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7 Attorneys for XAVIER HUNTER,
on behalf of himself, the State of California, and others similarly
situated and aggrieved

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
IN AND FOR THE COUNTY OF SANTA CRUZ

10
11 XAVIER HUNTER on behalf of himself, the
State of California, and others similarly situated
12 and aggrieved,

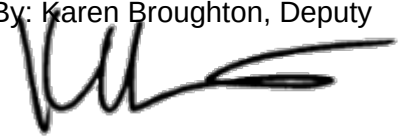
13 Plaintiff,

14
15 vs.

16 72 HOUR, LLC a California limited liability
company; BOB WONDRIES MOTORS, a
17 California corporation; and DOES 1 to 100,
inclusive,

18
19 Defendants.

ELECTRONICALLY FILED
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County of Santa Cruz
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Case No.: 22CV01215

**PLAINTIFF'S REPRESENTATIVE
COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LABOR CODE SECTIONS 2698, *et*
*seq.***

1 Plaintiff XAVIER HUNTER (“PLAINTIFF” or “PLAINTIFF HUNTER”), an individual on
2 behalf of himself, the State of California, and all other Aggrieved Employees (as defined below),
3 hereby files this Complaint against Defendants 72 HOUR, LLC, a California limited liability
4 company; BOB WONDRIES MOTORS, a California corporation; and DOES 1 to 100, inclusive,
5 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes, and
6 on the basis of that information and belief, alleges as follows:

7 **INTRODUCTION**

8 1. This is a representative action filed by PLAINTIFF on behalf of himself, other
9 similarly Aggrieved Employees and the State of California against DEFENDANTS, pursuant to
10 California’s Private Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover
11 civil penalties (75% payable to the Labor and Workforce Development Agency and 25% payable to
12 Aggrieved Employees) for DEFENDANTS’ violations of the California Labor Code as alleged
13 below.

14 **JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
16 California statutes, including but not limited to the PAGA, and decisional law and regulations.

17 3. Venue is proper in this judicial district and the County of Santa Cruz pursuant to
18 California Code of Civil Procedure section 395.5 because DEFENDANTS employed PLAINTIFF
19 at one or more of their facilities located in the County of Santa Cruz, and some of the acts, omissions,
20 and conduct alleged by PLAINTIFF herein occurred in this county. *Crestwood Behavioral Health,*
21 *Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county
22 where the defendants committed Labor Code violations against some of its employees).

23 **THE PARTIES**

3. DEFENDANTS are a California limited liability company and/or California
corporation that, at all relevant times, were authorized to do business within the State of California
and are doing business in the State of California.

4. DEFENDANTS and their managing agents own, operate, or otherwise manage

1 vehicle dealerships and/or vehicle service locations. Based on information and belief,
2 DEFENDANTS own, operate, or otherwise manage various locations in California including but
3 not limited to at least four vehicle dealerships/service locations in Watsonville, California and at
4 least two vehicle dealerships and/or vehicle service locations in Los Angeles County, California.

5 5. PLAINTIFF HUNTER is, and at all relevant times, was an individual domiciled in
6 the State of California and a citizen of the State of California who worked as a full-time non-exempt
7 employee for DEFENDANTS in the State of California.

8 6. PLAINTIFF HUNTER was employed by DEFENDANTS as a full-time non-exempt
9 employee from in or around February 2020 through in or around October 2021. PLAINTIFF
10 HUNTER worked for DEFEDANTS during the relevant time period as a non-exempt, Service
11 Advisor and/or similar title at one of DEFENDANTS' facilities located at 130 Lee Rd., Watsonville,
12 California 95706.

13 7. The true names and capacities of the DOE DEFENDANTS sued herein as DOES 1
14 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
15 DEFENDANTS by said fictitious names. Each of the DEFENDANTS designated herein as a DOE
16 is legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to
17 amend this Complaint to reflect the true names and capacities of the DOE DEFENDANTS when
18 such identities become known.

19 8. PLAINTIFF is further informed and believes that, at all relevant times, each
20 defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
21 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
22 predecessor in interest of some or all of the other DEFENDANTS, and was engaged with some or
23 all of the other DEFENDANTS in a joint enterprise for profit, and bore such other relationships to
some or all of the other DEFENDANTS so as to be liable for their conduct with respect to the
matters alleged in this Complaint. PLAINTIFF is further informed and believes and thereon alleges
that each defendant acted pursuant to and within the scope of the relationships alleged above, and
that at all relevant times, each defendant knew or should have known about, authorized, ratified,

1 adopted, approved, controlled, aided and abetted the conduct of all other DEFENDANTS.

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

7 **JOINT LIABILITY**

8 10. Under California law, the definition of the term "to employ" is broadly construed
9 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
10 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
11 to engage, thereby creating a common law employment relationship. *See Martinez v. Combs*, 49
12 Cal.4th 35, 64 (2010). One reason that the IWC defined "employer" in terms of exercising control
13 was to reach situations in which multiple entities control different aspects of the employment
14 relationship. Supervision of the work, in the specific sense of exercising control over how services
15 are properly performed, is properly viewed as one of the "working conditions" mentioned in the
wage order. *Id.* at 76. A joint employer relationship exists when one entity hires and pays a worker,
and the other entity supervises the work. *Id.*

16 11. As such, California courts have recognized that the definition of "employer" for
17 purposes of enforcement of the California Labor Code goes beyond the concept of traditional
18 employment to reach irregular working arrangements for the purpose of preventing evasion and
19 subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. Therefore,
20 anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or
21 permits any person to work or exercises control over the wages, hours, or working conditions of any
22 person, may be liable for violations of the California Labor Code as to that person.

23 12. PLAINTIFF is informed and believes and thereon alleges that at all relevant times,
DEFENDANTS operated as a single integrated enterprise with common ownership and centralized

1 human resources.

2 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
3 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
4 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
5 DEFENDANTS exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
6 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
7 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
8 Employees. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
9 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
10 time-keeping practices, meal and rest periods, and other working conditions that were distributed
11 to, and/or applied to PLAINTIFF and the Aggrieved Employees, and further that DEFENDANTS
12 uniformly compensated and controlled the wages of PLAINTIFF and the Aggrieved Employees in
13 a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and the Aggrieved
14 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS
15 collectively retained the right to terminate PLAINTIFF and the Aggrieved Employees' employment
16 with or without cause. Upon information and belief, DEFENDANTS further collectively
17 represented to PLAINTIFF and the Aggrieved Employees in writing the details of their
18 compensation, and the manner in which they were to take meal and rest periods, the procedures
19 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
20 to PLAINTIFF and the Aggrieved Employees by which DEFENDANTS collectively would
21 evaluate the wage rates of PLAINTIFF and the Aggrieved Employees.

22 14. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
23 and working conditions of PLAINTIFF and the Aggrieved Employees. As such, DEFENDANTS
collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
Employees' employment, including the instrumentality that resulted in the illegal conduct for which
PLAINTIFF seeks relief in this Complaint.

15. PLAINTIFF is informed and believes that DEFENDANTS exercised the same

1 control over, applied the same policies and practices, and engaged in the same acts and omissions
2 with regard to the other Aggrieved Employees.

3 16. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS
4 must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties
5 under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to
6 perform services from which they benefited, and furthermore that the aforementioned entities had
7 the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all
relevant times herein, so as to be considered the joint employers of PLAINTIFF.

8 17. By reason of their status as joint employers of PLAINTIFF and Aggrieved
9 Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor
Code and applicable Wage Orders as to PLAINTIFF and other Aggrieved Employees.

10 **PAGA ALLEGATIONS**

11 18. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
12 of himself, the State of California and Aggrieved Employees, regarding violations of the California
Labor Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

13 All current and former non-exempt employees that worked for
14 DEFENDANTS at any of its locations in California at any time from one
15 year plus 65 days from filing of the initial Complaint through the present
16 (“PAGA Period”).

17 19. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
18 section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations
19 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
20 PLAINTIFF seeks to recover on behalf of himself, the State of California, and all other Aggrieved
21 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
22 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
23 Employees, as he was jointly employed by DEFENDANTS and is thereby affected by one or more
of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th

1 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
2 the employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

3 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

4 20. On March 22, 2022, PLAINTIFF HUNTER, through his counsel, gave written notice
5 by online filing with the California Labor and Workforce Development Agency (“LWDA”)
6 informing it that DEFENDANTS failed to comply with California’s labor laws with regard to the
7 allegations alleged in this Complaint (“PAGA Letter”). Attached hereto as **Exhibit 1** is a true and
correct copy of the PAGA Letter also sent to DEFENDANTS via certified mail.

