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Attorneys for Plaintiff, REZA DIN individually, and on behalf of all employees similarly situated.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CIVIL COMPLEX CENTER

REZA DIN, individually, and on behalf of a
Class of all other persons similarly situated

Plaintiff,

vs.

AUTONATION INC., a California
Corporation; IRVINE IMPORTS, INC., a
California Corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 30-2022-01246360-CU-OE-CXC1

CLASS ACTION

Assigned For All Purposes To:

Hon.

Dept.:

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY OVERTIME
COMPENSATION;**
- 2. FAILURE TO PAY WAGES FOR HOURS
WORKED;**
- 3. FAILURE TO PROVIDE MEAL PERIODS;**
- 4. FAILURE TO PROVIDE REST PERIODS;**
- 5. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS;**
- 6. FAILURE TO PAY WAGES DUE AND
PAYABLE TWICE MONTHLY;**
- 7. FAILURE TO PAY WAGES UPON
TERMINATION OF EMPLOYMENT;**
- 8. UNLAWFUL COMPETITION AND
UNLAWFUL BUSINESS PRACTICES; and**
- 9. VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT**

DEMAND FOR JURY TRIAL

1 All allegations in this Class Action Complaint are based upon information and belief except for
2 those allegations, which pertain to the PLAINTIFF and his counsel. Each allegation in this Complaint either
3 has evidentiary support or is likely to have evidentiary support after discovery. PLAINTIFF REZA DIN
4 (“Plaintiff”), on behalf of himself and all others similarly situated, complains of DEFENDANTS, and each
5 of them, and for causes of action in this Class Action Complaint alleges:

6 **1. INTRODUCTION**

7 1. This is a class action, pursuant to California Code of Civil Procedure § 382, on behalf of
8 Plaintiff and all non-exempt employees employed by, or formerly employed by, **AUTONATION, INC.**, a
9 California Corporation, doing business AutoNation (“AutoNation” or “Defendant”) and **IRVINE**
10 **IMPORTS, INC.**, a California Corporation doing business as AutoNation Toyota Scion Irvine
11 (“Irvine Imports” or “Defendant”) within the State of California. These non-exempt employees who are
12 employed by, or who were formerly employed by, Defendants within the State of California are hereinafter
13 referred to individually as “Class Members” and collectively as the “Class” or “Classes.”

14 2. For at least four years prior to the filing of this action and through to the present (“relevant
15 time period” or “liability period”), Defendants consistently maintained and enforced against Defendants’
16 non-exempt employees, among others, the below addressed unlawful practices and policies, in violation of
17 California state wage and hour laws, including:

- 18 (a) During the relevant time period, Defendants had a consistent policy of requiring
19 employees to work more than eight (8) hours in any given day and/or more than
20 forty (40) hours in any given week, and of not paying them all overtime
21 compensation pursuant to applicable California Labor Code requirements.
- 22 (b) During the relevant time period, Defendants had a consistent policy of requiring
23 Class Members within the State of California to work at least five (5) hours without
24 a lawful meal period and failing to pay such employees one (1) hour of pay at the
25 employees’ regular rate of compensation for each workday that the meal period is
26 not provided, as required by California state wage and hour laws.
- 27 (c) During the relevant time period, Defendants have had a consistent policy of failing
28 to provide Class Members within the State of California, including Plaintiff, rest

1 periods of at least (10) minutes per three and a half (3.5) hours worked or major
2 fraction thereof and failing to pay such employees one (1) hour of pay at the
3 employees' regular rate of compensation for each workday that the rest period is not
4 provided, as required by California state wage and hour laws.

5 (d) With respect to Class Members who either were discharged, laid off, or resigned,
6 during the relevant time period, Defendants failed to pay them in accordance with
7 the requirements of Labor Code §§ 201, 202, 203; and

8 (e) During the relevant time period, Defendants failed to maintain accurate records of
9 Class Members' earned wages and work periods as evidenced by Defendants'
10 failure to keep adequate records of when meal periods were taken.

11 3. Plaintiff, on behalf of herself and all other Class Members, brings this action pursuant to
12 California Labor Code §§ 201, 202, 203, 204, 210, 218, 218.6, 226, 226.7, 510, 511, 512, 1174, 1194, 1197,
13 1197.1, 1199, 2698, 2699, et seq.

14 4. Plaintiff, on behalf of himself and all Classes, pursuant to Business and Professions Code
15 §§ 17200-17208, also seeks injunctive relief and restitution for the unfair, unlawful, or fraudulent practices
16 alleged in this Complaint.

17 **2. PARTIES**

18 **A. Plaintiff**

19 5. Plaintiff REZA DIN, at all relevant times, was and is a resident of California. Plaintiff was
20 employed by Defendants as a non-exempt Technician. Plaintiff and the other similarly situated Class
21 Members were employed by Defendants and worked at Defendants' locations, with assigned
22 responsibilities including fielding incoming telephone calls related to Defendants' services throughout the
23 State of California. Plaintiff was employed by Defendants from **November 24, 2021** to **December 31,**
24 **2021** and (1) shared similar job duties and responsibilities (2) was subjected to the same policies and
25 practices (3) endured similar violations at the hands of Defendants as the other Class Members who served
26 in similar and related positions.

1 6. Defendants failed to record accurate time worked by these employees, and provided
2 Plaintiff and the Class Members with inaccurate wage statements that prevented Plaintiff and the Class
3 from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class with
4 lawful meal and rest periods, as employees were not provided with the opportunity to take uninterrupted
5 and duty-free rest periods and meal breaks as required by the Labor Code.

6 7. Plaintiff is informed and believes and based upon that information and belief alleges
7 that AUTONATION INC. is a California limited liability company in good standing and authorized
8 to do business in California. Further, AUTONATION INC. does business throughout the United
9 States and in California, including Orange County. Accordingly, AUTONATION INC. is an
10 automotive retailer, and has retail locations throughout California. See
11 <https://www.autonation.com/>.

12 8. Plaintiff is informed and believes and based upon that information and belief alleges
13 that IRVINE IMPORTS, INC. is a California Corporation in good standing and authorized to do
14 business in California. Further, IRVINE IMPORTS, INC. does business throughout the United
15 States and in California, including Orange County. Accordingly, IRVINE IMPORTS, INC. is an
16 automotive retailer and has retail locations throughout California.
17 See <https://www.autonationtoyotairvine.com/>

18 9. The true names and capacities, whether individual, corporate, associate, or otherwise, of
19 Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to Plaintiff, who therefore sues
20 Defendants by such fictitious names under California Code of Civil Procedure § 474. Plaintiff is informed
21 and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally
22 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to
23 amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as
24 DOES when such identities become known.

25 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in
26 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
27 plan or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to
28

1 the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer
2 of Plaintiff and the Classes.

3 11. Venue as to each Defendant is proper in this judicial district, pursuant to California Code of
4 Civil Procedure § 395. On information and belief, Defendants AUTONATION INC. and DOES 1-100, do
5 business in Irvine, California, which is within the jurisdiction of this Court. The unlawful acts alleged
6 herein have had a direct effect on Plaintiff and those similarly situated within the State of California and the
7 County of San Diego. Defendants employ numerous Class Members in Orange County and throughout the
8 State of California.

