040(13)(B).

25 68. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
26 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
27 proven at trial.

28 69. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
behalf of himself and all other aggrieved employees by and through Labor Code section

2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

70. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

71. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

EIGHTH CAUSE OF ACTION
Requirement to Purchase Company Products Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

72. Plaintiff hereby incorporates by reference paragraphs 1 through 71 as though fully set forth herein.

73. California Labor Code section 221 prohibits an "employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." California Labor Code section 450 specifically states, "No employer, or agent or officer thereof, or other person, may compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of any thing of value."

74. Defendants violated Labor Code section 221 and 450 by requiring Plaintiff and other employees to purchase company products, such as uniforms. Defendants would often take this remuneration directly from its employees by and through their paychecks.

75. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

76. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below

1 Prayer For Relief.

2 77. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
3 pursuant to Labor Code sections 2699(a) for each of these employees.

4 78. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
5 section 2699(g)(1).

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff on behalf of all aggrieved employees, prays for judgment as follows:

8 1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section
9 2699(g)(1);

10 2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and

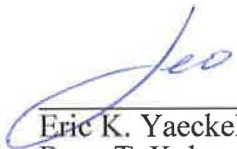
11 3. For such other relief as the Court deems just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs hereby request that this matter be heard and decided by trial by jury.

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15 Dated: August 3, 2022

SULLIVAN & YAECKEL LAW GROUP, APC

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17 
18 Eric K. Yaeckel
Ryan T. Kuhn
Leonel Fletes Jr.

19 Attorneys for Plaintiff ELIZER PINEDA, in a
20 Representative capacity only, and on behalf of other
21 members of the general public similarly situated
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Exhibit 1

SULLIVAN & YAECKEL

LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

March 30, 2022

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Elizer Pineda v. Golden Tire Centers, LLC
Our File No.: 7297

Dear Administrator:

Please allow this correspondence to serve as "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Golden Tire Centers, LLC (hereinafter "Golden"), in the above referenced matter. This "written notice" is filed on behalf of Mr. Pineda, and all current and former non-exempt employees employed by Golden. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Golden are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 221, 226, 226(a), 226.7, 450, 510, 512, 558, 1194, 1197.1, 1198.5 and 2802, as well as IWC Wage Order 4, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11040 *et seq.*

Facts and theories supporting the allegations: Mr. Pineda was employed as a non-exempt employee for Golden from approximately October 5, 2021 through November 30, 2021.

///

Throughout the term of Mr. Pineda's employment, Golden required Mr. Pineda and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

- Golden failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, IWC Wage Order 4, and any other applicable wage orders. This illegal action is due, in part, to Golden's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Golden would instruct Mr. Pineda to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, Golden would often require Mr. Pineda to work extended hours (beyond scheduled hours), without compensation. Ms Pineda often would be required to work up to 30 minutes after he had clocked out from his scheduled shift to assist customers who arrived late to pick up their vehicles. He was not compensated for this time. Further, Golden would regularly contact Mr. Pineda outside of normal work hours (*i.e.*, "after hours" or during lunch) without compensation.
- Additionally, among other issues, Golden has notice of Mr. Pineda, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Mr. Pineda was frequently scheduled to be "On Call" outside of when his work shifts ended, but was never compensated for this time. Mr. Pineda and other non-exempt employees would have to stay an extra few minutes after clocking out to shut off the lights, close and lock the doors, and set the alarm at the premises. Mr. Pineda was not compensated for this time. Further, Golden failed to properly calculate and pay overtime at the actual overtime rate of pay, as Golden ignores certain compensation when calculating the Regular Rate of Pay.

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interrupted during his Meal Periods by supervisors to discuss what work had been completed that day or other work related matters.

- Golden would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to supervisors and/or residents at all times. Golden has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Mr. Pineda was unable to clock back in to his shift when his Meal Period was interrupted because Golden's time keeping system utilizes a lockout which prevents employees from clocking back in until a full 30 minutes has expired. Finally, on the rare occasions when employees *were* paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not "cure" the stated Labor Code violation under section 226.7. The California Supreme Court held that "An employer's failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer's provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7." (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, *italics added.*). Even more recently, a 2020 California Supreme Court ruling stated that, "The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy 'does not excuse a section 226.7 violation.'" *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Golden failed to pay Meal Period Premiums at the proper rate, as Golden fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, S259172 (Slip Op. at p.1).
- Golden required its employees to constantly monitor their cell phones and be "on-call" at all times, specifically during Meal Periods. On occasion, Golden would interrupt, or cut short, its employees' Meal Periods and require them to return to work. Golden was frequently understaffed, this would result in Mr. Pineda being required to respond to supervisors, customers, and work related matters during his Meal Periods.
- Golden illegally retained control over its employees during Meal Periods. For example, Golden required its employees to "remain on the premises," and to remain "On Call" (*i.e.* monitor their phones) at all times, including during Meal Periods.

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- Finally, Golden illegally retained control over its employees during Rest Periods. For example, Golden required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their telephones) at all times, including during Rest Periods.

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- Golden violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Mr. Pineda, and other employees were not compensated for all hours worked (due in part to Golden’s requirement that employees list only *scheduled* work-times, not actual work-times.)
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improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.

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Failure to Provide Compliant Expense Reimbursement Payments

- Golden failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Mr. Pineda, and other non-exempt employees, including expenses for cell-phone costs, safety equipment, uniforms, other necessary work supplies, and mileage. Mr. Pineda had to purchase his own uniforms at a cost of \$300.00 dollars over the course of his employment. (Please see **Exhibit B**). Mr. Pineda was also required to use his own personal cellular phone when supervisors contacted him after his shift had ended. Finally, as part of his regular duties Mr. Pineda spent 15-20 hours per week running errands in his own personal vehicle dropping off or picking up customers, going to the bank, and delivering automotive parts from the company warehouse. He was never reimbursed for these expenses.

///

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Failure to Provide Adequate Seating and Resting Facilities

- Golden failed to provide suitable seats to all working employees when the nature of the work reasonably permitted the use of seats, in violation of Labor Code section 1198 and California Code of Regulations, title 8, section 11040(14)(A). Plaintiff and other nonexempt employees were required to stand throughout their work periods. Additionally, when Golden employees were not engaged in the active duties of their employment and/or the nature of the work required standing, an adequate number of suitable seats were not placed in reasonable proximity to the work area and/or Golden employees were not permitted to use such seats when it did not interfere with the performance of their duties, in violation of California Code of Regulations, title 8, section 11040(14)(B). During rare occasions when Mr. Pineda was able to take a Rest Period, Golden did not provide an area with adequate seating, instead he and other nonexempt employees had to sit on make-shift seats erected from dirty tires in the facilities storage room, in violation of California Code of Regulations, title 8, section 11040(13)(B).

Willful Failure to Provide All Compensation to Ex-Employees

- Golden failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that Golden failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above.

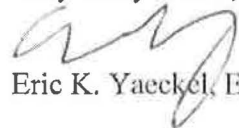
Requirement to Purchase Company Products

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To confirm, Golden is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Eric K. Yaeckel, Esq.

cc: *Via Certified U.S. Mail*

Matthew Greco

Agent for Service of Process for

GOLDEN WEST TIRE CENTERS, LLC

10761 Noel Street

Los Alamitos, CA 90720

cc: *Courtesy Copy and Filing Fee via U.S. Mail*

Department of Industrial Relations

Accounting Unit

455 Golden Gate Ave, 10th Floor

San Francisco, CA 94102

Exhibit A

Regular	16.0000	85.88	1,374.08	3,316.64
Overtime	24.0000	4.23	108.41	289.86
Sales Com			285.65	730.74
Sales Ot			7.84	25.86
Tire Bon				16.00
Tire Bonus Ot				0.29
Gross Pay		\$1,775.98		4,379.39

Information	this period	total to date
Total Hrs Worked	82.11	

Important Notes

COMPAN PH#: 714 236 0715

BASIS OF PAY: HOURLY

Deductions	Statutory		
	Social Security Tax	-110.11	271.52
	Medicare Tax	-25.75	63.50
	CA SDI Tax	-21.31	52.55
Net Pay		\$1,618.81	
Net Check		\$1,618.81	

Period Beginning: 10/24/2021
Period Ending: 11/11/2021

Your federal taxable wages this period are
\$1,775.98

4K0
GOLDEN WEST TIRE CENTERS, LLC DBA BIG O TIRES
10761 NOEL STREET
LOS ALAMITOS, CA 90720

90-4771222

Payroll check number:
Pay date: 11/12/2021

Pay to the
order of:
This amount:

ELIZER PINEDA

ONE THOUSAND SIX HUNDRED EIGHTEEN AND 81/100 DOLLARS

\$1618.81

ASSISTANCE WITH VERIFICATION AVAILABLE AT 800-433-7343
VOID - NON-NEGOTIABLE

VOID AFTER 180 DAYS

Wells Fargo Bank, N.A.
5401 California Ave
Bakersfield, CA 93309

THIS IS NOT A CHECK

APR 22 WCS shell
ADP AUTHORIZED SIGNATURE

NON-NEGOTIABLE - VOID - NON-NEGOTIABLE - VOID

Exhibit B



THE TEAM YOU TRUST™

**Golden West Tire Centers,
LLC.**

10934 Portal Dr.
Los Alamitos, CA 90720
(714) 236-0715 Fax (714) 252-5116

I understand that Golden West Tire Centers, LLC will be deducting \$300.00 from my payroll check for a uniform deposit. The deductions will be \$50.00 per payday until it reaches a balance of \$300.00. I further understand that I am responsible for keeping track of the uniforms and equipment issued to me and that I will immediately report any missing items to my manger. Upon my separation from the company I am to return all company property in my possession, and I will receive my deposit back plus interest minus the cost of replacement of any missing company property also any excessive wear of uniforms beyond that experienced during the normal course of business will be deducted from my deposit. My signature below acknowledges the deduction.

Elizée P.
Employee Signature

09/30/2021
Date

Sullivan Law Group APC

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, March 30, 2022 5:04 PM
To: Christian Yorke Struckmeyer
Subject: Thank you for submission of your PAGA Case.

3/30/2022

LWDA Case No. LWDA-CM-876297-22
Law Firm : Sullivan & Yaeckel Law Group, APC Plaintiff Name : Elizer Pineda
Employer: Golden Tire Centers, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to 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

Exhibit 2

SULLIVAN & YAECKEL

LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

May 27, 2022

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Elizer Pineda v. Golden West Tire Centers, LLC
Our File No.: 7297

Dear Administrator:

Please allow this correspondence to serve as a “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Golden West Tire Centers, LLC (hereinafter “Golden”), in the above referenced matter. This “written notice” is filed on behalf of Mr. Pineda, and all current and former non-exempt employees employed by Golden. Thank you for your assistance and instruction on this issue.

Please Note: This letter is mean to supplement and expand upon the original notice letter sent by Mr. Pineda on March 30, 2022, which was assigned LWDA Case No. LWDA-CM-876297-22. The Court of Appeal has recently held that the “relation back” doctrine can apply in the context of a PAGA case. *See Hutcheson v. Superior Court* (February 7, 2022) 74 Cal.App.5th 932.

The specific provisions alleged to have been violated by Golden are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 221, 226, 226(a), 226.7, 450, 510, 512, 558, 1194, 1197.1, 1198.5 and 2802, as well as IWC Wage Order 4, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11040 *et seq.*

Facts and theories supporting the allegations: Mr. Pineda was employed as a non-exempt employee for Golden from approximately October 5, 2021 through November 30, 2021

Throughout the term of Mr. Pineda's employment, Golden required Mr. Pineda and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

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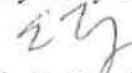
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Very Truly Yours,


Eric K. Yaeckel, Esq.

cc: *Via Certified U.S. Mail*

Matthew Greco

Agent for Service of Process for

GOLDEN WEST TIRE CENTERS, LLC

10761 Noel Street

Los Alamitos, CA 90720

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COMPAN PH#: 714 238 0715

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Period Beginning: 10/24/2021

Period Ending: 11/11/2021

Your federal taxable wages this period are
\$1,775.98

Copyright © 2018 All Rights Reserved

4K0

90-47711222

GOLDEN WEST TIRE CENTERS, LLC DBA BIG O TIRES Payroll check number:

10761 NOEL STREET

Pay date:

11/12/2021

LOS ALAMITOS, CA 90720

Pay to the
order of:

ELIZER PINEDA

This amount:

ONE THOUSAND SIX HUNDRED EIGHTEEN AND 81/100 DOLLARS

\$1618.81

ASSISTANCE WITH VERIFICATION AVAILABLE AT 1-877-433-5343

VOID NON-NEGOTIABLE VOID NON-NEGOTIABLE
VOID AFTER 180 DAYS
THIS IS NOT A CHECK

Wells Fargo Bank, N.A.
2401 California Ave
Bakersfield, CA 93309

422 WCSchul
AQP AUTHORIZED SIGNATURE

NON-NEGOTIABLE - VOID - NON-NEGOTIABLE - VOID

Exhibit B



THE TEAM YOU TRUST™

**Golden West Tire Centers,
LLC.**

10934 Portal Dr.
Los Alamitos, CA 90720
(714) 236-0715 Fax (714) 252-5116

I understand that Golden West Tire Centers, LLC will be deducting \$300.00 from my payroll check for a uniform deposit. The deductions will be \$50.00 per payday until it reaches a balance of \$300.00. I further understand that I am responsible for keeping track of the uniforms and equipment issued to me and that I will immediately report any missing items to my manger. Upon my separation from the company I am to return all company property in my possession, and I will receive my deposit back plus interest minus the cost of replacement of any missing company property also any excessive wear of uniforms beyond that experienced during the normal course of business will be deducted from my deposit. My signature below acknowledges the deduction.

Elmer P.
Employee Signature

09/30/2024
Date

Christian Yorke Struckmeyer

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Friday, May 27, 2022 4:25 PM
To: Christian Yorke Struckmeyer
Subject: Thank you for your Amended PAGA Claim Notice Submission.

05/27/2022 04:24:49 PM

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

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to 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