8 21. The PAGA Letter outlined PLAINTIFF’s claims for violations of the California
9 Labor Code and the applicable wage orders on behalf of himself, the State of California and other
Aggrieved Employees.

10 22. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
11 violations after expiration of the 65-day waiting time period, or at any time. PLAINTIFF has
12 exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently,
PLAINTIFF’s right to file the instant lawsuit has duly accrued.

13 23. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
14 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
15 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

16 **FACTUAL ALLEGATIONS**

17 24. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were
18 employed by DEFENDANTS in the State of California. DEFENDANTS, at all times, exercised
19 control over PLAINTIFF and each of the Aggrieved Employees, and suffered and/or permitted them
to work.

20 25. PLAINTIFF was employed by DEFENDANTS in a non-exempt position during the
21 relevant period and was subject to one or more of the Labor Code violations alleged herein.
22 PLAINTIFF worked as a Service Advisor at one of DEFENDANTS’ locations and typically worked
shifts longer than eight (8) hours per day, at least (5) days per week. PLAINTIFF was paid on an

1 hourly basis and earned non-discretionary commissions and/or bonuses.

2 26. **Meal Periods.** PLAINTIFF and other Aggrieved Employees regularly worked shifts
3 of five and one half (5 ½) hours or more and were entitled to at least one thirty-minute uninterrupted
4 meal break. However, PLAINTIFF and other Aggrieved Employees did not receive compliant
5 thirty-minute meal periods or were required to work through purported meal periods. PLAINTIFF
6 and other Aggrieved Employees were consistently unable to take timely, off duty, thirty-minute,
7 uninterrupted meal periods, often being forced to take late meal periods (i.e. after the fifth hour of
8 work), interrupted meal periods, and/or work through part or all their meal periods due to the nature
9 and constraints of their job duties and/or commentary from supervisors pressuring them to take non-
10 compliant meal periods or skip meal periods completely. Based on information and belief,
11 Aggrieved Employees were instructed by their supervisors to clock out for meal periods but to
continue working during the purported meal period due to their need to complete service orders,
answer customer inquiries, assist new customers, and/or attend to other work tasks.

12 27. PLAINTIFF and Aggrieved Employees were consistently suffered and permitted to
13 take meal periods past the fifth hour of work and/or had their meal periods interrupted and/or cut
14 short due to commentary from supervisors, understaffing, and/or the nature and constraints of their
15 job duties. For example, PLAINTIFF regularly took his meal period after the fifth hour of work.
16 DEFENDANTS' time records for PLAINTIFF demonstrate that on October 19, 2021, PLAINTIFF
17 clocked in for work at 7:13 am and clocked-out for a meal period at 12:15 pm (more than five hours
18 after his clock-in time). Similarly, on October 21, 2021, PLAINTIFF clocked into work at 7:06 am
19 and clocked out for a meal period at 12:09 pm (more than five hours after his clock-in time). On
20 information and belief, DEFENDANTS' time records for PLAINTIFF and Aggrieved Employees
21 demonstrate that meal periods were consistently late. Moreover, based information and belief,
22 DEFENDANTS' time records for PLAINTIFF and Aggrieved Employees often indicate an earlier
meal period start time than the actual meal period start time due to commentary from supervisors
and/or managers pressuring Aggrieved Employees to clock out for a meal period but continue
working during the purported meal period, thereby forcing them to take a meal period at a later time.

1 28. Based on information and belief, DEFENDANTS further implemented policies
2 and/or practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
3 DEFENDANTS' control during unpaid meal periods. Based on information and belief,
4 DEFENDANTS had a uniform policy and/or practice of requiring PLAINTIFF and other Aggrieved
5 Employees to always be responsive to work-related inquiries during their shifts, including but not
6 limited to during unpaid meal periods. For example, PLAINTIFF's meal periods were consistently
7 interrupted with phone calls/messages to his personal cell phone from, e.g., his supervisor,
8 coworkers, service technicians and/or customers, which PLAINTIFF was required to respond to
9 while PLAINTIFF was clocked out for purportedly off-duty meal periods. PLAINTIFF received
10 work-related inquiries during his meal period on a daily basis.

11 29. At other times, PLAINTIFF continued working or completing work tasks during
12 purported meal periods. For example, PLAINTIFF often worked through his meal period, including
13 but not limited to ordering parts needed to complete a service on customer vehicles/trucks.

14 30. Moreover, PLAINTIFF and other Aggrieved Employees often completed off-the-
15 clock work prior to their scheduled shift time which DEFENDANTS failed to take into account
16 when scheduling meal periods for Aggrieved Employees. Based on information and belief, meal
17 periods were late, in part due to this unaccounted pre-shift off-the-clock work.

18 31. Despite failing to provide lawful meal periods, DEFENDANTS implemented a
19 policy and/or practice of automatically deducting at least thirty minutes per shift for these
20 missed/unlawful meal periods, despite having actual and/or constructive knowledge that
21 PLAINTIFF and other Aggrieved Employees did not receive compliant meal periods.

22 32. Based on information and belief, DEFENDANTS had actual and/or constructive
23 knowledge that its policies and/or practices resulted in the denial of uninterrupted meal periods owed
to PLAINTIFF and other Aggrieved Employees, in violation of California's meal period laws.

 33. DEFENDANTS also failed to keep accurate records of the start and end times of
PLAINTIFF's and Aggrieved Employees' meal periods. Based on further information and belief,
DEFENDANTS illegally rounded the start and end times of employee meal periods resulting in

1 PLAINTIFF and other Aggrieved Employees not being paid for all time worked as well as late
2 and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

3 34. Based on further information and belief, DEFENDANTS did not have a written meal
4 period policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for
5 the Aggrieved Employees can be established by evidence that an employer adopted a uniform
6 corporate break policy that failed to give full effect to California law and the applicable Wage Order
7 requirements. The fact that employees may legally waive meal periods does not affect this result.
8 *Brinker, supra*, 53 Cal.4th 1004.

9 35. PLAINTIFF is further informed and believes and thereon alleges that
10 DEFENDANTS had actual and/or constructive knowledge that their time-rounding and auto-
11 deduction policies and practices resulted in the denial of meal periods owed to PLAINTIFF and
12 other Aggrieved Employees, in violation of California's meal period laws.

13 36. Moreover, per DEFENDANTS' uniform policy and practice, Aggrieved Employees
14 who worked shifts of more than ten hours did not receive a second legally compliant thirty (30)
15 minute meal period. For example, when PLAINTIFF worked more than ten hours in a shift,
16 PLAINTIFF was not provided with a second meal period.

17 37. Despite failing to provide lawful meal periods, DEFENDANTS also failed to pay
18 PLAINTIFF and other Aggrieved Employees, an additional hour of wages at their respective regular
19 rates of compensation for each workday a proper meal period was not provided. For example, in the
20 pay period 10/16/2021-10/31/2021, PLAINTIFF was subject to at least two meal period violations
21 as demonstrated by DEFENDANTS' time records for PLAINTIFF, yet DEFENDANTS did not pay
22 PLAINTIFF a single meal period premium during this pay period. As such, DEFENDANTS either
23 failed to pay a meal period premium at all for each workday a proper meal period was not provided
and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary
remuneration, including but not limited to bonuses, commissions/piece-rate pay, shift differential
pay and/or other non-discretionary compensation into the regular rate or compensation for purposes
of calculating the owed meal period premium.

1 38. **Rest Periods.** DEFENDANTS did not properly authorize and provide PLAINTIFF
2 and other Aggrieved Employees with legally compliant rest periods at a rate of every four (4) hours
3 worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work
4 period, as required by law.

5 39. PLAINTIFF and other Aggrieved Employees were not adequately informed,
6 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
7 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
8 the taking of duty-free rest periods.

9 40. Any purported rest periods were consistently interrupted, cut short, on duty,
10 restricted to premises, and/or late due to understaffing, the nature and constraints of PLAINTIFF's
11 and other Aggrieved Employees' job duties, including but not limited to their need to complete
12 service orders, search for service parts, respond to customer inquiries, assist incoming customers,
13 and/or complete other work tasks and/or due to commentary from supervisors pressuring them to
14 skip rest periods completely or otherwise take non-compliant rest periods. PLAINTIFF and other
15 Aggrieved Employees did not receive legally compliant first, second, or third rest periods.