9 **3. FACTUAL BACKGROUND**

10 12. Plaintiff and the Class Members are, and at all times pertinent hereto have been, non-exempt
11 employees within the meaning of the California Labor Code and the implementing rules and regulations of
12 IWC California Wage Orders. Defendants hire hourly employees who work in non-exempt positions, like
13 Plaintiff and Class Members' position, Technician, at the direction of Defendants in the State of California.

14 13. Plaintiff was an "Automotive Technician", which is an hourly, non-exempt position that
15 repaired, maintained and inspected vehicles related to Defendants' retail location in Irvine, California.
16 Although Plaintiff would work eight (8) hour shifts, typically more time was spent working off-the-clock.

17 14. During the course of Plaintiff and the Class Members' employment with Defendants, they
18 were not paid all wages they were owed, including for all work performed (resulting in "off the
19 clock" work), forced to work through their meal and rest periods, and for all overtime hours worked
20 and all hours worked off-the-clock to keep labor budgets low. Plaintiff is informed and believes that
21 Class Members were sometimes asked to work shifts over eight (8) hours and to work over forty (40)
22 hours in a workweek, and it was company policy to not pay overtime. Although Plaintiff and the
23 Class Members were paid bi-weekly by Defendants, the pay never reflected the hours that Plaintiff
24 and the Class Members worked without pay and while off-the-clock. As a result, Plaintiff and the
25 Class Members worked substantial hours during their employment with Defendants for which they
26 were not compensated, in violation of the California Labor Code. In particular, Plaintiff estimates that
27 he was not paid for at least five hours of overtime and/or double time pay for the work period of
28 **November 16, 2021 to November 30, 2021.**

1 15. As a matter of uniform Company policy, Plaintiff and the Class Members were
2 required to work off-the-clock which was not compensated by Defendants in violation of the
3 California Labor Code. Plaintiff and the Class Members were also not paid regular wages or overtime
4 for the time they were required to comply with other requirements imposed upon them, which they
5 had to complete while off-duty and without compensation.

6 16. As a result of these requirements to work off-the-clock, the daily work demands and
7 pressures to work through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff
8 and the Class Members were not properly paid for all wages earned and for all wages when working in any
9 given week. As a result of Defendants' unlawful policies and practices, Plaintiff and Class Members
10 were required to work consistently off-the-clock, some working more than eight (8) hours in a
11 workday or over forty (40) hours in a workweek, but Plaintiff estimates he was not paid by
12 Defendants for at least 4-5 hours of time worked per week, and is informed and believes that other
13 Class Members have similar experiences.

14 17. However, Defendants followed a policy and practice of further denying overtime
15 payments to the Class Members at an overtime rate of 1.5 times the regular rate for the first eight (8)
16 hours of the seventh consecutive workday in a week and overtime payments at the rate of 2 times the
17 regular rate for hours worked over eight (8) on the seventh consecutive workday, as required under
18 the Labor Code and applicable IWC Wage Orders.

19 18. Plaintiff and the Class Members were forced to meet the needs of Defendants'
20 shipments, and could not be relieved to take breaks, or were required to remain on-duty at all times
21 and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take
22 required breaks due to Defendants' policies and practices. Although Defendants have a facially lawful
23 policy regarding meal periods, it was Plaintiff's understanding and belief that the policy was not
24 implemented, especially during periods when Defendants needed employee on the floor to move
25 shipments. Plaintiff understands and believes that Class Members were practically unable to take a
26 meal period. On the occasions when Class Members could take a meal period, they were often
27 untimely or interrupted, as the Class Members were required to respond to work demands, and they
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1 were not provided with one (1) hour's wages in lieu thereof. Plaintiff understands and believes
2 therefore, that meal period violations occurred in one or more of the following manners:

- 3 (a) Class Members were not provided full thirty-minute duty free meal periods for
4 workdays in excess of five (5) hours and were not compensated one (1) hour's
5 wages in lieu thereof, all in violation of, among others, Labor Code § 226.7, 512 and
6 the applicable Industrial Welfare Commission Wage Order(s);
- 7 (b) Class Members were required to work through at least part of their daily meal
8 period(s);
- 9 (c) Meal periods were provided after five (5) hours of continuous working during a
10 shift; and
- 11 (d) Class Members were restricted in their ability to take a full thirty (30) minute meal
12 period.

13 19. Plaintiff and the Defendants' non-exempt employees were also not authorized and permitted
14 to take lawful rest periods, were often asked by Defendants to work through or during breaks, and were not
15 provided with one (1) hour's wages in lieu thereof. Rest period violations therefore arose in one or more of
16 the following manners:

- 17 (a) Class Members were required to work without being provided a minimum ten
18 minute rest period for every three and a half (3.5) hours or major fraction thereof
19 worked and were not compensated one (1) hour of pay at their regular rate of
20 compensation for each workday that a rest period was not provided;
- 21 (b) Class Members were not authorized and permitted to take timely rest periods for
22 every three and a half (3.5) hours worked, or major fraction thereof; and
- 23 (c) Class Members were restricted in their ability to take their full ten (10) minutes net
24 rest time or were otherwise not provided with duty-free rest periods.

25 20. As a result of these illegal policies and practices, Defendants engaged in and enforced the
26 following additional unlawful practices and policies against Plaintiff and the Class Members he seeks to
27 represent:

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- 1 (a) failing to pay all wages owed to Class Members who were either discharged, laid
2 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202 and
3 203;
- 4 (b) failing to pay all wages owed to the Class Members twice monthly in accordance
5 with the requirements of Labor Code § 204;
- 6 (c) failing to pay Class Members all wages owed, including all meal and rest period
7 premium wages; and
- 8 (d) failing to maintain accurate records of Class Members' earned wages and meal
9 periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the
10 applicable IWC Wage Orders.

11 21. Defendants have made it difficult to account with precision for the unlawfully withheld rest
12 period compensation owed to Plaintiff and the Class, during the liability period, because they did not
13 implement and preserve a record-keeping method as required for non-exempt employees by California
14 Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information
15 and belief, time clock punches were not maintained, or were not accurately maintained, for work shifts and
16 were automatically presumed by Defendants to have been lawfully provided when they were not.
17 Defendants also failed to accurately record and pay for all hours worked off-the-clock and submitted by
18 Plaintiff and the Class Members. Defendants have thus also failed to comply with Labor Code § 226(a) by
19 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class Members, along
20 with the appropriate applicable rates, among others requirements. Plaintiff and Class Members are therefore
21 entitled to penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code § 226(b).

22 22. Defendants have failed to comply with paragraph 7 of the applicable California IWC Wage
23 Orders by failing to maintain time records showing when the employee begins and ends each work period,
24 rest periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in
25 wage statements all deductions from payment of wages and accurately reporting total hours worked by the
26 Class Members.

