

1 **BOKHOUR LAW GROUP, P.C.**
2 Mehrdad Bokhour, Esq., CA Bar No. 285256
3 *mehrdad@bokhourlaw.com*
4 Anwar D. Burton, Esq., CA Bar No. 253504
5 *anwar@bokhourlaw.com*
6 1901 Avenue of the Stars, Suite 450
7 Los Angeles, California 90067
8 Tel: (310) 975-1493; Fax: (310) 675-0861

6 **FALAKASSA LAW, P.C.**
7 Joshua S. Falakassa, CA Bar No. 295045
8 *josh@falakassalaw.com*
9 1901 Avenue of the Stars, Suite 450
10 Los Angeles, California 90067
11 Tel: (818) 456-6168; Fax: (888) 505-0868

10 *Attorneys for Plaintiff and Aggrieved Employees*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12
13 **FOR THE COUNTY OF ALAMEDA**

13 LATEESHA JONES, on behalf of herself and all
14 others similarly situated aggrieved employees,

15 Plaintiff,

16 v.

17 DRIVEN BRANDS SHARED SERVICES,
18 LLC, a Delaware Corporation; and DOES 1-50,
19 inclusive.

19 Defendants.

Case No.: 22CV008219

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, et seq.)**

1 Plaintiff Lateesha Jones (“Plaintiff”) on behalf of herself, the State of California, and all others
2 similarly aggrieved employees, hereby brings this First Amended PAGA Representative Action
3 Complaint (“Complaint”) against defendant Driven Brands Shared Services, LLC, and DOES 1
4 through 50, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. This is a representative action brought pursuant to Labor Code § 2698 *et. seq.* on behalf
7 of the State of California and the group of aggrieved employees defined as follows: “All individuals
8 who are or were employed as hourly, non-exempt, employees by Defendants, or their predecessors,
9 affiliated, and/or merged entities, in the State of California from March 9, 2021, and continuing to
10 the present (“Aggrieved Employees).”

11 2. Plaintiff, on behalf of herself and all Aggrieved Employees presently or formerly
12 employed by Defendants during the liability period, brings this representative action pursuant to
13 Labor Code § 2699, *et seq.* seeking penalties for Defendants’ violation of California Labor Code §§
14 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 516, 558, 1194, 1197.1, 1198,
15 1199, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”).

16 3. This Court has jurisdiction over Defendants because, upon information and belief,
17 Defendants are citizens of California, Defendants have sufficient minimum contacts in California, or
18 otherwise intentionally avail themselves to the State of California so as to render the exercise of
19 jurisdiction over them by California courts consistent with the traditional notions of fair play and
20 substantial justice.

21 **VENUE**

22 4. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
23 §§ 395(a) and 395.5, Defendants own, maintain offices, transact business, have an agent or agents
24 within the County of Alameda, and/or otherwise are found within the County of Alameda, and
25 Defendants are within the jurisdiction of this Court for purposes of service of process.

26 **PARTIES**

27 5. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a
28 California resident residing in the State of California.

1 6. During the one-year immediately preceding Plaintiff giving PAGA Notice to the
2 LWDA and within the statute of limitations periods applicable to the cause of action pled herein,
3 Defendants employed Plaintiff as an hourly non-exempt hourly employee in Oakland, California.

4 7. Defendant Driven Brands Shared Services, LLC, is a corporation doing business in
5 Oakland and across the State of California. Plaintiff is informed and believes, and based thereon
6 alleges, that during the one-year preceding Plaintiff's PAGA Notice to the LWDA and continuing to
7 the present, Defendants employed Plaintiff and other similarly aggrieved employees within Alameda
8 County and the State of California, and therefore, were (and are) doing business in Alameda County
9 and the State of California.

10 8. Plaintiff is informed and believed, and thereon alleges, that at all times mentioned
11 herein, Defendants were licensed to do business in California and the County of Alameda and were
12 the employers of Plaintiff and the aggrieved employees.

13 9. Plaintiff does not know the true names or capacities, whether individual, partner, or
14 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
15 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
16 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
17 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
18 corporate, were responsible in some manner for the acts and omissions alleged herein, and
19 proximately caused Plaintiff and Aggrieved Employees to be subject to the unlawful employment
20 practices alleged herein.