16 41. Based on information and belief, DEFENDANTS implemented policies and/or
17 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
18 DEFENDANTS' control during rest periods. As such, PLAINTIFF and other Aggrieved Employees
19 were pressured to complete their work duties according to a designated schedule such that rest
20 periods were only taken once tasks were completed and/or as time permitted. For example,
21 PLAINTIFF does not recall receiving a single off-duty/uninterrupted ten-minute rest period during
22 his employment by DEFENDANTS due to his need to respond to inquiries from service technicians,
23 coworkers, assist customers, and/or complete other necessary work tasks. Moreover, PLAINTIFF
constantly received work-related messages and/or phone calls to his personal cell phone throughout
the day, including but not limited to during purported rest periods.

 42. Despite failing to provide lawful rest periods, DEFENDANTS failed to pay
PLAINTIFF and other Aggrieved Employees with an additional hour of pay at their regular rates of

1 compensation for each missed, or otherwise unlawful rest period. Based on information and belief,
2 DEFENDANTS either failed to pay a rest period premium at all for each workday a proper rest
3 period was not provided and/or failed to pay the proper rest period premium for failure to incorporate
4 all non-discretionary remuneration, including but not limited to bonuses, shift differential pay,
5 commission/piece-rate pay and/or other non-discretionary compensation into the regular rate of
6 compensation for purposes of calculating the owed rest period premium.

7 43. By failing to provide rest periods for every four (4) hours or major fraction thereof,
8 and by failing to provide compensation for these missed or unlawful rest periods, DEFENDANTS
9 willfully violated the provisions of Labor Code section 226.7.

10 44. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
11 PLAINTIFF and other Aggrieved Employees for all hours worked, including all owed minimum
12 and overtime wages. As explained above, PLAINTIFF and the Aggrieved Employees were
13 consistently unable to take off duty, thirty-minute, uninterrupted meal periods, often being forced
14 to work through part or all their meal periods due to understaffing, the nature and constraints of their
15 job duties and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved Employees
16 to take non-compliant meal periods or skip meal periods completely.

17 45. On information and belief, the work time reported by PLAINTIFF and Aggrieved
18 Employees was rounded and automatically deducted for at least 30 minutes of wages per shift for
19 interrupted and/or otherwise unlawful meal periods, despite having actual and/or constructive
20 knowledge that Aggrieved Employees were working through part or all of these purported meal
21 periods, depriving Aggrieved Employees of all wages owed.

22 46. Moreover, PLAINTIFF and other Aggrieved Employees were required to perform
23 other off-the-clock work for which they were not compensated. For example, on days PLAINTIFF
opened the work location, PLAINTIFF was required to unlock doors and disable the alarm prior to
clocking into work. This resulted in at least 5 minutes of unpaid pre-shift work time. At the end of
a shift, PLAINTIFF and/or the Aggrieved Employee in charge of closing the location was required
to first clock out, then enable the alarm and lock all doors. This resulted in additional off-the-clock

1 post-shift work time that was not compensated. PLAINTIFF and other Aggrieved Employees also
2 performed off-the-clock work when required to assist a customer prior to clocking in to work either
3 at the beginning of a shift or from a meal period, or after clocking out of work either at the end of a
4 shift or for a meal period.

5 47. PLAINTIFF was also required to complete off-the-clock work on weekends and/or
6 days off due to work related phone calls and/or messages he received and was required to respond
7 to including but not limited to communications from co-workers, customer inquiries and/or
8 customers asking to retrieve their vehicle. Communications with customers and/or coworkers lasted
9 at least 15 minutes, but often lasted at least 30 minutes. PLAINTIFF recalls calls from
10 DEFENDANTS' sales department on his day(s) off that lasted close to one hour, resulting in
11 significant off-the-clock and uncompensated work. Additionally, approximately once a month,
12 PLAINTIFF was required to drive to his assigned location and disable the location's alarm due to
13 security alarm issue(s) on a day when PLAINTIFF's work location was closed.

14 48. PLAINTIFF and other Aggrieved Employees were also required to pick up service
15 parts while off-the-clock (either on a day off or before or after a scheduled shift). At times,
16 PLAINTIFF and/or other Aggrieved Employees were required to drop off work-related documents
17 at one of DEFENDANTS' other locations. PLAINTIFF estimates that this type of off-the-clock
18 work (picking up/dropping off service parts/documents) happened 2-3 times per week.

19 49. Based on information and belief, DEFENDANTS' Aggrieved Employees also
20 regularly performed off-the-clock work due to their need to respond to work-related
21 communications, pick-up and/or drop off work related documents or materials, and/or their need to
22 complete assigned tasks on a day off or while off-the-clock.

23 50. Based on information and belief, DEENDANTS had actual and/or constructive
knowledge that its time-rounding policies/practices, auto-deduction policies/practices, failure to
provide off-duty meal periods, and other mandated off-the-clock work described above resulted in
the underpayment of minimum wages and overtime wages owed to PLAINTIFF and other
Aggrieved Employees.

1 51. Based on information and belief, DEFENDANTS failed and continue to fail to pay
2 premium wage rate for hours worked beyond eight (8) hours in a day or beyond forty (4) hours in a
3 week. Based on further information and belief, DEFENDANTS failed to pay Aggrieved Employees'
4 twice their regular rate of pay for time worked beyond twelve (12) hours per workday and for time
5 worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation
6 of California's minimum and overtime laws.

7 52. DEFENDANTS' automatic deduction policies and practices for meal periods,
8 payment according to scheduled hours worked rather than actual time worked/mandated pre-shift
9 and post-shift off-the-clock work (described above) as well as other off-the-clock work described
10 herein resulted in the failure to account for all hours worked and thus the denial of minimum wages
11 as well as overtime wages for PLAINTIFF and Aggrieved Employees who worked more than (8)
12 hours in a day or more than forty (40) hours in a week.

13 53. Based on further information and belief, DEFENDANTS also failed to pay the
14 correct overtime rate to Aggrieved Employees due to DEFENDANTS' failure to incorporate all
15 forms of non-discretionary remuneration, including but not limited to, shift differential pay, bonus
16 pay, commission and/or piece rate pay and/or other non-discretionary pay into the regular pay rate(s)
17 of pay used to calculate the owed overtime rate, resulting in the miscalculation and underpayment
18 of overtime wages owed to PLAINTIFF and other Aggrieved Employees. For example, PLAINTIFF
19 earned a 2.5% commission on product sales and service sales, yet such commission was not factored
20 into PLAINTIFF's regular rate of pay for purposes of calculating his owed overtime rate.
21 Additionally, DEFENDANTS implemented other non-discretionary bonus incentive programs for
22 PLAINTIFF and Aggrieved Employees, including but not limited to performance-based,
23 production-based, and/or sales-based incentive programs. Based on information and belief,
DEFENDANTS failed to incorporate all non-discretionary remuneration including but not limited
to earned commissions and bonuses into the regular rate of pay, resulting in unpaid overtime wages.

 54. **Failure to Provide Written Commission Agreements.** Based on information and
belief, DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees who were

1 compensated on a commission basis with proper written commission agreements, in violation of
2 Labor Code section 2751.

3 **55. Violation of Labor Code Section 226.2.** Based on information and belief,
4 DEFENDANTS failed to compensate Aggrieved Employees who were paid solely on a piece rate
5 and/or commission basis separately for the rest periods and nonproductive time, and/or failed to pay
6 them for this time at the correct rates. Based on information and belief, DEFENDANTS further
7 failed to include information related to the payment of non-productive time and/or rest periods on
8 wage statements issued to those Aggrieved Employees. As such, DEFENDANTS failed to comply
9 with Labor Code section 226.2.

10 **56. Inaccurate Records.** Based on the above-described unlawful policies and practices,
11 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
12 required by Labor Code section 1174, 1198, 1199, and the applicable Wage Order, section 7.
13 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
14 required by law, including but not limited to the following records: total daily hours worked,
15 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
16 began and ended each work period, time records of meal periods, and accurate itemized wage
17 statements.

18 **57.** DEFENDANTS have failed and continue to fail to keep accurate and complete
19 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
20 break deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
21 employer control during unpaid meal periods, failure to record the true start and end times of meal
22 periods, shift start times and shift end times, and other off-the-clock work policies and practices
23 described herein.

24 **58. Failure to Produce Records.** Based on information and belief, DEFENDANTS
25 failed and continue to fail to produce or make available a current or former employee's personnel
26 records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432,
27 and/or the applicable Wage Order. For example, PLAINTIFF sent a request for payroll and

1 personnel records to DEFENDANTS. Yet, DEFENDANTS failed to produce complete records or
2 failed to produce any records at all within the time periods delineated by California labor law. Based
3 on information and belief, DEFENDANTS failed and continue to fail to timely produce complete
4 payroll and personnel records when requested by other Aggrieved Employees, resulting in violations
of Labor Code sections 226(b)-(c), 1198.5, and 432.