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1 **4. CLASS ALLEGATIONS**

2 23. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
3 action pursuant to California Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed
4 of and defined as:

5 **All persons who are employed or have been employed by Defendants as non-exempt**
6 **Technicians, in the State of California who, during any time from four years prior to**
7 **the filing of this class action to the present, have worked as non-exempt employees.**

8 Further, Plaintiff seeks to represent the following subclasses composed of and defined as follows:

- 9 (a) **Subclass 1. Unpaid Overtime Subclass.** All Class Members who
10 are employed or have been employed by Defendant in the State of
11 California who were not paid overtime for hours worked beyond
12 eight (8) hours in a single day or for hours worked beyond forty
13 (40) in a single week pursuant to the applicable Labor Code and
14 applicable IWC Wage Orders.
- 15 (b) **Subclass 2. Off-the-Clock Subclass.** All Class Members who
16 worked off-the-clock in any given week and who were not
17 paid compensation pursuant to the Labor Code and applicable
18 IWC Wage Order requirements.
- 19 (c) **Subclass 3. Meal Period Subclass.** All Class Members who have
20 not been provided a meal period for every five (5) hours or major
21 fraction thereof worked per day, and were not provided one (1)
22 hour's pay for each day on which such meal period was not
23 provided pursuant to Labor Code § 226.7 and § 512.
- 24 (d) **Subclass 4. Meal Period Rounding Subclass.** All Class Members
25 who are or have been employed by Defendant in the state of
26 California, who used electronic timekeeping systems, and had
27 meal periods of less than thirty (30) minutes rounded to a net 30-
28 minute meal period or more.
- (e) **Subclass 5. Rest Period Subclass.** All Class Members who have
not been provided a rest period for every three and a half (3.5)
hours or major fraction thereof worked per day, and were not
provided compensation of one (1) hour's pay for each day on
which such rest period was not provided pursuant to Labor Code §
226.7 and § 512.
- (f) **Subclass 6. Paystub Subclass.** All Class Members who were not
provided an itemized wage statement accurately showing (1) gross
wages earned, (2) total hours worked by the employee, (3) the
number of piece-rate units earned and any applicable piece rate for
Class Members 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 pursuant to Labor Code § 226.

(g) **Subclass 7. Wage Payment Subclass.** All Class Members who were not provided all straight time wages earned pursuant to the Labor Code and applicable IWC Wage Orders.

(h) **Subclass 8. Twice Monthly Pay Subclass.** All Class Members who were not paid twice monthly in accordance with Labor Code § 204.

(i) **Subclass 9. Termination Subclass.** All Class Members who were not provided all wages due upon termination or resignation pursuant to Labor Code §§ 200 through 203.

(j) **Subclass 10. B&P Code § 17200 Subclass.** All Class Members who were subjected to Defendants' unlawful, unfair or fraudulent business acts or practices in the form of Labor Code violations regarding overtime, meal periods, rest periods, or minimum wages and/or waiting time penalties.

24. Plaintiff reserves the right under Rule 1855(b) of the California Rules of Court, to amend or modify the class descriptions with greater specificity or to provide further division into subclasses or limitation to particular issues.

25. This action has been brought and may properly be maintained as a class action under the provisions of the California Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable.

A. Numerosity

26. The potential members of each Class as defined are so numerous that joinder of all the members of the Class is impracticable. Plaintiff estimates there are at least several dozen Class Members, and possibly several hundred, which is sufficient to satisfy the numerosity requirement. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the relevant time periods employed, sufficiently numerous employees in positions as Defendants' non-exempt employees in California, who are or have been affected by Defendants' unlawful practices as alleged herein.

1 27. Employee turnover during the relevant time period will increase this number substantially.
2 Upon information and belief, Plaintiff alleges Defendants' employment records would provide information
3 as to the number and location of all Class Members. Joinder of all members of the proposed Classes is not
4 practicable.

5 **B. Commonality**

6 28. There are questions of law and fact common to each Class predominating over any
7 questions affecting only individual Class Members. These common questions of law and fact include,
8 without limitation:

- 9 (a) Whether Defendants violated Labor Code § 226.7 and the IWC Wage Orders, and
10 Cal. Code Regs., Title 8, section 11000 *et seq.* by failing to authorize and permit all
11 daily ten (10) minute rest periods to non-exempt employees for every three and a
12 half (3.5) hours and/or 7 hours or major fraction thereof worked and failing to
13 compensate said employees one (1) hour's wages in lieu of rest periods;
14 (b) Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
15 Orders by failing to maintain accurate records of Class Members' earned wages and
16 work periods;
17 (c) Whether Defendants violated Labor Code § 1194 by failing to compensate all
18 employees during the relevant time period for all hours worked, whether regular or
19 overtime;
20 (d) Whether Defendants violated § 17200 *et seq.* of the Business and Professions Code,
21 Labor Code §§ 201-203, 204, 226.7, 512, 1174, and applicable IWC Wage Orders,
22 which constitutes a violation of fundamental public policy;
23 (e) Whether Plaintiff and the Class Members are entitled to equitable relief pursuant to
24 Business and Professions Code § 17200 *et seq.*; and

25 There are common answers to these questions which further demonstrate that class treatment is
26 appropriate in this case.

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1 **C. Typicality**

2 29. The claims of the named Plaintiff are typical of the claims of the Class Members. Plaintiff
3 and all members of each Class sustained injuries and damages arising out of and caused by Defendants'
4 common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

5 **D. Adequacy of Representation**

6 30. Plaintiff will fairly and adequately represent and protect the interests of the members of each
7 Class. Counsel who represent Plaintiff are competent and highly experienced in litigating large employment
8 class actions on a regular basis. See www.quintlawn.com

9 **E. Superiority of Class Action**

10 31. A class action is superior to other available means for the fair and efficient adjudication of
11 this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact
12 common to each Class predominate over any questions affecting only individual members of the Class.
13 Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' unlawful
14 policies and practices alleged in the Complaint.

15 32. Class action treatment will allow those similarly situated persons to litigate their claims in
16 the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware
17 of any difficulties that are likely to be encountered in the management of this action that would preclude its
18 maintenance as a class action.

19 33. Class Plaintiff contemplates the eventual issuance of notice to the proposed Class Members
20 of each Plaintiff Classes that would set forth the subject and nature of the instant action. The Defendants'
21 own business records can be utilized for assistance in the preparation and issuance of the contemplated
22 notices. To the extent that any further notice is required additional media and/or mailings can be used.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME COMPENSATION**

25 **[CALIFORNIA LABOR CODE §§ 510, 1194 and 1198]**

26 **(Against All Defendants)**

27 34. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by
28 reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

1 35. This claim is brought by Plaintiff, on behalf of the Class and the subclasses thereof.

2 36. In California, employees must be paid at least the then applicable state minimum wage
3 for all hours worked. (IWC Wage Order MW-2014).

4 37. California Labor Code § 1194 provides that “any employee receiving less than the legal
5 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in
6 a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation,
7 including interest thereon, reasonable attorney's fees, and costs of suit.” The action may be maintained
8 directly against the employer in an employee’s name without first filing a claim with the Department of
9 Labor Standards and Enforcement.