21 10. Plaintiff is informed, and believes, and thereon alleges, that at all times, each of said
22 Defendants participated in the doing of the acts hereinafter alleged to have been done by the named
23 Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and
24 employees of each and every one of the other Defendants, as well as the agents of all Defendants, and
25 at all times herein mentioned were acting within the course and scope of said agency and employment.
26 Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one
27 of the acts or omissions complained of herein.

28 11. At all times mentioned herein, Defendants, and each of them, were members of and

1 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
2 scope of and in pursuance of said joint venture, partnership, and common enterprise.

3 12. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of
4 Plaintiff and the Aggrieved Employees.

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 13. Defendants are the largest automotive services company in North America with
7 numerous locations across California, providing a range of automotive needs, including paint,
8 collision, glass, vehicle repair, oil change, maintenance, and car wash.

9 14. Plaintiff was employed by Defendants as a non-exempt customer service representative
10 in Oakland, California starting on or about October 2021, until her separation from employment on
11 or about February 22, 2022.

12 15. Plaintiff and other non-exempt employees were and are employed as non-exempt
13 employees for Defendants and include customer service representatives, warehouse associates,
14 installers, and other non-exempt positions throughout California.

15 16. First, at all relevant times, Plaintiff and other non-exempt employees were not properly
16 paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or
17 forty (40) hours per workweek due to Defendants' uniform failure to include all forms of
18 compensation/renumeration, including, but not limited to, commissions, non-discretionary bonuses,
19 and other renumeration, when calculating the "regular rate of pay" used in overtime calculations.

20 17. Under the California Labor Code (as well as the FLSA), courts have held that regularly
21 paid non-discretionary commission, incentive pay/bonuses must be included in determining an
22 employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana*
23 *Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be
24 included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042,
25 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiffs under California and federal
26 law on the grounds, tat defendant improperly calculated overtime by excluding annual bonuses paid
27 to employees from the "regular rate of compensation"].)

28 18. Here, although Defendants consistently paid non-exempt employees commissions,

1 non-discretionary bonuses, and other non-hourly remuneration, Defendants omitted these payments
2 when calculating the “regular rate of pay” used in overtime calculations and when paying overtime
3 to non-exempt employees.

4 19. Next, Defendants failed to pay all sick time at the correct “regular rate” by failing to
5 include all forms of compensation/remuneration. Pursuant to Labor Code § 246(a), (b), “[a]n
6 employee who, on or after July 1, 2015, works in California for the same employer for 30 or more
7 days within a year from the commencement of employment is entitled to paid sick days. . .at the rate
8 of not less than one hour per every 30 hours worked, beginning at the commencement of employment.
9 . . .”

10 20. In addition, Labor Code § 246(l)(1) provides that paid sick time for non-exempt
11 employees must be “calculated in the same manner as the regular rate of pay for the workweek in
12 which the employee uses paid sick time, whether or not the employee actually works overtime in that
13 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
14 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
15 hours worked in the full pay periods of the prior 90 days of employment.”

16 21. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
17 other non-exempt employees the legally required paid sick days at the legal rate pursuant to Labor
18 Code §§ 246(a),(b). On the occasions that non-exempt employees took sick time and received paid
19 sick leave, Defendants only paid sick time at the base rate of pay, rather than the “regular rate of pay”
20 as required by Labor Code § 246(l)(1-2).

21 22. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
22 compliant and timely 30-minute off-duty meal periods as mandated by California law. As a result of
23 Defendants’ uniform meal period policies/practices and work demands, Plaintiff and other non-
24 exempt employees were not unable to take all their mandated 30-minute uninterrupted first meal
25 periods before the end of the fifth hour of work. Further, when Plaintiff and other non-exempt
26 employees worked in excess of 10.0 hours in a shift, which was a regular occurrence, they were not
27 allowed and permitted to take all mandated and timely second meal periods before the end of the
28 tenth hour of work in violation of the Labor Code and applicable Wage Orders.

1 23. Each time Plaintiff and other non-exempt employees were not provided a legally
2 compliant meal period, Defendants also failed to provide meal period premiums for missed or non-
3 compliant meal periods at the “regular rate of pay” as required by Labor Code § 226.7 and *Ferra v.*
4 *Loews Hollywood Hotel, LLC* (2021) 11 5th 858 (“*Ferra*”).

5 24. Accordingly, due to Defendants’ uniform meal period policies/practices and
6 operational requirements, Plaintiff and other non-exempt employees were not provided with all their
7 legally compliant meal periods in violation of Labor Code §§ 226.7, 510, 516, and applicable IWC
8 Wage Orders.

9 25. Next, at all relevant times, Plaintiff and other non-exempt employees were not provided
10 with 10 minutes of net rest period time for every 4 hours worked, or major fraction thereof due to
11 Defendants’ rest period policies/practices and work demands. Plaintiff, and other non-exempt
12 employees, not provided with all their mandated first rest period before the end of their fourth hour
13 of work. As a result, Plaintiff and other non-exempt employees are not permitted to take all legally
14 compliant (10) minute duty-free rest periods for every major fraction of four hours worked. This
15 includes a second rest period for shifts in excess of six hours, and a third rest period for shifts in
16 excess of 10 hours in a workday.

17 26. By not relieving all non-exempt employees of all duties during rest periods, Defendants
18 failed to provide legally compliant rest periods. *See Augustus v. ABM Security Services, Inc.* (2016)
19 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
20 duties and relinquish control over how employees spend their time.”]. In *Augustus*, the California
21 Supreme Court expressly rejected the employers’ assertion that it could provide an on-duty rest period
22 to employees who worked as security guards and further explained “that employers [must] relinquish
23 any control over how employees spend their break time and relieve their employees of all duties.” *Id.*
24 at 273.

25 27. Each time Plaintiff and other non-exempt employees were unable to take compliant
26 rest periods, Defendants failed and continue to fail to adequately pay rest period premium payments
27 at the “regular rate of pay” as required by Labor Code § 226.7 and *Ferra*.

28 28. Accordingly, due to Defendants’ uniform rest period policies and practices and work

1 demands, Plaintiff and other non-exempt employees were also regularly denied legally compliant rest
2 breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

3 29. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees
4 overtime, sick pay, and meal and rest period premiums at the "regular rate of pay", Defendants issued
5 wage statements which fail to accurately identify the gross wages earned, the total hours worked, the
6 net wages earned, and the correct corresponding number of hours worked at each hourly rate, in
7 violation of Labor Code § 226(a)(1, 2, 5, and 9).

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

13 31. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
14 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of
15 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-
16 exempt employees are in violation of Labor Code § 226(a).

17 32. Finally, because of, Defendants' failure to pay all overtime wages, meal and rest period
18 premiums, and sick pay at the "regular rate of pay", Defendants also failed and continue to fail to pay
19 non-exempt employees all wages owed at their time of separation from employment in violation of
20 Labor Code §§ 201-203. Thus, non-exempt employees would be entitled to recover penalties under
21 Labor Code §§ 201-203.

22 33. Based on the foregoing, Plaintiff seeks to represent herself and all aggrieved
23 employees, as defined by Labor Code § 2699(c) in order to recover civil penalties as mandated by
24 Labor Code § 2699(f) and the California Court of Appeals in *Thurman v. Bayshore Management,*
25 *Inc.* (2012) 203 Ca. App. 4th 1112, 1147 and its progeny.

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1 **FIRST CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 *(Plaintiff and Similarly Aggrieved Employees Against All Defendants)*

4 34. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
5 the preceding paragraphs.

6 35. Defendants have committed several Labor Code violations against Plaintiff and other
7 similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
8 § 2698 *et seq.*, acting on behalf of herself and other similarly aggrieved employees, brings this
9 representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly
10 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
11 (a) and (f) including, but not limited to \$100 for each initial violation and \$200 for each subsequent
12 violation per employee per pay period for those violations of the Labor Code for which no civil
13 penalty is specifically provided based on the following Labor Code violations:

14 a. Failing to pay Plaintiff and other similarly aggrieved employees all overtime wages in
15 violation of Labor Code §§ 204, 210, 510, 558, 1194, and 1198;

16 b. Failing to pay Plaintiff and other similarly aggrieved employees their sick time at the
17 regular rate of pay in violation of Labor Code §§ 246, 1194.2, 1197.1, 1198, and 1199;

18 c. Failing to provide Plaintiff and other similarly aggrieved employees with all of their
19 statutorily mandated meal periods in violation of Labor Code §§ 204, 210, 510, 1194 and 1198;

20 d. Failing to authorize and permit Plaintiff and other similarly aggrieved employees with
21 all of their statutorily mandated rest periods in violation of Labor Code §§ 226.7 and 516;

22 e. Failing to furnish Plaintiff and other similarly aggrieved employees with complete,
23 accurate, itemized wage statements in violations of Labor Code § 226;

24 f. Failing to compensate Plaintiff and similarly aggrieved employees with all earnings at
25 their separation of employment in violation of Labor Code §§ 201-203; and

26 g. Failing to maintain accurate records on behalf of Plaintiff and similarly aggrieved
27 employees in violation of Labor Code § 1174.

28 36. On or about March 9, 2022, Plaintiff notified Defendant Driven Brands Shared

1 Services, LLC via certified mail, and the California Labor and Workforce Development Agency
2 (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 *et seq.*
3 with respect to violations of the California Labor Code identified in Paragraph 35 (a)-(g). Now that
4 sixty-five days have passed from Plaintiff notifying Defendant of these violations, Plaintiff has
5 exhausted her administrative requirements for bringing a claim under the Private Attorneys General
6 Act with respect to these violations.

7 37. Plaintiff was compelled to retain the services of counsel to file this court action to
8 protect her interests and the interests of other similarly aggrieved employees, and to assess and collect
9 the civil penalties owed by Defendants. Plaintiff has therefore incurred attorneys’ fees and costs,
10 which she is entitled to receive under California Labor Code § 2699.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff prays for judgment for herself and for all others on whose behalf
13 this suit is brought against Defendants, as follows:

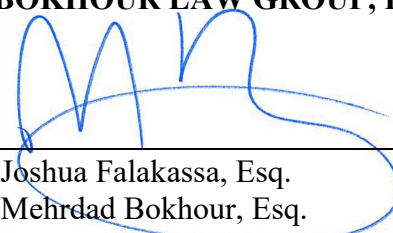
14 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly
15 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
16 (a) and (f) including, but not limited to \$100 for each initial violation and \$200 for each subsequent
17 violation per employee per pay period for those violations of the Labor Code for which no civil
18 penalty is specifically provided under the Labor Code;

19 2. On all causes of action, for attorneys’ fees and costs as provided by Labor Code
20 §§2698 *et seq.*, and Code of Civil Procedure §1021.5; and

21 3. For such other and further relief, the Court may deem just and proper.

22 Dated: May 16, 2022

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

23
24
25 By: 

26 Joshua Falakassa, Esq.
27 Mehrdad Bokhour, Esq.
28 Anwar D. Burton, Esq.
Attorneys for Plaintiff and Aggrieved Employees

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On May 16, 2022, I served the following document(s) described as **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

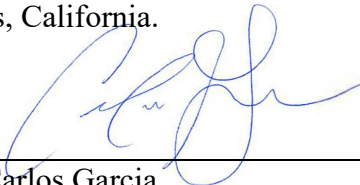
Julie A. Dunne, Esq.
Julie.dunne@us.dlapiper.com
Matthew Riley, Esq.
Matthew.riley@us.dlapiper.com
DLA PIPER, LLP
401 B Street, Suite 1700
San Diego, California 92101

**Counsel for defendant Driven Brands
Shared Services, LLC**

BY ELECTRONIC SERVICE: I transmitted the above-referenced document(s) via electronic service provider First Legal to the person(s) identified above at the email address(es) indicated and did not, within a reasonable time after transmission, receive any message or communication indicating that delivery failed or that any other error had occurred which would delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

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

Executed on May 16, 2022, at Los Angeles, California.



Carlos Garcia