5 **59. Standard Conditions of Labor violations.** DEFENDANTS' unlawful policies and
6 practices described herein also resulted in violations of Labor Code Sections 1198 and 1199, which
7 together, make it unlawful to employ individuals under conditions that are prohibited by the Wage
8 Orders or any provision within Part 4, Chapter 1 of the Labor Code, including section 1174, 1197,
and 1198, or order or ruling of the commission.

9 **60.** Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
10 recordkeeping provisions, minimum wages and overtime wages, and business expenses result in
11 separate violations of sections 1198 and 1199.

12 **61. Refusal to Make Payment.** DEFENDANTS violated and continue to violate Labor
13 Code section 216 by failing to pay PLAINTIFF and Aggrieved Employees for all hours worked at
14 the proper wage rate and by failing to pay PLAINTIFF and Aggrieved Employees an additional
15 hour of pay for each meal/rest period not provided or that was otherwise unlawful. *Gould v.*
Maryland Sound Industries, Inc. (1995) 31 Cal.App.4th 1137, 1154-1155.

16 **62. Statutory Wage Violations.** As described above, DEFENDANTS willfully and
17 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
18 for all hours worked which resulted in the payment of less than the statutorily required wages owed
19 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
20 not limited to, overtime wages and minimum wages, to which they were entitled to under California
21 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
Aggrieved Employees lower wages than those they were entitled to while purporting that
PLAINTIFF and other Aggrieved Employees were properly paid.

22 **63. Unreimbursed Business Expenses.** DEFENDANTS also failed to compensate

1 PLAINTIFF and Aggrieved Employees for business-related expenses incurred in direct
2 consequence of the discharge of their duties or of their obedience to the directions of the employer.

3 64. At all relevant times, DEFENDANTS shifted the cost of doing business onto
4 PLAINTIFF and Aggrieved Employees by requiring them to pay for DEFENDANTS' business
5 expenses, including but not limited to, use of their personal mobile phone and data usage, as well as
6 costs associated with the purchase and or maintenance of uniforms/clothing and/or vehicle-related
expenses incurred on the job.

7 65. For example, PLAINTIFF was required to use his personal phone to respond to work-
8 related inquiries from, including but not limited to, coworkers, supervisors and/or customers.
9 DEFENDANTS created business cards for PLAINTIFF that listed PLAINTIFF's personal cell
10 phone number as a direct contact number for PLAINTIFF. As such, DEFENDANTS were aware
11 that PLAINTIFF used his personal cell phone for work related purposes. DEFENDANTS also
12 required PLAINTIFF to use his personal vehicle to complete work-related tasks including but not
13 limited to pick-up or drop-off of vehicle parts from another one of DEFENDANTS' locations or
14 from a vendor that had the vehicle part in stock. At other times, PLAINTIFF was required to drive
15 to another one of DEFENDANTS' locations to drop-off work-related documents/reports.
16 DEFENDANTS also failed to reimburse PLAINTIFF for the cost of maintaining work-related
uniforms including but not limited to shirts provided by DEFENDANTS with DEFENDANTS' logo
on them.

17 66. DEFENDANTS failed and continue to fail to reimburse PLAINTIFF and other
18 Aggrieved Employees for the use of a personal cell phone, mileage, and/or the use of his or her
19 personal vehicle. As such, DEFENDANTS failed and continue to fail to compensate for vehicle-
20 related expenses at the Internal Revenue Service (IRS) mandated per mile compensation for the
relevant time period.

21 67. DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees with
22 full reimbursement for all reasonable expenses associated with carrying out their duties and required
23 that PLAINTIFF and Aggrieved Employees subsidize and/or carry the burden of business expenses

1 in violation of Labor Code section 2802.

2 68. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
3 provide accurate wage statements that complied with Labor Code section 226. DEFENDANTS
4 provided PLAINTIFF and other Aggrieved Employees with wage statements that failed to indicate
5 the earned gross and net wages earned during the pay period, the correct applicable rates of pay for
6 all hours worked, and the total hours worked (by virtue of the automatic deduction for meal periods,
7 failure to relieve Aggrieved Employees of all duties and employer control during unpaid meal
8 periods, payment according to scheduled hours worked rather than actual hours worked, mandated
9 pre-shift and/or post-shift off the clock work, other off-the-clock work policies and practices, and
10 failure to pay meal and rest break premiums, all described in greater detail *supra*), which results in
11 a violation of Labor Code section 226. As described herein, DEFENDANTS also failed to
12 incorporate all forms of non-discretionary compensation earned during the pay period into the
overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
of overtime worked by PLAINTIFF and other Aggrieved Employees.

13 69. Separately, and independent of the above allegations, based on information and
14 belief, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees that
15 further violate Labor Code section 226(a), by among other things, failing to list the correct name
and address of the legal entity that is the employer.

16 70. **Sick Leave.** Throughout the relevant time period, DEFENDANTS either failed to
17 provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate
18 of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the accrued sick
19 leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction
20 policies and practices for meal periods and shift start and end times, or other required off-the-clock
21 work described herein) and by failing to incorporate multiple rates of pay and/or all non-
22 discretionary remuneration, including but not limited to, non-discretionary bonuses, shift
differential pay, commission and/or piece-rate compensation and/or other non-discretionary
compensation into the sick leave pay rate calculation.

1 71. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
2 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
3 entitlement to sick leave in a Labor Code section 2810.5 notice. Additionally, DEFENDANTS failed
4 to provide notice of the correct sick leave amount balance available to PLAINTIFF and other
5 Aggrieved Employees on their wage statements or other written statement. Moreover, based on
6 information and belief, DEFENDANTS failed to maintain accurate records of used sick leave and
the balance of paid sick leave.

7 72. Throughout the relevant time period, DEFENDANTS failed to provide notice of the
8 balance of sick leave pay left for PLAINTIFF and all Aggrieved Employees, thus affecting their
9 intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF and all Aggrieved
10 Employees would have used their paid sick leave at least prior to their respective separations, for as
11 on several occasions thereafter, he or she would have been entitled to use the banked sick leave and
earn appropriate compensation.

12 73. DEFENDANTS further failed and continue to fail to comply with Labor Code
13 section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with a Labor Code
14 section 226 wage statement, or separate writing containing the amount of paid sick leave available,
15 or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages. For
16 example, PLAINTIFF's wage statements do not indicate the balance of unused sick leave and/or
paid time off leave provided in lieu thereof.

17 74. As such, DEFENDANTS have violated California's paid sick leave laws and
18 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
19 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
unlawful practices and policies violate Labor Code sections 245-248.5.

20 75. **Untimely Payment of Final Wages.** Based on information and belief,
21 DEFENDANTS failed to timely pay Aggrieved Employees all wages that were due and owing upon
22 termination or resignation. Labor Code sections 201 and 202, together require employers to pay all
wages immediately upon discharge and within 72 hours of an employees' resignation. Based on

1 information and belief, DEFENDANTS untimely provide final wages to Aggrieved Employees
2 without regard to the timing requirements of Labor Code section 201-202.

3 76. Upon separation of employment, Aggrieved Employees' final paychecks were not
4 timely provided and/or were not timely provided with all owed vacation pay. Moreover, Aggrieved
5 Employees' final paychecks, once provided, did not include all wages owed as they were devoid of,
6 including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation
7 pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

8 77. These violations subject DEFENDANTS to civil penalties under Labor Code section
9 203, 210, and/or 256.

Unlawful Agreements-Unlawful Criminal History Inquiries:

Unlawful Financial and Criminal Background Checks

10 78. Based on information and belief, DEFENDANTS required Aggrieved Employees to
11 agree in writing to unlawful conditions of employment including but not limited to unlawful
12 criminal and/or financial checks, unlawful confidentiality agreements, and/or unlawful non-compete
13 agreements as a condition of obtaining and/or continuing employment in violation of Labor Code
14 section 432.5.

15 79. Based on information and belief, DEFENDANTS ordered unlawful financial credit
16 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
17 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
18 employment, in violation of California and Federal law, which results in a further violation of Labor
19 Code section 432.5.

20 80. Based on information and belief, DEFENDANTS required PLAINTIFF and
21 Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background
22 checks as a condition of obtaining and/or holding employment in violation of the Investigative
23 Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair
Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*)

81. Based on information and belief, DEFENDANTS required PLAINTIFF and

1 Aggrieved Employees to agree in writing to a background check which failed to abide by the
2 requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*,
3 including but not limited to by failing to provide a clear and conspicuous disclosure, failing to
4 provide disclosures free of extraneous information, failing to provide a lawful purpose for the
5 background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
6 failing to provide a way by which the individual can request a copy of the report, failing to disclose
7 the name, address, and telephone number of the third party preparing the report, and failing to
8 properly obtain authorization or consent to such a background check, and thus was an unlawful
background check.