10 38. Employees in California shall not be employed more than eight hours in any workday,
11 and/or more than forty hours in any workweek, unless they receive additional compensation beyond
12 their regular wages in amounts specified by law. More specifically, Labor Code § 510 codifies the right
13 to overtime compensation at one and one-half times the regular hourly rate for hours worked in excess
14 of eight (8) hours in a day or forty (40) hours in a week.

15 39. California Labor Code § 1198 provides that “[T]he maximum hours of work and the
16 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
17 standard conditions of labor for employees. The employment of any employee for longer hours than
18 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

19 40. At all times relevant hereto, the Labor Code requirements and paragraph 3 of the
20 applicable IWC Wage Orders also provided for payment of overtime wages equal to one and one-half
21 times an employee’s regular rate of pay for all hours worked over 8 hours a day and/or forty (40) hours
22 in a work week, and for the first eight (8) hours on the seventh consecutive day of work in a work week.

23 41. Defendants, and each of them, have intentionally and improperly avoided payment of
24 overtime wages in violation of the California Labor Code and California Code of Regulations and the
25 IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement, as
26 described above. Defendants have also violated these provisions by requiring Plaintiff and other
27 similarly situated non-exempt employees to work through meal periods when they were required to be
28 clocked out. Defendants, and each of them, have also intentionally and improperly rounded, changed,

1 adjusted and/or modified certain employees' hours, and imposed difficult to attain job and scheduling
2 requirements on Plaintiff and the Class Members, which resulted in an underpayment of wages to
3 employees over a period of time while benefiting Defendants.

4 42. At all times relevant hereto, Plaintiff and Class Members have worked more than eight
5 (8) hours in a workday, and/or more than forty (40) hours in a workweek, as employees of Defendants.
6 During the relevant time period, Plaintiff and Class Members were not fully paid for all the hours they
7 worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week as a result of
8 Defendants' above-described policies and practices. In addition to the other overtime payments
9 Defendants failed to make for all off the clock work, Plaintiff is informed and believes that Defendants
10 have scheduled Class Members to occasionally work shifts for seven consecutive days in a row.
11 However, Defendants followed a policy and practice of further denying overtime payments to Class
12 Members at an overtime rate of 1.5 times the regular rate for the first eight hours of the seventh
13 consecutive workday in a week and overtime payments at the rate of 2 times the regular rate for hours
14 worked over eight (8) on the seventh consecutive workday, as required under the Labor Code § 510 and
15 paragraph 3 of the applicable IWC Wage Orders.

16 43. Therefore, Plaintiff and Class Members were not properly paid for all hours worked,
17 including for the hours worked in excess of the maximum hours permissible by law under California
18 Labor Code § 1194, § 1197 and § 1198 and the provisions of IWC Wage Orders and the applicable
19 California Code of Regulations sections.

20 44. On information and belief, Plaintiff and the Class Members allege that Defendants
21 followed an unlawful policy and practice of refusing to pay and failing to pay them for all wages earned
22 in each pay period, including by requiring and compelling off the clock work, by failing to pay for
23 overtime hours worked, and for the other reasons set forth in detail above.

24 45. As a result of Defendants' failure to pay overtime pay throughout Class Members'
25 employment, Defendants intentionally failed to provide Class Members with all earned wages earned
26 by and owed to them during the corresponding pay periods. Defendants willfully violated the
27 provisions of Labor Code § 1194, the applicable IWC Wage Orders, and California law by failing to
28 properly pay the Class the overtime pay that Class Members were due.

1 46. Defendants' failure to pay Class Members all wages owed to them also violated
2 California Penal Code §§ 484 and 532 (obtaining labor through false pretenses), to the extent their
3 managers specifically instructed them that they were not entitled to receive overtime under the
4 California Labor Code and related provisions for off the clock work they were required to perform.

5 47. Plaintiff and the Class Members are informed and believe, and based upon that
6 information and belief therefore further allege, that Defendants knew or should have known that the
7 Class did not qualify as exempt employees, and Defendants purposely elected not to pay the Class
8 Members for their overtime labor performed.

9 48. By virtue of the Defendants' unlawful failure to provide overtime pay to Plaintiff and
10 the Plaintiff Classes, Plaintiff and Class Members have suffered, and will continue to suffer, damages in
11 amounts which are presently unknown to them, but which exceed the jurisdictional limits of this Court
12 and which will be ascertained according to proof at trial.

13 49. Plaintiff and the Class Members are informed and believe, and based upon that
14 information and belief allege, that Defendants, and each of them, purposely elected not to provide
15 overtime pay.

16 50. As a result of Defendants' failure to pay overtime pay throughout the Class Members'
17 employment, Plaintiff and Class Members were deprived of wages in amounts to be determined at trial,
18 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
19 costs, for Defendants' violations of Labor Code § 510 and applicable IWC Wage Order provisions.

20 51. Defendants, and each of them, acted intentionally, oppressively and maliciously toward
21 the Class Members with a conscious disregard of their rights, or the consequences to the Class
22 Members, with the intent of depriving them of property and legal rights and otherwise causing the Class
23 Members injury.

24 52. Plaintiff, on behalf of members of the Class and Sub-Classes, requests recovery of both
25 straight time and overtime compensation according to proof, interest, attorney's fees and costs pursuant
26 to Labor Code § 1194(a), as well as the assessment of any statutory penalties against these Defendants,
27 and each of them, and any additional sums as provided by the Labor Code and/or other statutes.

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53. Further, Plaintiff and the Class Members are entitled to seek and recover reasonable attorneys' fees and costs pursuant to Labor Code §§ 210 and 1194.

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES FOR HOURS WORKED

[CALIFORNIA LABOR CODE §§ 1194, 1197, 1197.1 and 558]

(Against All Defendants)

54. Plaintiff and the Members of the Class re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

55. Plaintiff brings these claims under California Labor Code §§ 1194, 1197, 1197.1 and IWC Wage Orders 1-2001, as amended.

56. California Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission Wage Orders 1-2001 entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.

57. Defendants did not and do not compensate Plaintiff and other hourly employees for time spent off the clock during lunch or after hours responding to calls, texts, emails and other work-related inquiries. This work was known or should have been known by Defendants as management are and were requesting the off the clock work and receiving the work-related communications.

58. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and the applicable Industrial Welfare Commission Wage Orders, for failure to pay minimum wage, Defendants are liable for attorneys' fees and costs, civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 et seq. and other relief.

59. California Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage compensation, including interest thereon, reasonable attorney's fees, and costs of suit.” The action may be maintained directly against the employer in an employee’s name without first filing a claim with the Department of Labor Standards and Enforcement.

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1 60. Defendants, and each of them, have also intentionally and improperly rounded, changed,
2 adjusted, underpaid, and/or modified certain employees' hours, including by requiring off-the-clock work,
3 requiring work to be performed while on breaks, and by not properly paying employees all overtime hours
4 they worked and reported, and imposed difficult to attain job and scheduling requirements on Plaintiff and
5 the Class Members. This resulted in an underpayment of wages to employees over a period of time while
6 benefitting Defendants.