9 82. By requiring PLAINTIFF and other Aggrieved Employees to agree in writing to
10 unlawful criminal and/or financial checks not in conformance with the applicable laws,
DEFENDANTS violated Labor Code section 432.5.

11 83. Based on further information and belief, DEFENDANTS also required Aggrieved
12 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
13 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
14 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
requiring applicants and employees to agree to an unlawful provision as a condition of employment.

15 84. Based on further information and belief, DEFENDANTS knew that requiring
16 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
condition of obtaining and/or holding employment was unlawful.

17 85. Based on information and belief, DEFENDANTS also required PLAINTIFF and
18 Aggrieved Employees to agree in writing to unlawful non-compete agreements/provisions and/or
19 unlawful confidentiality agreements/provisions as a condition of obtaining and/or holding
20 employment.

21 86. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
condition of employment, DEFENDANTS violated Labor Code section 432.5.

22 Unlawful Inquires into Criminal History

87. Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in convictions on its employment application, in violation of California law.

88. Upon information and belief, DEFENDANTS, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law, and in violation of Labor code section 432.5.

89. As such, Aggrieved Employees continue to be subject to various unlawful provisions as a condition of employment.

90. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty for PLAINTIFF and each Aggrieved Employee.

FIRST CAUSE OF ACTION

VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS

2698, *ET SEQ.*

(On behalf of Plaintiff, Aggrieved Employees, and the State of California against all Defendants)

91. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

Failure to Keep Accurate Records

92. California Labor Code § 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by all non-exempt employees. All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

93. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate and complete records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other

1 Aggrieved Employees began and ended each work period, time records of meal periods, shift start
2 times and end times, and accurate itemized wage statements.

3 94. DEFENDANTS' failure to keep "accurate and complete" payroll records for
4 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
5 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties
6 under Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section
7 and Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for
each pay period during which the referenced statutes and Wage Order provisions were violated.¹

8 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

9 95. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
10 Orders, section 7 require that employers keep the following information on file for each employee
11 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
12 and the corresponding number of hours worked by the employee at each hourly rate, when the
employee begins and ends each work period (including meal periods) and split intervals; total hours
worked by the employee; all deductions; gross wages earned; and net wages earned.

13 96. Section (b) of Labor Code section 226 further requires employers to "afford current
14 and former employees the right to inspect or receive a copy of records pertaining to their
15 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
16 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
17 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
18 the request as soon as practicable, but no later than 21 calendar days from the date of the request.
19 A violation of this subdivision is an infraction." An employer's failure to comply within this
timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750)

20 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
21 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
employee was underpaid"); All applicable wage orders), § 20 (establishing that "[i]n addition to any other civil
22 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 penalty from the employer. Lab. Code section 226(f).

2 97. Personnel Records. In addition to their right to time and pay records, employees, and
3 their representatives, have the right to inspect and receive a copy of their personnel files pursuant
4 to Labor Code section 1198.5. This statute applies to both former and current employees. Labor
5 Code section 432 further specifies that employers must furnish copies of all employment records
6 bearing the employee's signature. Labor Code section 1198.5 also requires that the file be made
7 available for inspection or receipt within a "reasonable" amount of time, but "not later than 30
8 calendar days from the date the employer receives a written request." An employer's failure to
9 comply within this timeframe likewise entitles a current or former employee to recover a seven
10 hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

11 98. Based on information and belief, DEFENDANTS fail to produce or make available
12 Aggrieved Employees' personnel records and/or payroll records when requested pursuant to Labor
13 Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
14 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

15 Meal Period Violations

16 99. California law requires employers to provide employees a duty-free, uninterrupted
17 thirty (30) minute meal period when an employee works more than five (5) hours in a workday,
18 and it must be provided within the first five (5) hours the employee works. Lab. Code section 512
19 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v.*
20 *Superior Court* (2012) 53 Cal.4th 1004.

21 100. Employers must also provide employees with a second duty-free, uninterrupted thirty
22 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
23 be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
under the following circumstances: (1) if an employee's total work period in a day is over five (5)
hours but no more than six (6) hours, the required meal period may be waived by mutual consent
of the employer and employee; and (2) if an employee's total work period in a day is over ten (10)
hours but no more than twelve (12) hours, the required second meal period may be waived by

1 mutual consent of the employer and employee, but only if the first meal period was not waived.
2 *Ibid.* Upon information and belief, PLAINTIFF did not sign a meal period waiver throughout his
3 employment by DEFENDANTS.

4 101. Employers covered by any and all applicable IWC Wage Orders have an obligation
5 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
6 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
7 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
8 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
9 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
rebuttable presumption arises that the employee was not relieved of duty and no meal period was
provided”).

10 102. Employers must pay employees an additional hour of wages at the employees’
11 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
12 meal period, first meal period provided after five (5) hours, second meal period provided after 10
13 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to
14 provide an employee a meal period in accordance with the applicable provision of this Order, the
15 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation
for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

16 103. DEFENDANTS have a consistent policy and/or practice of not providing lawful
17 meal periods to PLAINTIFF and all Aggrieved Employees and/or providing compensation in lieu
18 thereof. As explained herein, PLAINTIFF and other Aggrieved Employees were consistently
19 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
20 being forced to take late meal periods, interrupted meal periods and/or work through part or all
21 their purported meal periods. Moreover, based on information and belief, Aggrieved Employees
22 were instructed by their supervisors to clock out for meal periods but to continue working. As such,
23 DEFENDANTS failed to keep accurate records of the start and end times of PLAINTIFF’s and
Aggrieved Employees’ meal period start and end times.

1 104. Based on information and belief, DEFENDANTS rounded the start and end times of
2 employees' meal periods and/or automatically deducted thirty minutes per shift despite having
3 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did not
4 receive compliant meal periods.

5 105. DEFENDANTS also failed to pay premiums for missed/otherwise unlaw meal
6 periods in violation of California law or failed to pay the proper meal period premium for failure
7 to incorporate all non-discretionary remuneration including but not limited to, bonuses,
8 commission/piece-rate pay, shift differential pay and/or other non-discretionary compensation into
9 the regular rate or compensation for purposes of calculating the owed meal period premium.

10 106. These unlawful meal period policies and practices result in violations of Labor Code
11 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
12 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
13 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
14 1174 as discussed above, 1199, 226.6 and other violations discussed below.

15 **Rest Period Violations**

16 107. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
17 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
18 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
19 "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
20 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
21 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up
22 to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.*
23 at 1029). The rest period requirement obligates employers to permit and authorize employees to
take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
Cal.5th 257. If the employer fails to provide any required rest period, the employer must pay the
employee one hour of pay at the employee's regular rate of compensation for each workday the

1 employer did not provide at least one legally required rest period, pursuant to Labor Code section
2 226.7, and applicable IWC Wage Order, §12(B).

3 108. As explained above, DEFENDANTS did not properly authorize and provide
4 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
5 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
6 middle of the work period, as required by law. Any purported rest periods were consistently
interrupted, cut short, on duty, restricted to premises and/or late.

7 109. Moreover, based on information and belief, DEFENDANTS failed to pay
8 PLAINTIFF and other Aggrieved Employees an additional hour of pay at the regular rate of
9 compensation for each missed or improper rest period. DEFENDANTS also failed to pay the proper
10 rest period premium for failure to incorporate all non-discretionary remuneration including but not
11 limited to, bonuses, shift differential pay, commission/piece-rate pay and/or other non-
12 discretionary compensation into the regular rate of compensation for purposes of calculating the
owed rest period premium.

13 110. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
14 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

15 **Minimum and Overtime Wage Violations**

16 111. California law provides that employees in California must be paid for all hours
17 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
18 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
19 The minimum wage standard applies to each hour employees worked for which they were not paid.
20 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
even if averaging an employee's total pay over all hours worked, paid or not, results in an average
hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

21 112. California law also provides that employees in California must be paid overtime,
22 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per
23

1 week or 8 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3. Employers
2 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond
3 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh
4 consecutive day of work in a work week. *Ibid.*

5 113. As alleged herein, PLAINTIFF and Aggrieved Employees regularly worked
6 minimum and overtime hours for which they were not compensated as required by California law.
7 DEFENDANTS failed to compensate PLAINTIFF and other Aggrieved Employees for all hours
8 worked by virtue of DEFENDANTS' automatic deductions and time rounding policies for meal
9 periods, payment according to scheduled hours worked instead of actual time worked, mandated
10 pre-shift/post shift/ and/or other off-the-clock work policies and/or practices described above, and
11 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
12 unlawful practices for missed or otherwise unlawful meal periods.