7 61. During the relevant time period, Plaintiff and the Class Members were not fully paid for all
8 the hours they worked as a result of Defendants' above described policies and practices. Therefore, Plaintiff
9 and the Class Members were not properly paid for all work performed.

10 62. During the relevant time period, Defendants willfully failed to pay all wages owed to
11 Plaintiff and the Class Members.

12 63. Labor Code § 558(a) provides "any employer or other person acting on behalf of an
13 employer who violates, or causes to be violated, a section of this chapter or any provisions regulating hours
14 and days of work in any order of the IWC shall be subject to a civil penalty as follows: (1) For any violation,
15 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid
16 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
17 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was
18 underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to
19 this section shall be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided
20 for in this section are in addition to any other civil or criminal penalty provided by law."

21 64. Defendants have violated provisions of the Labor Code regulating hours and days of work
22 as well as the IWC Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth
23 in Labor Code § 558.

24 65. Upon information and belief, Plaintiff alleges that Defendants' policy of failing to pay
25 employees for all hours worked whether regular time or overtime violates the Labor Code and IWC Wage
26 Orders. Pursuant to Labor Code § 1194, Plaintiff and the Class Members are entitled to recover their unpaid
27 wages owed, as well as interest, costs and attorney's fees.

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FAILURE TO PROVIDE MEAL PERIODS

[CALIFORNIA LABOR CODE §§ 226.7 and 512, and Paragraph 11 of Applicable IWC Wage Orders]

(Against All Defendants)

66. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

67. This claim is brought by Plaintiff on his behalf, and on behalf of Class Members and the subclasses thereof.

68. Labor Code §§ 226.7 and 512 and paragraph 11 of the applicable IWC Wage Order provide that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes.

69. Labor Code § 226.7 and paragraph 11 of the applicable IWC Wage Orders also provide that, if an employer fails to provide an employee a meal period in accordance with this section, 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.

70. Defendants failed to provide the Class Members with meal periods as required by the Labor Code, including by not providing them with the opportunity to take meal breaks, by providing them late or for less than thirty (30) minutes, or by requiring them to perform work during breaks.

71. Defendants, and each of them, have intentionally and improperly denied meal periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 11 of the applicable IWC Wage Orders, along with other applicable regulations and statutes.

72. At all times relevant hereto, Class Members have worked more than five (5) hours in a workday.

73. At all times relevant hereto, the Defendants, and each of them, failed to provide meal periods as required by Labor Code §§ 226.7 and 512 and paragraph 11 of the applicable IWC Wage Orders.

74. By virtue of the Defendants' unlawful failure to provide meal periods Class Members, Plaintiff is informed and believes Class Members have suffered, and will continue to suffer, damages in

1 amounts which are presently unknown to Plaintiff, but which exceed the jurisdictional limits of this Court
2 and which will be ascertained according to proof at trial.

3 75. Plaintiff and the Class Members are informed and believe, and based upon that information
4 and belief allege, that Defendants, and each of them, purposely elected not to provide meal periods.

5 76. Plaintiff is informed and believes Defendants, and each of them, acted intentionally,
6 oppressively and maliciously toward Class Members with a conscious disregard of their rights, or the
7 consequences to them, with the intent of depriving them of property and legal rights and otherwise causing
8 the Class Members to suffer injury.

9 77. Plaintiff, on behalf of the Class, requests recovery of meal period compensation pursuant to
10 Labor Code §§ 226.7 and paragraph 11 of the applicable IWC Wage Orders, as well as the assessment of
11 any statutory penalties against these Defendants, and each of them, in a sum as provided by the Labor Code
12 and other statutes.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST PERIODS**

15 **[CALIFORNIA LABOR CODE §§ 226.7 and 512, and Paragraph 11 of Applicable IWC Wage Orders]**

16 **(Against All Defendants)**

17 78. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by
18 reference the paragraphs previously alleged in this Complaint.

19 79. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that
20 employers must authorize and permit all employees to take rest periods at the rate of ten (10) minutes net
21 rest time per three and a half (3.5) work hours.

22 80. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that if
23 an employer fails to provide an employee rest period in accordance with this section, the employer shall pay
24 the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the
25 rest period is not provided.

26 81. Defendants, and each of them, have intentionally and improperly denied rest periods to
27 Plaintiff and the Class Members in violation of Labor Code §§ 226.7 and paragraph 12 of the applicable
28 IWC Wage Orders. Defendants failed to authorize and permit Plaintiff and the Class Members to take rest

1 periods, as required by the Labor Code.

2 82. At all times relevant hereto, Plaintiff and the Class Members have worked more than three
3 and a half hours in a workday.

4 83. At all times relevant hereto, the Defendants, and each of them, failed to provide rest periods
5 as required by Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders.

6 84. By virtue of the Defendants' unlawful failure to provide rest periods to the Plaintiff and the
7 Class Members, Plaintiff and the Class Members have suffered, and will continue to suffer, damages in
8 amounts which are presently unknown to the Plaintiff and the Class Members but which exceed the
9 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

10 85. Plaintiff and the Class Members are informed and believe, and based upon that information
11 and belief allege, that Defendants, and each of them, knew or should have known that Plaintiff and the Class
12 Members were entitled to rest periods and purposely elected not to provide them with rest periods.

13 86. Defendants, and each of them, acted intentionally, oppressively and maliciously toward
14 Plaintiff and the Class Members with a conscious disregard of their rights, or the consequences to Plaintiff
15 and the Plaintiff Classes, with the intent of depriving Plaintiff and the Class of property and legal rights and
16 otherwise causing the Plaintiff and the Class Members injury.

17 87. Plaintiff, individually, and on behalf of employees similarly situated, requests recovery of
18 rest period compensation pursuant to Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage
19 Orders, as well as the assessment of any statutory penalties against these Defendants, and each of them, in a
20 sum as provided by the Labor Code and/or other statutes.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO FURNISH ACCURATE ITEMIZED STATEMENTS**

23 **[CALIFORNIA LABOR CODE § 226]**

24 **(Against All Defendants)**

25 88. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by
26 reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

27 89. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiff and the
28 Class Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages

1 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable
2 piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the
3 period for which the employee is paid, (7) the name of the employee and only the last four digits of his or
4 her social security number or an employee identification number other than a social security number, (8) the
5 name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during
6 the pay period and the corresponding number of hours worked at each hourly rate by the employee pursuant
7 to Labor Code § 226, amongst other statutory requirements.