13 114. DEFENDANTS' unlawful policies and practices resulted in unpaid minimum wages,
14 and unpaid overtime wages owed to PLAINTIFF and those Aggrieved Employees that worked
15 more than eight (8) hours in a day or more than forty hours (40) in a week, as well as unpaid double
16 time wages.

17 115. Moreover, based in information and belief, DEFENDANTS failed to pay proper
18 overtime rates to PLAINTIFF and Aggrieved Employees due to DEFENDANTS' failure to
19 incorporate all forms of non-discretionary compensation, including but not limited to, shift
20 differential pay, bonus pay, commission and/or piece rate pay and/or other non-discretionary pay
21 into the regular pay rate(s) of pay used to calculate the owed overtime rate(s), resulting in the
22 miscalculation and underpayment of overtime wages owed to PLAINTIFF and other Aggrieved
23 Employees.

24 116. Based on information and belief, DEFENDANTS had actual or constructive
25 knowledge that its unlawful policies and practices resulted in the underpayment of minimum wages
26 and overtime wages owed to PLAINTIFF and other Aggrieved Employees, in violation of
27 California's minimum and overtime wage laws.

1 117. These violations subject DEFENDANTS to civil penalties under Labor Code
2 sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC Wage Orders, section 20.

3 **Failure to Provide Written Commission Agreements**

4 118. Labor Code section 2751 requires that all commission contracts "be in writing and .
5 . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code
6 section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract
7 to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract
8 from each employee." *Id.* section 2751(b).

9 119. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
10 other Aggrieved Employees who were compensated on a commission basis with proper written
11 commission agreements, in violation of Labor Code section 2751.

12 **Violation of Labor Code Section 226.2:**

13 120. Labor Code section 226.2 requires an employer to pay employees compensated on a
14 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any
15 piece-rate pay. This statute further requires an employer to include on the wage statements for
16 these employees the total hours of compensable rest and recovery periods, the total hours for other
17 non-productive time, the rates of compensation for these hours, and the gross wages paid for these
18 hours. In addition, the statute requires that employees shall be compensated for rest and recovery
19 periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate
20 determined by dividing the total compensation for the workweek, exclusive of compensation for
21 rest and recovery periods and any premium compensation for overtime, by the total hours worked
22 during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum
23 wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a
commission basis.

24 121. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
25 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
26 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based

1 on information and belief, DEFENDANTS further failed to include this information on wage
2 statements issued to Aggrieved Employees. As such, DEFENDANTS failed to comply with Labor
3 Code section 226.2.

4 **Statutory Wage Violations**

5 122. California Labor Code section 223 makes it unlawful for an employer to secretly pay
6 wages lower than required by statute while purporting to pay legal wages. As described above,
7 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
8 earned minimum and overtime compensation for all hours worked which resulted in the payment
9 of less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
10 statutory wages, including, but not limited to, overtime wages and minimum wages, to which they
11 were entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other
12 Aggrieved Employees lower wages than those they were entitled to while purporting that
13 PLAINTIFF and other Aggrieved Employees were properly paid. As a result, PLAINTIFF and
14 other Aggrieved Employees are entitled to recover penalties, attorney's fees, costs, and interest
15 thereon, pursuant to Labor Code § 2699(f)-(g).

16 **Refusal to Make Payment**

17 123. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
18 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
19 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
20 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
21 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
22 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
23 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

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1 communication devices for work related purposes, vehicle use and mileage, and/or costs associated
2 with the maintenance and/or purchase of uniforms.

3 128. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved
4 Employees are entitled to be reimbursed for all reasonable expenses associated with carrying out
5 DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

6 129. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
7 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
8 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
9 Code § 2802 and the applicable Wage Order.

10 **Wage Statement Violations**

11 130. California law requires every employer semi-monthly or at the time of each payment
12 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
13 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
14 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
15 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
16 is paid; (7) the name of the employee and only the last four digits of his or her social security
17 number or an employee identification number other than a social security number; (8) the name
18 and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect
19 during the pay period and the corresponding number of hours worked at each hourly rate. Lab.
20 Code § 226.

21 131. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved Employees with
22 meal and rest periods that complied with Labor Code section 226.7, the wage statements
23 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
during the pay period and the corresponding number of hours worked at each hourly rate by the

1 employee, in violation of Labor Code section 226(a)(9).

2 132. Moreover, due to violations detailed above, including but not limited to,
3 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to pay all
4 sick leave wages at the proper rates, and failure to provide meal and rest break premiums,
5 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
6 PLAINTIFF and Aggrieved Employees with accurate, itemized wage statements that listed the
7 earned gross and net wages earned and the correct applicable rates of pay for all hours worked.
8 Moreover, wage statements issued by DEFENDANTS failed to list the "total hours worked" by
9 PLAINTIFF and Aggrieved Employees (by virtue of the automatic deduction for meal periods,
10 failure to relieve Aggrieved Employees of all duties and employer control during unpaid meal
11 periods, payment according to scheduled hours worked rather than actual hours worked, and
12 mandated off-the-clock work policies and practices, all described in greater detail *supra*), which
13 results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage
14 statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon*
15 *Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

16 133. DEFENDANTS' failure to accurately list all hours worked on all wage statements
17 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
18 Employees over whether they received all wages owed to them.

19 134. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
20 they could not easily determine whether they received all wages owed to them and whether they
21 were paid for all hours worked.

22 135. Separately, and independent of the above allegation, based on information and belief,
23 DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees that further
violate Labor Code section 226(a), by failing to list the correct name and/or address of the legal
entity that is the employer.

136. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period

1 during which the statute provisions were violated.³

2 **Standard Conditions of Labor Violations**

3 137. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
4 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
5 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
6 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
7 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
8 and minimum/overtime wages result in separate violations of sections 1198 and 1199, which
subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

9 **Sick Leave Violations**

10 138. DEFENDANTS violated California's paid sick leave laws including, Labor Code
11 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
12 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
13 DEFENDANTS' failure to account for actual hours worked (by virtue of DEFENDANTS' meal
14 period auto-deduction, and time rounding practices, and off-the-clock work described herein),
and/or failure to incorporate all forms of non-discretionary remuneration into the sick pay
calculation.

15 139. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
16 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
17 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of
18 used sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF
and Aggrieved Employees' intelligent exercise of their paid sick leave.

19 140. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
20 their paid sick leave at least prior to their respective separations, for as on several occasions
21 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
22 compensation.

23 ³ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 141. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
2 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
3 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
4 were entitled to the maximum number of hours accruable.

5 142. Upon information and belief, DEFENDANTS failed and continue to fail to comply
6 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
7 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
8 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
9 wages.

10 143. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

11 144. On information and belief, PLAINTIFF alleges that all of these practices were
12 experienced and continue to be experienced by other Aggrieved Employees.

13 145. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, including but
14 not limited to injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

15 **Untimely Payment of Final Wages**

16 146. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
17 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
18 and payable immediately." California Labor Code section 202(a) provides, in relevant part, that
19 "[i]f an employee not having a written contract for a definite period quits his or her employment,
20 his or her wages shall become due and payable not later than 72 hours thereafter, unless the
21 employee has given 72 hours previous notice of his or her intention to quit, in which case the
22 employee is entitled to his or her wages at the time of quitting."

23 147. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see

1 also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

2 148. Upon information and belief, DEFENDANTS fail to timely pay final wages to
3 Aggrieved Employees upon separation of employment in violation of Labor Code sections 201-
4 202 and/or did not include all owed vacation pay. Moreover, final paychecks, once provided to
5 Aggrieved Employees did not include all wages owed as they are devoid of, including but not
6 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
7 sick leave and/or paid time off wages at the properly accrued rates.

8 149. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
9 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
10 256.

11 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

12 150. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
13 require any employee or applicant for employment to agree, in writing, to any term or condition
14 which is known by such employer...to be prohibited by law.” Based on information and belief,
15 DEEFENDANTS required and continue to require Aggrieved Employees to agree in writing to
16 submit to unlawful criminal and/or financial checks, agree to unlawful confidentiality agreements,
17 and/or unlawful non-compete agreements as a condition of obtaining and/or continuing
18 employment.