8 90. As a result of Defendants' conduct, Plaintiff and the Class Members have suffered injury in
9 that, among other things, the lack of the required information hindered them from determining the amount of
10 wages owed to them and led them to believe they were not entitled to be paid wages all hours worked, for
11 overtime, missed meal and rest breaks, or for each hour of labor they performed, for piece rates where
12 applicable, and the properly hourly rate where applicable, although they were so entitled. The absence of
13 accurate wage statements has prevented timely challenges to Defendants' unlawful pay practices, caused
14 difficulty and expense in attempting to reconstruct time and pay records, and resulted in the submission by
15 Defendants of inaccurate information about wages and deductions from wages to state and federal
16 government agencies. The entitlement of Plaintiff and the Class Members is to receive wage statements that
17 accurately list the total amount of wages earned and deductions from wages as reflected on wage statements,
18 and Plaintiff and the Class Members have thereby been injured by the Defendants' failure to report the total
19 amount of wages earned during each pay period on each paycheck stub. All Class Members have been
20 similarly injured. As a result of Defendants' conduct, Plaintiff and the Class Members have suffered injury
21 because their legal right to receive accurate wage statements was violated.

22 91. Labor Code § 226(a) requires Defendants "semimonthly or at the time each payment to
23 wages" to furnish to Plaintiff and the Class Members "an accurate itemized statement in writing"
24 showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
25 earned and any applicable piece rate for Class Members paid on a piece-rate basis, (4) all deductions, (5) net
26 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
27 employee and only the last four digits of his or her social security number or an employee identification
28 number other than a social security number, (8) the name and address of the legal entity that is the employer

1 and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee pursuant to Labor Code § 226. Defendants knowingly and
3 intentionally failed to provide Plaintiff and the Class Members with such timely and accurate wage
4 and hour statements.

5 92. Plaintiff and the Class Members suffered injury as a result of Defendants' knowing
6 and intentional failure to provide them with the wage and hour statements as required by law and are
7 presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
8 Defendants have failed to provide a wage statement, failed to provide accurate and complete
9 information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and the
10 Plaintiff and Class Members cannot promptly and easily determine from the wage statement alone
11 one or more of the following: (i) The amount of the gross wages or net wages paid to the employee
12 during the pay period or any of the other information required to be provided on the itemized wage
13 statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions
14 the employer made from gross wages to determine the net wages paid to the employee during the pay
15 period, (iii) The name and address of the employer and, (iv) The name of the employee and only the
16 last four digits of his or her social security number or an employee identification number other than a
17 social security number. For purposes of Labor Code § 226(e) "promptly and easily determine" means
18 a reasonable person [i.e. an objective standard] would be able to readily ascertain the information
19 without reference to other documents or information.

20 93. Plaintiff and the Class Members suffered injury as a result of Defendants' knowing
21 and intentional failure to provide them with the wage and hour statements as required by law.

22 94. Plaintiff and the Class Members are entitled to the amounts provided in Labor Code § 226(e),
23 plus costs and attorneys' fees.

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103. Therefore, each of these employees is entitled to one day's wages for each day he or she was not timely paid all said wages due, up to a maximum of thirty (30) days' wages for each employee. Because none of the employees were ever paid all earned overtime wages, to which they were entitled, and as referred to in this Complaint, each of these employees is entitled to up to thirty (30) days of wages.

EIGHTH CAUSE OF ACTION
FOR UNLAWFUL COMPETITION AND UNLAWFUL BUSINESS PRACTICES

[CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *et seq.*]

(Against All Defendants)

104. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

105. This claim is brought by Plaintiff, on behalf of herself and on behalf of the Class and the subclasses thereof.

106. At all times relevant hereto, from time to time, the Class Members have worked as employees of Defendants. The representative Plaintiff herein and members of the Class have had their hours adjusted, changed, underpaid, and/or modified to not reflect their actual number of hours worked per day and per pay period, including by Defendants' failure to pay for all off-the-clock hours worked at the appropriate rate of pay and by requiring off-the-clock work before and after work shifts.

107. At all times relevant hereto, from time to time, Plaintiff and the Class Members have been denied rest breaks by Defendants.

108. Defendants, and each of them, are “persons” as defined under of Business & Professions Code § 17021.

109. Since at least four years prior to the present Complaint filing and at all times relevant hereto, by and through the conduct described herein, the Defendants have engaged in unfair, unlawful and fraudulent business practices, in violation of California Business & Professions Code §§ 17200, *et seq.*, and have thereby deprived Plaintiff, and all persons in interest, of fundamental rights and privileges guaranteed to all employees under California law.

110. Defendants own, operate and manage facilities in California which provide services in California to the public as defined in the Business & Professions Code §§ 17022 and 17024.

111. Defendants, as set forth in this Complaint, *supra*, engaged in false, unfair and misleading business practices, consisting of acts and omissions that include, but are not limited to:

- (a) The fact that Defendants adjusted, altered, underpaid and/or changed time and/or pay schedules to reflect that employee Class Members had not worked off-the-clock;
- (b) The fact that Defendants required non-exempt, hourly employees to work more than three and a half (3.5) hour shifts without a ten (10) minute rest period;
- (c) The fact that Defendants kept no detailed records of non-exempt, hourly employees' actual daily work activities, in part, to prevent Plaintiff and Plaintiff Classes from recovering overtime wages from Defendants after the discovery of Defendants' deceptive, fraudulent, false, unfair and unlawful conduct;
- (d) The fact that Defendants failed to pay all earned wages to Plaintiff and Plaintiff Class for all hours worked.
- (e) The fact that Defendants failed to pay all earned wages to Plaintiff and Plaintiff Class twice monthly for all hours worked.
- (f) The fact that Defendants failed to pay all earned wages to Plaintiff and the Plaintiff Class twice monthly.
- (g) The fact that Defendants failed to pay all earned wages to Plaintiff and Plaintiff Class upon termination of employment.
- (h) The fact that Defendants' activities related to their failure to disclose material and relevant information constitutes violations of Business & Professions Code § 17200.

112. Defendants, and each of them, have underreported to state authorities, wages earned by non-exempt, hourly employees and, therefore, have underpaid state taxes, employer matching funds, unemployment premiums and Worker's Compensation premiums. The aforesaid conduct is criminal in nature and subjects the Defendants, and each of them, to sanctions, fines and imprisonment, and is actionable under of Business & Professions Code §§ 17000, *et seq.* and 17200, *et seq.*

113. Pursuant to of Business & Professions Code §§ 17071 and 17075, the failure of Defendants, and each of them, to pay overtime wages, related benefits, and employment taxes, is admissible as evidence

1 of Defendants' intent to violate Chapter 4 of the Unfair Business Trade Act.

2 114. Defendants' practices are unlawful, unfair, deceptive, untrue, and misleading. Non-exempt,
3 hourly employees, including Plaintiff and Plaintiff Classes are likely to be deceived by these practices.

4 115. As a direct and proximate result of these acts and omissions, Plaintiff, is informed and
5 believes, and based upon that information and belief alleges, that the Defendants, and each of them, were
6 able to unfairly compete with other facilities in the state of California by not paying overtime and wages in
7 violation of Business & Professions Code Chapters 4 and 5, *et al.* Due to this unfair business practice,
8 Defendants have been able to charge lower prices for its services than the prices charged by other
9 comparable entities doing business in the state of California.

10 116. The victims of this unfair business practice include, but are not limited to, all non-exempt,
11 hourly employees of Defendants, competitors of Defendants in the state of California, and the general
12 public.

13 117. Plaintiff is informed and believes, and based upon that information and belief alleges, that
14 Defendants, and each of them, performed the above-mentioned acts with the intent of gaining an unfair
15 competitive advantage and thereby injuring Plaintiff, other employees, other competitors, and the general
16 public.

17 118. By and through the conduct described above, Plaintiff and all non-exempt, hourly
18 employees have been deprived of the right to be paid all wages earned, including meal and rest premiums
19 and overtime compensation earned by virtue of employment with the Defendants at regular intervals, in
20 accordance with the requirements of Labor Code §§ 200-203, 204, 226.7, 1197, *et seq.*

21 119. By and through their unfair, unlawful and/or fraudulent business practices described herein,
22 Defendants, has obtained valuable property, money and services from Plaintiff, and all persons similarly
23 situated, and has deprived Plaintiff, and all non-exempt, hourly employees of valuable rights and benefits
24 guaranteed by law, all to their detriment.

25 120. Plaintiff and the Class have injury-in-fact as a result of Defendants' conduct. Moreover,
26 Plaintiff and the Class have lost money as a direct result of Defendants' unfair, unlawful, deceptive and
27 fraudulent conduct.

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1 121. All of the acts described herein as violations of, among other things, the California Labor
2 Code and Industrial Welfare Commission Wage Orders, are unlawful and in violation of public policy; and
3 in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair,
4 unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§
5 17200, *et seq.*

6 122. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, is entitled to, and
7 does seek such relief as may be necessary to disgorge the profits which the Defendants have acquired, or of
8 which Plaintiff has been deprived, by means of the above-described unfair, unlawful and/or fraudulent
9 business practices. Plaintiff, and the members of the Plaintiff Classes, is not obligated to establish individual
10 knowledge of the unfair practices of Defendants in order to recover restitution.

11 123. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, is further entitled to
12 and does seek a declaration that the above-described business practices are unfair, unlawful and/or
13 fraudulent, and injunctive relief restraining the Defendants, and each of them, from engaging in any of the
14 above-described unfair, unlawful and/or fraudulent business practices in the future.

15 124. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, has no plain,
16 speedy, and/or adequate remedy at law to redress the injuries suffered as a consequence of the Defendants'
17 unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent
18 business practices described above, Plaintiff and the Plaintiff Class have suffered and will continue to suffer
19 irreparable harm unless the Defendants' and each of them, are restrained from continuing to engage in said
20 unfair, unlawful and/or fraudulent business practices.

21 125. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth herein
22 above, they will continue its failure to compensate non-exempt hourly employees for off-the-clock work. In
23 addition, Defendants, and each of them, will continue to avoid paying the appropriate taxes, insurance and
24 unemployment holdings.

25 126. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, requests that the
26 Court issue a preliminary and permanent injunction prohibiting the Defendants, and each of them, from
27 requiring non-exempt, hourly employees from working off-the-clock.

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1 127. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, also requests that
2 the Court order Defendants to disgorge all illegally obtained monies from failing to pay taxes, state disability
3 insurance premiums, and unemployment taxes, obtained by way of their violation of Business & Professions
4 Code §§ 17200, *et seq.*

5 128. As Plaintiff seeks to enforce an important right affecting the public interest, to wit, and the
6 disgorgement of ill-gotten gains and the restitution of unlawfully withheld wages, with interest thereon,
7 Plaintiff requests an award of attorneys' fees, pursuant to Code Civil Procedure § 1021.5.

8 **NINTH CAUSE OF ACTION**
9 **FOR VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT**
10 **[CALIFORNIA LABOR CODE §§ 2698 and 2699]**

11 **(Against All Defendants)**

12 129. Plaintiff incorporates the paragraphs above in this Complaint as though fully set forth herein.

13 130. As a result of the acts alleged above, including the Labor Code violations set forth in the
14 paragraphs above, Plaintiff seeks penalties under Labor Code § 2698 et seq. as a consequence of
15 Defendants' violations, including under Labor Code §§ 201-204, 226, 226(a), 226.7, 510, 512, 558,
16 1174, 1194, 1197, 1198, and 2802.

17 131. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties
18 in an amount to be shown at the time of trial subject to the following formula (with Plaintiff and the other
19 aggrieved employees being referred to collectively as "Plaintiffs" for this cause of action):

20 132. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each
21 subsequent violation of Labor Code §§ 201-204, 226, 226(a), 226.7, 510, 512, 558, 1174, 1194, and 2802
22 per employee per pay period;

23 133. Pursuant to Labor Code § 2699(a), all penalties as provided for by Labor Code § 558.

24 134. For Defendants' failure to provide uninterrupted off-duty meal and rest periods, Defendants
25 are liable to Plaintiff and aggrieved employees for one hour of additional pay at the regular rate of
26 compensation for each workday that the full and uninterrupted, off-duty rest and /or meal periods were not
27 provided. Defendants are also liable for civil penalties pursuant to Labor Code §§ 558 and 2699 as follows:
28 for any initial violation, \$50.00 for each Plaintiff for each pay period during which the Plaintiffs were not

provided proper meal and rest breaks; and for each subsequent violation \$100.00 for each Plaintiff for each pay period during which the Plaintiffs were not provided proper meal and rest breaks.

135. For Defendants' failure to pay wages due, Plaintiffs are entitled to recover such amounts, plus interest thereon, attorney's fees and costs. Defendants are also liable for civil penalties pursuant to Labor Code §§ 558 and 2699 as follows: for any initial violation, \$50.00 for each Plaintiff for each pay period during which the Plaintiff was not paid all earned wages; and for each subsequent violation, \$100.00 for each Plaintiff for each pay period during which the Plaintiff was not paid all wages.

136. For Defendants' failure to furnish accurate wage statements, Plaintiffs are entitled to recover the greater of all actual damages or \$50.00 for the initial violation and \$100.00 for each subsequent violation, up to \$4,000.00. Defendants are additionally liable for civil penalties pursuant to Labor Code §§ 226.3 and 2699 in the amount of \$250.00 for each Plaintiff per initial violation and \$1,000.00 for each Plaintiff per subsequent violation.

137. For Defendants' failure to keep accurate payroll records, Defendants are liable for civil penalties pursuant to California Labor Code §§ 1174.5 and 2699 in the amount of \$500.00 per violation.

138. All penalties will be allocated 75% to the Labor Workforce Development Agency, and 25% to the affected employees, and all wages will be allocated to the aggrieved employees.

139. Plaintiff has met all of the requirements set forth in Labor Code §§ 2699.3 necessary to commence a civil action against Defendants for the violations addressed herein. On **May 17, 2022**, Plaintiff sent a letter, by certified mail, return receipt requested, to the LWDA and Defendants Autonation, Inc. and Irvine Imports, Inc. setting forth the facts and theories of the violations alleged, as proscribed by Labor Code § 2698 et seq.

140. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within 63 calendar days of the mailing of Plaintiff's PAGA Notice Letter to the LWDA and sending it by certified mail to Defendant. Plaintiff may therefore commence this action to seek penalties pursuant to Labor Code § 2698 et seq.

141. Wherefore, Plaintiff and all aggrieved employees request relief as described below.

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1 **PRAYER**

2 **WHEREFORE**, the PLAINTIFF DEMANDS and JURY TRIAL and prays for judgment as follows:

3 **ON THE FIRST CAUSE OF ACTION:**

- 4 (a) For compensatory damages and/or statutory damages and statutory penalties
5 resulting from improper compensation according to proof;
6 (b) For interest on any compensatory damages;
7 (c) For Certification of the Classes defined herein, or such other Classes and/or
8 subclasses as the Court will certify; and
9 (d) For attorneys' fees and costs.

10 **ON THE SECOND CAUSE OF ACTION:**

- 11 (a) For compensatory damages and/or statutory damages and statutory penalties resulting
12 from improper compensation according to proof;
13 (b) For interest on any compensatory damages;
14 (c) For Certification of the Classes defined herein, or such other Classes and/or
15 subclasses as the Court will certify; and
16 (d) For attorneys' fees and costs as allowed by law.

17 **ON THE THIRD CAUSE OF ACTION:**

- 18 (a) For statutory compensation, including one hour of pay for each workday that a
19 lawful meal period was not provided;
20 (b) For interest on any compensatory damages;
21 (c) For Certification of the Classes defined herein, or such other Classes and/or
22 subclasses as the Court will certify; and
23 (d) For attorneys' fees and costs as allowed by law.

24 **ON THE FOURTH CAUSE OF ACTION:**

- 25 (a) For statutory compensation, including one hour of pay for each workday that a lawful
26 rest period was not provided;
27 (b) For interest on any compensatory damages;
28 (c) For Certification of the Classes defined herein, or such other Classes and/or

subclasses as the Court will certify; and

(d) For attorneys' fees and costs.

ON THE FIFTH CAUSE OF ACTION:

(a) For statutory penalties;

(b) For compensatory damages and interest thereon for actual harm caused;

(c) For Certification of the Classes defined herein, or such other Classes and/or subclasses as the Court will certify; and

(d) For attorneys' fees and costs.

ON THE SIXTH CAUSE OF ACTION:

(a) For statutory penalties; and

(b) For attorneys' fees and costs as allowed by law.

ON THE SEVENTH CAUSE OF ACTION:

(a) For statutory penalties, including 30 days of pay for each employee not timely paid wages upon termination;

(b) For penalty enhancements for willful conduct;

(c) For Certification of the Classes defined herein, or such other Classes and/or subclasses as the Court will certify; and

(d) For attorneys' fees and costs.

ON THE EIGHTH CAUSE OF ACTION:

(a) For equitable, injunctive and declaratory relief;

(b) Treble damages;

(c) For Certification of the Classes defined herein, or such other Classes and/or subclasses as the Court will certify; and

(d) For disgorgement of profits.

ON THE NINTH CAUSE OF ACTION:

(a) That Defendants be ordered to pay civil penalties pursuant to violations of Labor Code §§ 2698 and 2699, in the amount of \$100 for the first violation per employee per pay period, and \$200 for subsequent violations per employee per pay period to be

1 allocated 75% to the LWDA and 25% to the affected employees.

2 (b) For reasonable attorney's fees and costs as allowed by statute.

3 **ON ALL CAUSES OF ACTION:**

4 (a) For reasonable attorneys' fees;

5 (b) For costs of suit; and,

6 (c) For such other and further relief as this Court may deem just and proper.

7 Dated: July 19, 2022

QUINTILONE & ASSOCIATES

8
9 By: _____



RICHARD E. QUINTILONE II,
JEFFREY T. GREEN,
KYLE J. GALLEG0

Attorneys for Plaintiff REZA DIN, individually,
and on behalf of a Class of all other persons
similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of the claims by jury to the extent authorized by law.

Dated: July 19, 2022

QUINTILONE & ASSOCIATES

By: _____



RICHARD E. QUINTILONE II,
JEFFREY T. GREEN,
KYLE J. GALLEG0

Attorneys for Plaintiff REZA DIN individually,
and on behalf of a Class of all other persons
similarly situated

1 **PROOF OF SERVICE**

2 I, the undersigned, declare as follows:

3 I am a citizen of the United States, over the age of 18 years, and not a party to the within action. I am an
4 employee of or agent for Quintilone & Associates, whose business address is 22974 El Toro Rd., Suite 100,
Lake Forest, CA 92630-4961.

5 On the date below, I served the foregoing document(s):

6 **FIRST AMENDED COMPLAINT**

7 on the following parties in this action addressed as follows:

8 **SEE ATTACHED SERVICE LIST**

9 _____ **(BY MAIL)** I caused a true copy of each document, placed in a sealed envelope with postage fully
10 paid, to be placed in the United States mail at Lake Forest, California. I am "readily familiar" with
11 this firm's business practice for collection and processing of mail, that in the ordinary course of
business said document(s) would be deposited with the U.S. Postal Service on that same day. I
understand that the service shall be presumed invalid if the postal cancellation date or postage
meter date on the envelope is more than one day after the date of deposit for mailing contained on
this affidavit.

12 _____ **(BY PERSONAL SERVICE)** I delivered each such document by hand to each addressee above.

13 _____ **(BY OVERNIGHT DELIVERY)** I caused a true copy of each document, placed in a sealed
14 envelope with delivery fees provided for, to be deposited in a box regularly maintained by Federal
Express or Overnight Express. I am readily familiar with this firm's practice for collection and
15 processing of documents for overnight delivery and know that in the ordinary course of Quintilone
& Associates' business practice the document(s) described above will be deposited in a box or
16 other facility regularly maintained by Federal Express or Overnight Express or delivered to a
courier or driver authorized by Federal Express or Overnight Express to receive documents on the
same date it is placed at Quintilone & Associates for collection.

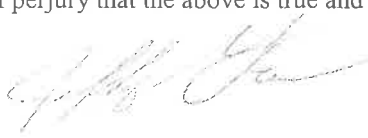
17 _____ **(BY FACSIMILE)** By use of facsimile machine number 949.458.9679, I served a copy of the
18 within document(s) on the above interested parties at the facsimile numbers listed above. The
transmission was reported as complete and without error. The transmission report was properly
19 issued by the transmitting facsimile machine.

20 X **(BY ELECTRONIC SERVICE)** I delivered each such document by electronic means pursuant to
California Civil Code, Code of Civil Procedure, the Local Rules and/or FRCP § 5(b)(2), et seq.

21 Executed on **July 19, 2022**, at Lake Forest, California.

22 _____ **(FEDERAL)** I declare under penalty of perjury that the above is true and correct.

23 X **(STATE)** I declare under penalty of perjury that the above is true and correct.

24 
25 _____
26 **JEFFREY T. GREEN**

SERVICE LIST

Christopher C. Hoffman, Esq. (SBN 176334) Attorneys for Defendants AUTONATION,
Steven D. Eheart, Esq. (SBN 332772) INC. and IRVINE IMPORTS, INC.

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