19 151. Based on information and belief, DEFENDANTS required Aggrieved Employees to
20 agree in writing to unlawful financial credit checks and/or background checks as a condition of
21 employment. The California Labor Code places certain procedural and substantive limits on an
22 employers’ ability to conduct employee background checks and on how employers can use the
23 information they obtain through those background checks. Labor Code section 1024.5 states that
employers, except for financial institutions, may order a credit check only if the individual works
(or is applying to work) in certain positions (e.g., managerial positions, financially-related
positions, and certain government positions). Additionally, the Investigative Consumer Reporting
Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act

1 (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an
2 employee background check, including but not limited to identifying an appropriate reason for the
3 background check, a separate consent form with required disclosures and certain formatting
4 requirements, additional forms such as a summary of rights, a way by which to request a copy of
the report, as well as proper notice of adverse actions taken, among other statutory requirements.

5 152. Based on information and belief, DEFENDANTS ordered unlawful financial credit
6 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
7 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
8 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

9 153. Based on information and belief, DEFENDANTS required Aggrieved Employees to
10 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

11 154. Based on further information and belief, DEFENDANTS also required Aggrieved
12 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
13 background checks throughout the duration of employment, in violation of the ICRAA and/or
14 FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5,
15 by requiring applicants and employees to agree to an unlawful provision as a condition of
employment.

16 155. Based on further information and belief, DEFENDANTS knew that requiring
17 PLAINTIFF and Aggrieved Employees to agree to unlawful criminal and/or financial background
checks as a condition of obtaining and/or holding employment was unlawful.

18 156. By requiring that PLAINTIFF and other Aggrieved Employees sign off on the illegal
19 background and/or financial checks, DEFENDANTS violated Labor Code section 432.5.

20 157. Based on information and belief, DEFENDANTS also required PLAINTIFF and
21 other Aggrieved Employees to agree in writing to unlawful non-compete agreements/provisions
22 and/or unlawful confidentiality agreements/provisions as a condition of obtaining and/or holding
employment, in violation of Labor Code section 432.5.

1 Unlawful Inquires into Criminal History

2 158. Labor Code section 432.7 prohibits an employer from asking applicants about past
3 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
4 information and belief, DEFENDANTS asked PLAINTIFF and other Aggrieved Employees about
5 arrests not resulting in convictions on its employment application, in violation of California law.

6 159. Upon information and belief, DEFENDANTS, in violation of California law,
7 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
8 (“FEHA”), asked PLAINTIFF and other Aggrieved Employees about convictions prior to
9 extending an offer of employment and/or otherwise impermissibly inquired into criminal history
10 on its employment application in violation of California law.

11 160. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
12 Code section 432.7. By asking about convictions at the application phase or prior to extending an
13 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
14 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
15 disclose arrests and/or convictions as a condition of employment.

16 161. As such, PLAINTIFF and other Aggrieved Employees continue to be subject to
17 various unlawful provisions as a condition of employment.

18 162. Under the provisions of PAGA and the above mentioned Labor Code sections,
19 including but not limited to Labor Code sections 201, 202, 203, 210, 225.5, 226, 226.2, 226.3,
20 226.7, 245, 247.5, 248, 248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1197,
21 1197.1, 1198, 1199, 2699, 2699.3, 2751, 2802, 2810.5 and all applicable Wage Orders as well as
22 all interpretations of these laws by California Courts and administrative bodies, as well as any other
23 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
relevant California Labor Code provisions listed herein only if permitted by the
PAGA statute, pursuant to Labor Code section 2699(a); and
- b. Default PAGA penalties for any violation of the enumerated list of Labor Code

1 violations without a civil penalty recoverable under the PAGA, all in the default
2 amounts provided by Labor Code section 2699(f).

- 3 c. The proper measure of penalties under PAGA is the number of violations,
4 whether those violations were committed as against PLAINTIFF or any
5 Aggrieved Employee, whether a party to this action or not.

6 163. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
7 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of himself,
10 the State of California, and the Aggrieved Employees:

- 11 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
12 25% payable to Aggrieved Employees);
- 13 2. For reasonable attorney's fees and costs of suit; and
- 14 3. For such other and further relief that the Court deems just and proper.

15 Dated: June 9, 2022

CROSNER LEGAL, P.C.

16 

17 Michael R. Crosner, Esq.
18 Zachary M. Crosner, Esq.
19 Blake R. Jones, Esq.
20 Attorneys for Plaintiff,
21 XAVIER HUNTER

EXHIBIT

1



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March 22, 2022

VIA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Melvin Cooper
Agent for Service of Process for:
72 Hour, LLC
490 Auto Center Drive
Watsonville, CA 95076

Paul Wondries
Agent for Service of Process for:
Bob Wondries Motors
400 S. Atlantic Blvd.,
Alhambra, CA 91801

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; 72 Hour, LLC; and Bob Wondries Motors
Date: March 22, 2022
Subject: *Xavier J. Hunter v. 72 Hour, LLC et. al.*

Introduction

This office represents COMPLAINANT, Xavier J. Hunter (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: 72 Hour, LLC and Bob Wondries Motors (hereinafter, these entities and its managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by EMPLOYER within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C. at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.2, 226.7, 245-

248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2751, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT’s and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ rights by violating various sections of the California Labor Code. The California Legislature defines “other person acting on behalf of an employer” as “a natural person who is an owner, director, officer, or managing agent of the employer.” The “managing

agent” definition mirrors that found in California’s punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, “managing agents” are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER and its managing agents own, operate, or otherwise manage vehicle dealership and/or vehicle service locations, including but not limited to at least four vehicle dealerships and/or vehicle service locations in Watsonville, California, and at least two vehicle dealerships and/or vehicle service locations in Los Angeles County, California. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee from in or around February 2020 through in or around October 2021. COMPLAINANT worked for EMPLOYER during the relevant time period as a non-exempt, Service Advisor and/or other similar title at one of EMPLOYER’s facilities located at 130 Lee Rd., Watsonville, California 95706. COMPLAINANT typically worked shifts longer than eight (8) hours per day, at least five (5) days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked. COMPLAINANT was also compensated with non-discretionary remuneration, including but not limited to non-discretionary bonuses and commissions.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; and (14) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue

of EMPLOYER's time rounding and/or auto deduction policies and practices and other mandated off-the-clock work policies and practices, described herein.

EMPLOYER further failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER's failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control for unpaid meal periods, resulting in unpaid hours worked.

EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.¹

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to produce complete records or failed to produce any records at all within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided”).

Employers must pay employees an additional hour of wages at the employees’ regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out for meal periods but to continue working due to their need to complete service orders, answer customer inquiries, assist new customers, and/or attend to other work tasks. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted and/or cut short due to commentary from supervisors, understaffing, and/or the nature and constraints of their job duties. For example, COMPLAINANT regularly took his meal period after the fifth hour of work. EMPLOYER’s time records for COMPLAINANT demonstrate that on October 19, 2021, COMPLAINANT clocked in for work at 7:13 am and clocked-out for a meal period at 12:15 pm (more than five hours after his clock-in time). Similarly, on October 21, 2021, COMPLAINANT clocked into work at 7:06 am and clocked out for a meal period at 12:09 pm (more than five hours after his clock-in time). On information and belief, EMPLOYER’s time records for COMPLAINANT demonstrate that meal periods were consistently late. Moreover, based information and belief, EMPLOYER’s time records for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES often indicate an earlier meal period start time than the actual meal period start time due to commentary from supervisors and/or managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to

clock out for a meal period but continue working during the purported meal period, thereby forcing NON-EXEMPT AGGRIEVED EMPLOYEES to take a meal period at a later time.

Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding the start and end times of NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or of automatically deducting at least thirty minutes per shift for missed/unlawful meal periods, despite having actual and/or constructive knowledge that NON-EXEMPT AGGRIEVED EMPLOYEES did not receive compliant meal periods.

EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal breaks. Based on information and belief, EMPLOYER had a uniform policy and practice of requiring COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to always be responsive to work-related inquiries during their shifts, including but not limited to during unpaid meal breaks. For example, COMPLAINANT's meal periods were consistently interrupted with phone calls/messages to his personal cell phone from, e.g., his supervisor, coworkers, service technicians and/or customers, which COMPLAINANT was required to respond to while COMPLAINANT was clocked out for purportedly off-duty meal periods. COMPLAINANT received work-related inquiries during his meal period on a daily basis.

At other times, COMPLAINANT continued working or completing work tasks during purported meal breaks. For example, COMPLAINANT often worked through his meal period, including but not limited to ordering parts needed to complete a service on customer vehicles/trucks.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES often completed off-the-clock work prior to their scheduled shift time which EMPLOYER failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER also failed to keep accurate records of the start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Further, based on further information and belief, EMPLOYER illegally rounded the start and end times of employee meal periods resulting in NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on further information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the NON-

EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and practices resulted in the denial of lawful meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, when COMPLAINANT worked more than ten hours in a shift, COMPLAINANT was not provided with a second meal period.

EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a proper meal period was not provided. For example, in the pay period 10/16/2021-10/31/2021, COMPLAINANT was subject to at least two meal period violations as demonstrated by EMPLOYER's records, yet EMPLOYER did not pay COMPLAINANT a single meal period premium during this pay period. As such, EMPLOYER either failed to pay a meal period premium at all for each workday a proper meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, commission/piece-rate pay, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violation of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "i>In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. See applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods.

Rest periods were consistently interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, including but not limited to their need to complete service orders, search for service parts, respond to customer inquiries, assist incoming customers, and/or complete other work tasks and/or due to commentary from supervisors pressuring them to skip rest breaks completely or otherwise take non-compliant rest breaks. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES did not receive legally compliant first, second, or third rest periods.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest breaks. As such, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted. For example, COMPLAINANT does not recall receiving a single off-duty/uninterrupted ten-minute rest period during his employment by EMPLOYER due to his need to respond to inquiries from service technicians, coworkers, assist customers, and/or complete

other necessary work tasks. Moreover, COMPLAINANT constantly received work-related messages and/or phone calls to his personal cell phone throughout the day, including but not limited to during purported rest periods.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed/unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a proper rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, commission/piece-rate pay and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Minimum Wage Violations: “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 attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

EMPLOYER failed to compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER's automatic deduction and time rounding policies, payment according to scheduled hours worked instead of actual time worked, mandated pre-shift/post-shift/ and/or other off-the clock work policies and/or practices and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

As explained above, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take off duty, thirty-minute, uninterrupted meal periods, often being forced to work through part or all their meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary from supervisors pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to take non-compliant meal periods or skip meal periods completely.

Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that NON-EXEMPT AGGRIEVED EMPLOYEES were working through part or all of these purported meal periods, depriving NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Moreover, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform other off-the-clock work for which they were not compensated. For example, on days COMPLAINANT opened his work location, COMPLAINANT was required to unlock doors and disable the alarm prior to clocking into work. This resulted in at least 5 minutes of unpaid pre-shift work time. At the end of a shift, COMPLAINANT and/or the NON-EXEMPT AGGRIEVED EMPLOYEE in charge of closing the location was required to first clock out, then enable the alarm and lock all doors. This resulted in additional off-the-clock post-shift work time that was not compensated. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES also performed off-the-clock work when required to assist a customer prior to clocking in to work (either at the beginning of a shift or from a meal period), or after clocking out of work (either at the end of a shift or for a meal period).

COMPLAINANT was also required to complete off-the-clock work on weekends and/or days off due to work related phone calls and/or messages he received and was required to respond to including but not limited to communications from co-workers, customer inquiries and/or customers asking to retrieve their vehicle. Communications with customers and/or coworkers lasted at least 15 minutes, but often lasted at least 30 minutes. COMPLAINANT recalls calls from EMPLOYER's sales department on his day(s) off that lasted close to one hour, resulting in significant off-the-clock and uncompensated work. Additionally, approximately once a month, COMPLAINANT was required to drive to his assigned location and disable the location's alarm due to security alarm issue(s) on a day when COMPLAINANT's work location was closed.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were also required to pick up service parts while off-the-clock (either on a day off or before or after a scheduled shift). At times, COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES were

required to drop off work-related documents at one of EMPLOYER's other locations. COMPLAINANT estimates that this type of off-the-clock work (picking up/dropping off service parts/documents) happened 2-3 times per week.

Based on information and belief, EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES also regularly performed off-the-clock work due to their need to respond to work-related communications, pick-up and/or drop off work related documents or materials, and/or their need to complete assigned tasks on a day off or while off-the-clock.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices, failure to provide off-duty 30-minute meal periods, and mandated off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or forty hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide off-duty meal periods and other mandated off-the-clock work described above resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by COMPLAINANT and NON-

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods, payment according to scheduled hours worked rather than actual time worked/mandated pre-shift and post-shift off-the clock work (described above) as well as other off-the-clock work completed during meal periods (described above), and other off-the-clock work described herein resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for hours worked beyond eight (8) hours in a day or beyond forty hours in a week.

Based on information and belief, EMPLOYER failed to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, commission and/or piece rate pay and/or other non-discretionary pay into the regular pay rate(s) of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. For example, COMPLAINANT earned a 2.5% commission on product sales and service sales, yet such commission was not factored into his regular rate of pay for purposes of calculating his owed overtime rate. Additionally, EMPLOYER implemented other non-discretionary bonus incentive programs for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to performance-based, production-based, and/or sales-based incentive programs. Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration including but not limited to earned commissions and bonuses into the regular rate of pay.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Failure to Provide Written Commission Agreements: Labor Code section 2751 requires that all commission contracts "be in writing and . . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

Based on information and belief, EMPLOYER failed to provide PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES who were compensated on a commission basis with proper written commission agreements, in violation of Labor Code section 2751.

Violation of Labor Code Section 226.2: Labor Code section 226.2 requires an employer to pay employees compensated on a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any piece-rate pay. This statute further requires an employer to include on the wage statements for these employees the total hours of compensable rest and recovery period, the total hours for other non-productive time, the rates of compensation for these hours, and the gross wages paid for these hours. In addition, the statute requires that employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

Based on information and belief, EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES who were paid solely on a piece rate and/or commission basis separately for the rest periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based on information and belief, EMPLOYER further failed to include this information on NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements. As such, EMPLOYER failed to comply with Labor Code section 226.2.

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and shift start and end times/other required off-the-clock work described herein) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

EMPLOYER failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave.

But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages. For example, COMPLAINANT's wage statements do not indicate the balance of unused sick leave and/or paid time off leave provided in lieu thereof.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁶

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (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. Cal. Lab. Code. section 226(a).

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation

⁶ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by the COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of the automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, mandated pre-shift and/or post-shift off-the-clock work and other off-the-clock work policies and practices, all described in greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES and AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE

and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁷

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and business expenses, result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section

⁷ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee’s daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ final paychecks were not timely provided and/or were not timely provided with all owed vacation pay. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES’ final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁸

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. See Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. See applicable IWC Wage Order, § 9 (b).

⁸ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." *See Cal. Lab. Code § 2804.*

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' mobile phone and data usage, as well as costs associated with the purchase and or maintenance of uniforms/clothing/ and/or vehicle-related expenses incurred on the job.

For example, COMPLAINANT was required to use his personal phone to respond to work-related inquiries from, including but not limited to, coworkers, supervisors and/or customers. EMPLOYER created business cards for COMPLAINANT that listed COMPLAINANT's personal cell phone number as direct contact number. As such, EMPLOYER was aware that COMPLAINANT used his personal cell phone for work related purposes. EMPLOYER also required COMPLAINANT to use his personal vehicle to complete work-related tasks including but not limited to pick-up or drop-off of vehicle parts from another one of EMPLOYER's locations or from a vendor that had the vehicle part in stock. At other times, COMPLAINANT was required to drive to another one of EMPLOYER's locations to drop-off work-related documents/reports. EMPLOYER also failed to reimburse COMPLAINANT for the cost of maintaining work-related uniforms including but not limited to EMPLOYER-provided shirts with EMPLOYER's logo.

EMPLOYER failed and continues to fail to reimburse COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for the use of a personal cell phone, mileage, and/or the use of his or her personal vehicle. As such, EMPLOYER failed and continues to fail to compensate for vehicle-related expenses at the Internal Revenue Service (IRS) mandated per mile compensation for the relevant time period.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, cell phone/data plan charges incurred as a result of being required to use their personal cell phones/other mobile communication devices for work related purposes, vehicle use and mileage, and/or costs associated with the maintenance and/or purchase of uniforms.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to purchase and/or maintain their own uniforms.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful criminal and/or financial checks, unlawful confidentiality agreements, and/or unlawful non-compete agreements as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful financial credit checks and/or background checks as a condition of employment. The California Labor Code places certain procedural and substantive limits on employers' ability to conduct

employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER required COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on further information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in

a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

Based on information and belief, EMPLOYER also required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful non-compete agreements/provisions and/or unlawful confidentiality agreements/provisions as a condition of obtaining and/or holding employment.

By requiring COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California’s Fair Chance Act, and thereby violated Labor Code 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties COMPLAINANT and NON-EXEMPT AGGRIEVED

EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirement created by Labor Code §§ 2699, 2699.3(a), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The signature is written in a cursive, flowing style.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC