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SUPERIOR COURT-STOCKTON

2022 NOV -3 PM 4:12

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN—UNLIMITED JURISDICTION

CORY WALKER, Individually and on
Behalf of Others Similarly Situated,

Plaintiff,

vs.

AUTO BRAKES, INC.; BRAKE MASTERS
of SACRAMENTO, INC.; and DOES 1-50,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2022-7517

FIRST AMENDED CLASS ACTION AND
INDIVIDUAL COMPLAINT FOR
PENALTIES AND DAMAGES

1. VIOLATION OF LABOR CODE §§ 98.6, 1102.5 (Retaliation),
2. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY,
3. VIOLATION OF LABOR CODE §§ 1194, 1197, 1198 Wage Order 4-2001 (CLASS: Minimum Wage),
4. VIOLATION OF LABOR CODE §§ 1194, 1198, & 510, Wage Order 4-2001 (CLASS: Overtime Wage),
5. VIOLATION OF LABOR CODE § 226.7, 512, Wage Order 4-2001, (CLASS: Non-compliant Meal Breaks),
6. VIOLATION OF LABOR CODE § 226.7, 512, Wage Order 4-2001, (CLASS: Non-compliant Rest Breaks),
7. VIOLATION OF LABOR CODE §§ 201-202 (CLASS: Failure to Pay Wages Due at Cessation of Employment),
8. VIOLATION OF LABOR CODE § 226 (CLASS: Inaccurate Wage Statements),
9. UNFAIR BUSINESS PRACTICES (CLASS)
10. VIOLATION OF 2698 *et seq.* (PAGA)

JURY TRIAL DEMANDED

1 Plaintiff Cory Walker ("Walker") brings this Class and individual action against
2 defendants for compensatory damages, penalties, interest, costs, and attorneys' fees resulting
3 from the Defendants Auto Brakes, Inc., Brake Masters of Sacramento, Inc., and DOES 1-100,
4 ("Defendants") for unlawful conduct, and as grounds therefore alleges:

5 **PARTIES**

6 1. Plaintiff Cory Walker is and, at all times relevant herein, was an individual
7 residing in Calaveras County, California. Defendants employed Walker in San Joaquin County.

8 2. Defendant Auto Brakes, Inc., is an Arizona Corporation registered to do business
9 in California, with its principal place of business in Tucson, Arizona.

10 3. Defendant Brake Masters of Sacramento, Inc., is an Arizona Corporation
11 registered to do business in California, with its principal place of business in Tucson, Arizona.

12 4. Walker is not aware of the true names and capacities of the defendants sued
13 herein as Does 1-100, whether individual, corporate, associate, or otherwise, and therefore sues
14 such defendants by these fictitious names. Walker will amend this complaint to allege their true
15 names and capacities when ascertained. Walker is informed and believes, and on that basis
16 alleges, that each of the fictitiously named defendants is responsible in some manner for the
17 occurrences herein alleged and that Walker's damages and penalties herein alleged were legally
18 caused by such defendants. Unless otherwise indicated, each defendant was acting within the
19 course and scope of said agency and/or employment, with the knowledge and/or consent of said
20 co-defendant. Collectively, Defendants Auto Brakes, Inc., Brake Masters of Sacramento, Inc.,
21 and DOES 1-100 are referred to herein as "Defendants."

22 5. Plaintiff is informed and believes, and, on that basis, alleges that Defendants Auto
23 Brakes, Inc., Brake Masters of Sacramento, Inc., are vertically integrated companies with shared
24 owners, officers and directors. Each exercised sufficient control over the hiring, firing, and
25 terms of employment of Walker, and other similarly situated employees, to be his and their
26 employer as a matter of California law.

1 15. In addition to the above, while Walker was employed by Defendants, Defendants
2 engaged in other conduct prohibited by the California Labor Code.

3 16. Specifically, Walker and Defendants' other non-exempt employees were eligible
4 for and at times received commissions, non-discretionary bonuses, and other items of
5 compensation.

6 17. Defendants failed to include commissions, non-discretionary bonuses and other
7 items of compensation when determining the regular rate of pay of Walker and its other non-
8 exempt employees for purposes of overtime.

9 18. For example, during the pay period of March 6, 2022, through March 19, 2022,
10 Walker received a commission, designated as "Spiff," of \$42.00 and worked overtime. See
11 **Exhibit 1**¹.

12 19. Pursuant to its uniform policy and practice, Defendants failed to properly
13 calculate Walker's regular rate of pay for purposes of overtime and instead paid him at 1.5 times
14 his base rate of pay. See **Exhibit 1**.

15 20. Defendants were, at all times relevant herein, aware of the requirement to factor
16 these non-discretionary bonuses, commissions, and other items of compensation into its non-
17 exempt employees' regular rate of pay for purposes of overtime rates.

18 21. Additionally, Walker and Defendants' other non-exempt employees were not
19 consistently authorized or permitted to take meal and rest breaks as require by California law.

20 22. Defendants required Walker and its other non-exempt California employees to
21 work through meal and rest breaks due to understaffing and work demands.

22 23. On the occasions that Walker and Defendants' other non-exempt California were
23 able to take their meal breaks, they routinely occurred after 5 hours of work.

24 24. Further, Defendants frequently failed to relieve Walker and its other non-exempt
25 California of employer control during their meal and rest breaks.

26
27 ¹ Exhibit 1 is incorporated by this reference as though fully set forth herein. Some Exhibits have
28 been reduced and/or redacted due to their size and content.

1 25. For example, if a vehicle was being processed and it was approaching lunch
2 break, Defendants would have Walker and its other non-exempt employees punch out for lunch
3 but continue working without pay.

4 26. Similarly, Walker and other non-exempt employees were handed assignments
5 while on lunch and expected to get to work.

6 27. When Walker and Defendants' other non-exempt California were not provided
7 compliant meal and rest breaks, Defendants did not pay premiums as required by California law.
8 Specifically, Defendants either (a) failed to pay the premiums in their entirety or (b) paid the
9 premium(s) only at its employees' base rate of pay rather than their regular rate of pay, without
10 accounting for non-discretionary bonuses, commissions, and/or other items of compensation.

11 28. Because Defendants required Walker and its other non-exempt employees, both
12 current and former, to work off of the clock, did not pay them twice the applicable minimum
13 wage while requiring them to furnish tools necessary to the job, required them to perform off-
14 the-clock work during lunch breaks, failed to properly calculate and pay overtime, did not pay
15 required premiums for missed meal and rest breaks, and did not pay required premiums for
16 missed meal and rest breaks at the correct rate, Defendants did not timely compensate Walker
17 and their other non-exempt California employees for all wages due and owing during each pay
18 period.

19 29. Similarly, because Defendants required Walker and its other non-exempt
20 employees, both current and former, to work off of the clock, did not pay them twice the
21 applicable minimum wage while requiring them to furnish tools necessary to the job, required
22 them to perform off-the-clock work during lunch breaks, failed to properly calculate and pay
23 overtime, did not pay required premiums for missed meal and rest breaks, and did not pay
24 required premiums for missed meal and rest breaks at the correct rate, Defendants did not timely
25 compensate Walker and their other non-exempt California employees for all wages due and
26 owing when their employment ended.

1 30. Defendants also failed to furnish accurate wage statements because they did not
2 account for the correct total hours worked, gross wages earned, net wages earned, or the
3 corresponding number of hours worked at each applicable hourly rate by the employee, as
4 required by Labor Code § 226(a)(1), (2), (5) and (9). This failure was willful, as Defendants
5 knew they were not accurately paying their technicians.

6 31. Plaintiff Walker and Defendants' other non-exempt California employees were
7 unable to promptly and easily determine their gross wages earned, total hours worked, net wages
8 earned, and all applicable hourly rates in effect during the pay period and the corresponding
9 number of hours worked at each hourly rate from the wage statements furnished to them by
10 Defendants. As such, Walker and Defendants other current and former non-exempt employees
11 have suffered injury as a result of Defendants' knowing and intentional failure to comply with
12 California Labor Code section 226(a).

13 32. From at least four years prior to the filing of this action, Defendants have adopted
14 and employed unfair business practices. These unfair business practices include, but are not
15 limited to, failing to pay employees required to use their tools on the job at the legally required
16 rate, failing to pay overtime and minimum wage for all hours worked, failing to pay overtime at
17 the legally required rate, and failing to furnish meal and rest breaks as required by law.

18 33. In addition to complaining about being underpaid, Walker complained to
19 Defendants that O'Brien was encouraging the drinking of alcohol on the job and that it was an
20 unsafe practice because employees were required to operate customers vehicles.

21 34. In retaliation for these complaints, Defendants retaliated against Walker by
22 cutting his hours, making him take days off from work, and ultimately terminating his
23 employment. Specifically, after lodging said complaints, O'Brien began to send Walker home
24 early. In July of 2022, O'Brien text messaged Walker several days in a row telling him, "Take
25 tomorrow off."

26 35. When Walker called Defendants' Human Resources department, he was greeted
27 on the other line by someone saying, "Hello, trouble." During a second call, they hung up on
28

1 Walker, telling him to call back to get a better connection. They then failed to answer the call or
2 respond to the messages he left. During his last conversation, which occurred after Walker had
3 retained counsel to assist him, he was told, "We could have handled this professionally, but you
4 had to go out and get a lawyer." Walker was then told to come and pick up his tools.

5 36. Defendants terminated Walker's employment in July of 2022. When it did so, it
6 failed to compensate Walker for all wages earned at the time of termination, in violation of
7 Labor Code section 201. Employer has similarly failed to pay all wages due at the cessation of
8 employment for other its California employees, in violation of Labor Code sections 201 and 202.

9 **CLASS ACTION ALLEGATIONS**

10 37. Plaintiff Walker Plaintiff brings this action, on behalf of himself and all others
11 similarly situated, as to Causes of Action three (3) through eight (8), as a class action pursuant to
12 California Code of Civil Procedure Section 382. The classes which Plaintiff seeks to represent
13 are defined as follows:

- 14 a. All current and former non-exempt employees of Defendants
15 who received commissions, non-discretionary bonuses, and/or
16 other items of compensation and worked overtime during one
17 or more pay periods from April 8, 2019, through the date of
18 final judgment (the "Regular Rate Class");
- 19 b. All technicians who worked Defendants at any time from April
20 8, 2019, through the date of final judgment (the "Technician
21 Class").
- 22 c. All current and former non-exempt California employees of
23 Defendants who worked one or more shift of longer than five
24 hours from April 8, 2019, through the date of final judgment
25 (the "Meal Break Class");
- 26 d. All current and former non-exempt California employees of
27 Defendants who worked one or more shift of longer than three
28 and one-half hours from April 8, 2019, through the date of final
judgment (the "Rest Break Class");
- e. All current and former non-exempt California employees of
Defendants who were issued a wage statement therefor from
August __, 2021, through the date of final judgment (the
"Wage Statement Class"); and

1 f. All members of Regular Rate Class, Meal Break Class, Rest
2 Break Class, or Technician Class whose employment with
3 Defendants ended, at any time from April 8, 2019, through the
date of final judgment (the "Waiting Time Penalty Class").

4 38. The Regular Rate Class, Technician Class, Meal Break Class, Rest Break Class,
5 Wage Statement Class, and Waiting Time Penalty Class will be collectively referred to as the
6 "Class."

7 39. This action has been brought and may be properly maintained as a class action
8 under Code of Civil Procedure section 382 because there is a well-defined community of interest
9 in the litigation and the Class is easily ascertainable:

10 a. Numerosity: Class of persons is so numerous that joinder of all members is
11 impracticable, and the disposition of their claims in a class action is a benefit
12 to the parties and to the Court. Plaintiff is informed and believes, and based
13 thereon alleges, that Defendants have employed more than 100 employees
14 who satisfy the class definition. Although the exact number and identity of
15 Class members is not presently known, they can be identified in Defendants'
16 records through coordinated discovery pursuant to this class action.

17 b. Commonality: There are questions of law and fact common to Plaintiff and
18 Class members that clearly predominate over any questions affecting only
19 individual members. These common questions of law and fact include,
20 without limitation:

- 21 i. Whether Defendants paid technicians who were required to use their
22 own tools at the applicable hourly minimum wage;
- 23 ii. Whether Defendants paid non-exempt employees at least minimum
24 wage for all time worked;
- 25 iii. Whether Defendants paid non-exempt employees all required overtime
26 wages;
- 27 iv. Whether Defendants paid non-exempt employees' overtime at the
28 correct rate;

- 1 v. Whether Defendants have a legally-compliant policy and practice of
2 providing meal and rest breaks to its non-exempt employees;
- 3 vi. Whether Defendants have paid premium wages for missed meal and
4 rest breaks;
- 5 vii. Whether Defendants paid premium wages at the correct rate;
- 6 viii. Whether Defendants furnished accurate itemized wage statements;
- 7 ix. Whether Defendants timely paid their former non-exempt employees
8 all wages due at termination or within 72 hours of resignation; and
- 9 x. Whether Defendants engaged in unfair business practices.
- 10 c. Typicality: Plaintiff's claims are typical of the claims of the members of the
11 Class as a whole, all of whom have sustained and/or will sustain damage and
12 injury as a proximate and/or legal result of the alleged violations of
13 Defendants. Plaintiff's claims are typical of those of the Class because
14 Defendants subjected Plaintiff and each member of the Class to the same
15 violations alleged herein. The defenses of Defendants, to the extent that such
16 defenses apply, are applicable generally to the whole Class and are not
17 distinguishable as to the proposed class members.
- 18 d. Adequacy of Representation: Plaintiff will fairly and adequately protect the
19 interests of all members of the Class, and has retained attorneys with
20 extensive experience in litigation, including class and representative actions.
21 Plaintiff has no interests that conflict with those of the Class. Plaintiff is able
22 to fairly and adequately protect the interests of all members of the Class
23 because it is in his best interest to prosecute the claims alleged herein in order
24 to obtain the full compensation due himself and the other class members.
- 25 e. Superiority of Class Action: A class action is superior to any other method
26 available for fairly and efficiently adjudicating the controversy because 1)
27 joinder of individual class members is not practicable; 2) litigating the claims
28

1 of individual class members would be unnecessarily costly and burdensome
2 and would deter individual claims; 3) litigating the claims of individual class
3 members would create a risk of inconsistent or varying adjudications that
4 would establish incompatible standards of conduct for Defendants; 4) class
5 members still working for Defendants may be fearful of retaliation if they
6 were to bring individual claims; 5) class members would be discouraged from
7 pursuing individual claims because the damages available to them are
8 relatively small; and 6) public policy encourages the use of the class actions to
9 enforce employment laws and protect individuals who, by virtue of their
10 subordinate position, are particularly vulnerable.

11 40. Judicial economy will be served by maintenance of this lawsuit as a class action.
12 To process numerous virtually identical individual cases will significantly increase the burden on
13 the Court, the class members, and Defendants, all while unnecessarily delaying the resolution of
14 this matter. There are no obstacles to effective and efficient management of this lawsuit as a
15 class action by this Court and doing so will provide multiple benefits to the litigating parties
16 including, but not limited to, efficiency, economy, and uniform adjudication with consistent
17 results.

18 41. Notice of a certified class action and any result or resolution of the litigation can
19 be provided to class members by mail, email, publication, or such other methods of notice as
20 deemed appropriate by the Court.

21 **FIRST CAUSE OF ACTION**
22 **VIOLATION OF LABOR CODE §§ 98.6, 1102.5**
23 **(Retaliation)**
Against All Defendants

24 42. Plaintiff Walker hereby realleges and incorporates by reference each and every
25 allegation set forth above as though fully set forth herein, except as said paragraphs are
26 inconsistent with the allegations of this cause of action.
27
28

1 43. Pursuant to Labor Code § 98.6, no person shall discharge an employee or in any
2 manner discriminate against any employee because the employee engaged in any conduct
3 delineated in Chapter 4 of the Labor Code, including the conduct described in 96(k), and Chapter
4 5 of the Labor Code (Labor Code §§ 1101-1105), or because of the exercise by the employee on
5 behalf of himself, herself, or others of any rights afforded him or her under the Labor Code.

6 44. Labor Code section 1102.5(b) makes expressly unlawful any form of retaliation
7 against an employee for disclosing to any person with authority over the employee information
8 that the employee has reasonable cause to believe is a violation of a state or federal statute, or
9 local, state, or federal rule or regulation.

10 45. As set forth above, Plaintiff Walker complained that he was being underpaid
11 because he was required to use his own tools on the job. He further complained that Defendants
12 were deploying an unsafe and unlawful practice of drinking alcohol on the job.

13 46. In retaliation, Defendants reduced Walker's hours, made him take unpaid time
14 away from work, and terminated the employment relationship.

15 47. As a result of Defendants' conduct, Plaintiff Walker has suffered compensatory
16 damages, including special and general damages.

17 48. Wherefore, Plaintiff Walker prays for relief as set forth below.

18 **SECOND CAUSE OF ACTION**
19 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
20 **(Tameny v. ARCO)**
 Against All Defendants

21 49. Plaintiff Walker hereby realleges and incorporates by reference each and every
22 allegation set forth above as though fully set forth herein, except as said paragraphs are
23 inconsistent with the allegations of this cause of action.

24 50. In *Tameny v. ARCO, Inc.* (1980) 27 Cal.3d 167, the California Supreme Court
25 held that an action lies in tort for an employee who has been terminated in contravention to the
26 fundamental principles of public policy.

1 51. When Defendants terminated Plaintiff Walker, they violated the fundamental
2 principles of public policy, including those set forth in Labor Code §§ 6310, 1102.5 and 98.6,
3 which protect employees from retaliation for complaining about unsafe and illegal employment
4 practices.

5 52. As a result of Defendants' conduct, Plaintiff Walker has suffered compensatory
6 damages, including special and general damages.

7 53. Wherefore, Plaintiff Walker prays for relief as set forth below.

8 **THIRD CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE §§ 1194, 1197, 1198 Wage Order 4-2001**
10 **(CLASS: Minimum Wage Violations)**
11 **Against All Defendants**

12 54. Plaintiff Walker hereby realleges and incorporates by reference each and every
13 allegation set forth above as though fully set forth herein, except as said paragraphs are
14 inconsistent with the allegations of this cause of action.

15 55. Labor Code §1198 provides that the standard conditions of labor are to be fixed
16 by the Industrial Wage Commission ("IWC") and that employment outside of said conditions is
17 unlawful.

18 56. Labor Code sections 1194 and 1197 provide that the minimum wage established
19 by law in California is the minimum wage that may be paid to employees for every hour worked,
20 notwithstanding any private agreement to the contrary.

21 57. IWC Wage Order 4-2001 is applicable to Technician Class. Subsection (B), of
22 Section 9, of Wage Order 4-2001 provides "[w]hen tools or equipment are required by the
23 employer or necessary to the performance of a job, such tools shall be provided by the employer,
24 except that an employee whose wages are at least two (2) times the minimum wage provided
25 herein may be required to provide and maintain tools and equipment customarily required by the
26 trade or craft."

27 58. Nevertheless, as set forth above, it was necessary for Plaintiff Walker and the
28 Technician Class to use their own tools, and they were not paid two (2) times the applicable
minimum wage.

1 59. In addition, the Class was commonly required to work off the clock during meal
2 breaks, as alleged above. The effect of this was that the Class was not paid the applicable
3 minimum wage for time worked off the clock.

4 60. During the relevant time period, and as set forth in greater detail above,
5 Defendants failed to pay Plaintiff and the Class at least minimum wage for all hours worked, in
6 violation of Labor Code sections 1194 and 1197.

7 61. Wherefore, Plaintiff and the other members of the Class have been injured as set
8 forth above and request relief as hereafter provided.

9 **FOURTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE §§ 1194, 1198, & 510, Wage Order 4-2001**
11 **(CLASS: Overtime Pay Violations)**
 Against All Defendants

12 62. Plaintiff Walker hereby realleges and incorporates by reference each and every
13 allegation set forth above as though fully set forth herein, except as said paragraphs are
14 inconsistent with the allegations of this cause of action

15 63. Pursuant to California Labor Code section 510, any work in excess of eight hours
16 in one workday and any work in excess of 40 hours in any one workweek and the first eight
17 hours worked on the seventh day of work in any one workweek shall be compensated at the rate
18 of no less than one and one-half times the regular rate of pay for an employee. Any work in
19 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular
20 rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day
21 of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an
22 employee.

23 64. Pursuant to California Labor Code section 1198, the maximum hours of work and
24 standard conditions of labor fixed by the commission shall be the maximum hours of work and
25 the standard conditions of labor for employees and the employment of any employee for longer
26 hours than those fixed by the commission or under conditions of labor prohibited by the order is
27 unlawful.

1 65. The Fair Labor Standards Act, 29 USC §§ 201 et seq. and 29 CFR §§ 778 et seq.,
2 requires time-and-a-half pay for the time an employee works over forty hours a week.

3 66. The "regular rate of pay" includes all remuneration for employment paid to the
4 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
5 commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. §
6 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

7 67. During the relevant time period, Plaintiff and Defendant's other non-exempt
8 employees regularly worked overtime. In such instances in which they were also required to
9 work off the clock, they were underpaid.

10 68. Further, during the relevant time period, whenever the Technician Class worked
11 overtime in a period in which they were not paid the rate of two (2) times the applicable
12 minimum wage, they were not paid all overtime compensation due to them.

13 69. During the relevant time period, and as set forth in greater detail above,
14 Defendants failed to pay employees for all time worked, including overtime, at the appropriate
15 rate.

16 70. During the relevant time period, Defendants intentionally and willfully failed to
17 pay the proper overtime wages due to Plaintiff and the other members of the Class.

18 71. Wherefore, Plaintiff and the other members of the Class have been injured as set
19 forth above and request relief as hereafter provided.

20 **FIFTH CAUSE OF ACTION**
21 **VIOLATION OF LABOR CODE § 226.7, 512, Wage Order 4-2001**
22 **(CLASS: Failure to Furnish Meal Breaks)**
 Against All Defendants

23 72. Plaintiff Walker realleges and incorporates by reference each and every
24 allegation set forth above as though fully set forth herein, except as said paragraphs are
25 inconsistent with the allegations of this cause of action.

26 73. Labor Code § 226.7 requires employers to provide employees meal periods as
27 mandated by Order of the IWC.
28

74. Labor Code § 512(a) and the applicable IWC Wage Order(s) provide that an employer may not employ a person for a work period of more than 5 hours per day without providing that employee a meal period of not less than 30 minutes, except that if the total work period per day is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

75. The applicable Wage Order(s) and Labor Code section 226.7 further require an employer who fails to provide a meal period to pay the employee one hour of pay at the employee's "regular rate of compensation" for each day that a meal period is missed.

76. As set forth above, Defendants failed to provide Plaintiff and the other members of the Class with meal breaks as required by the Labor Code and IWC Wage Orders, nor did Defendants pay required premium wages for missed meal breaks.

77. As a proximate result of Defendants actions, Plaintiff and the other members of the Class have suffered harm.

78. Wherefore, Plaintiff and the other members of the Class have been injured as set forth above and request relief as hereafter provided.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226.7
(CLASS: Failure to Furnish Rest Breaks)
Against All Defendants

79. Plaintiff Walker realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

80. Labor Code § 226.7 requires employers to provide employees rest periods as mandated by Order of the IWC.

81. The applicable Wage Order(s) require that employers must authorize and permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major

1 fraction thereof. Employees are not entitled to a rest break if their total daily work is less than.
2 three-and-one-half hours.

3 82. The applicable Wage Order(s) and Labor Code § 226.7 further require an
4 employer who fails to provide a rest period to pay the employee one hour of pay at the
5 employee's regular rate for each day that a meal period is missed.

6 83. As set forth above, during her employment, Defendants failed to provide Plaintiff
7 and the Class with rest breaks as required by the Labor Code and IWC Orders.

8 84. As a proximate result of Defendants actions, Plaintiff and the other members of
9 the Class have suffered harm and seek relief as set forth below.

10 **SEVENTH CAUSE OF ACTION**
11 **VIOLATION OF LABOR CODE §§ 201, 202**
12 **(CLASS: Failure to Pay Wages Due at Cessation of Employment)**
13 **Against All Defendants**

14 85. Plaintiff Walker realleges and incorporates by reference Paragraphs 1 through 69
15 above as though fully set forth herein, except as said paragraphs are inconsistent with the
16 allegations of this cause of action.

17 86. California Labor Code section 201 provides that if an employer discharges an
18 employee, the wages earned and unpaid at the time of discharge are due and payable
19 immediately.

20 87. California Labor Code section 202 requires an employer to pay an employee all
21 earned wages within 72 hours of the employee quitting his or her employment, or immediately at
22 the time of quitting if the employee has given 72 hours previous notice of his or her intention to
23 quit.

24 88. As set forth above, Defendants failed to pay Plaintiff and the other former
25 employee members of the Class all wages earned and unpaid, including overtime and paid sick
26 time, at termination or within seventy-two hours of resignation.

27 89. Wherefore, Plaintiff and the other former employee members of the Class have
28 been injured as set forth above and request relief as hereafter provided.

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(CLASS: Failure to Furnish Accurate Itemized Wage Statements)
Against All Defendants

90. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

91. Pursuant to California Labor Code section 226(a) "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment."

92. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees. Labor Code § 226(e)(1).

93. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot

1 promptly and easily determine from the wage statement alone, i) the amount of gross/net wages
2 paid to the employee during the pay period or any of the other information required to be
3 provided pursuant to Labor Code section 226(a) items (2) to (4), inclusive, (6) and (9), ii)
4 deductions made by the employer, iii) the name and address of the employer and iv) the name of
5 the employee and the last four digits of his or her social security number or employee
6 identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv). "Promptly and easily
7 determine" means a reasonable person would be able to readily ascertain the information without
8 reference to other documents or information. Labor Code § 226(e)(2)(C).

9 94. As set forth above, Defendants intentionally and willfully failed to furnish
10 accurate itemized wage statements which complied with Labor Code section 226.

11 95. Wherefore, Plaintiff and the other members of the Class, have been injured as set
12 forth above and request relief as hereafter provided.

13 **NINTH CAUSE OF ACTION**
14 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200 *ET SEQ.***
15 **(CLASS: Unfair Business Practices)**
Against All Defendants

16 96. Plaintiff hereby realleges and incorporates by reference each and every allegation
17 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with
18 the allegations of this cause of action .

19 97. The statutory violations, as alleged above, are unfair business practices within the
20 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*),
21 and include, but are not limited to failing to pay their non-exempt California employees
22 minimum wage and overtime, as well as the legally required rates, and failure to furnish meal
23 and rest breaks.

24 98. Wherefore, Plaintiff and the other members of the Class have been injured as set
25 forth above and request relief as hereafter provided.

TENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 2698 *et seq.*
(Private Attorneys General Act)
Against All Defendants

99. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

100. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may pursue a civil action arising under the California Private Attorneys General Act of 2004 ("PAGA") after the following requirements have been met:

- a. The aggrieved employee shall give written notice by certified mail to the LWDA and the employer (hereinafter "Employee's Notice") of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The LWDA shall provide notice (hereinafter "LWDA's Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA's Notice, or if the LWDA does not provide notice within 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to Labor § 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

101. For reasons set forth above, Plaintiff Walker is an aggrieved employee as he has been subjected to one or more violation of the California Labor Code within the last year.

102. On August 17, 2022, Plaintiff Walker electronically filed an Employee's Notice with the LWDA and served the same on Defendants by certified mail. The August 17, 2022, Employee's Notice is attached hereto as **Exhibit 2**, and is incorporated by this reference.

103. On August 23, 2022, Plaintiff Walker electronically filed a supplement to its Employee's Notice to the LWDA and served the same on Defendants by certified mail. The

1 August 23, 2022, supplement to the Employee's Notice is attached hereto as Exhibit 3 and is
2 incorporated by this reference.

3 104. As of today's date, more than 65 days have passed without the LWDA providing
4 any LWDA Notice that it intends to investigate the allegations in the notices. Accordingly,
5 Plaintiff Walker has satisfied the administrative prerequisites under Labor Code § 2699.3 in
6 effect at the time of the postmark of his notice to bring a civil action to recover penalties against
7 Defendants under the PAGA.

8 105. As set forth in detail in Exhibits 2 and 3, within the relevant time period,
9 including the past year and 65 days and continuing, and in accordance with uniform policy,
10 Defendants have violated the Labor Code as to Plaintiff Walker and other former and current
11 employees, including Labor Code Sections 201, 202, 226(a)(1), (2), (5), (9), 226.7, 512, and
12 2802.

13 106. Wherefore, Plaintiff Walker prays for relief set forth below.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff Walker prays judgment against each defendant as follows.

16 **As to the First Cause of Action:**

- 17 1. For compensatory damages in the form of economic and non-economic damages
18 in an amount unknown, but in excess of the jurisdictional minimum of this
19 superior court;
- 20 2. For a civil penalty of \$10,000 pursuant Labor Code § 98.6(b)(3);
- 21 3. For attorneys fees and costs pursuant to Labor Code § 1102.6, and any other
22 applicable statute;
- 23 4. For prejudgment and post-judgment interest according to any applicable provision
24 of law or as otherwise permitted by law, including that available under Civil Code
25 sections 3287(a) and 3289(b);
- 26 5. For such other and further relief as the Court deems just and proper.

27 ///

1 **As to the Second Cause of Action:**

- 2 1. For compensatory damages in the form of economic and non-economic damages
3 in an amount unknown, but in excess of the jurisdictional minimum of this
4 superior court;
- 5 2. For prejudgment and post-judgment interest according to any applicable provision
6 of law or as otherwise permitted by law, including that available under Civil Code
7 sections 3287(a) and 3289(b);
- 8 3. For such other and further relief as the Court deems just and proper.

9 **As to the Third through Ninth Causes of Action:**

- 10 1. That this Court certify the Class and subclasses;
- 11 2. That this Court certify Plaintiff as the representative of the Class;
- 12 3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
- 13 4. That this Court award actual, compensatory, special and general damages as well
14 as restitutionary relief to Plaintiff and the members of the Class;
- 15 5. That this Court award penalties and liquidated damages including, but not limited
16 to, those available under Labor Code §§ 203, 226(e), 226.7, 1194.2, and 1198 to
17 Plaintiff and the members of the Class;
- 18 6. That this Court award injunctive relief, including that available under Labor Code
19 § 226(h) and Business and Professions Code § 17203;
- 20 7. That this Court award statutory attorneys' fees and costs, including those
21 available under Labor Code §§ 218.5, 226(e)(1), and 1194, as well as Code of
22 Civil Procedure § 1021.5;
- 23 8. That this Court award prejudgment and post-judgment interest according to any
24 applicable provision of law or as otherwise permitted by law; and
- 25 9. That this Court award such other and further relief as the court deems just and
26 proper.
- 27
- 28

1 As to the Tenth Cause of Action:

- 2 1. For civil penalties under the PAGA for violations of Labor Code sections 201,
3 202, 226(a)(1), (2), (5), (9), 226.7, 512, and 2802, including but not limited to
4 those available under Labor Code sections 226.3, 256, 558, and 2699(f);
- 5 2. For statutory attorneys' fees and costs, including but not limited to those available
6 under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);
- 7 3. For prejudgment and post-judgment interest according to any applicable provision
8 of law or as otherwise permitted by law, including those available under Civil
9 Code §§ 3287(a) and 3289(b); and
- 10 4. For such other and further relief as the court deems just and proper.

11
12 DATED: November 1, 2022

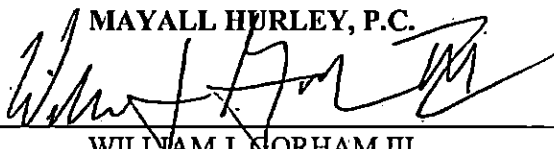
13
14 By 
15 WILLIAM J. GORHAM III
16 ROBERT J. WASSERMAN
17 VLADIMIR J. KOZINA
18 Attorneys for Plaintiff Cory Walker
19
20
21
22
23
24
25
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27
28

Exhibit 1

Brake Masters of Sacramento, Inc
6179 East Broadway Boulevard
Tucson, AZ 85711

Pay Date: 03/25/2022

Voucher #: (72027)

Deposited To The Account(s) Of	Deposit #	Account Type	Account #	Transit ABA	Deposit
Cory Lewis Walker	1	Checking	XXXX3806	321175261	681.80
5191 03/25/2022 (72027)	2	Checking	XXXXXX0869	321175261	501.05
Cory Lewis Walker					1,182.85

Non-Negotiable - This Is Not A Check

#5191 - Cory Lewis Walker				Voucher #(72027)		Pay Date: 03/25/2022			
						Pay Period: 03/06/2022-03/19/2022			
Earnings						Timesheet			
	Rate	Hours	YTD	Current	YTD	Time Off	In	Out	Total
OVT	42.00	1.41	8.31	59.22	349.02	Tue, 03/08/2022	08:00a	02:53p	6.97
REG	28.00	57.26	354.94	1,603.28	9,938.32	Wed, 03/09/2022	08:00a	11:07a	3.12
Spiff				42.00	42.00	Sat, 03/12/2022	08:02a	05:21p	8.34
Gross Pay				1,704.50	10,329.34	Tue, 03/15/2022	08:03a	04:25p	7.37
Hours Worked		58.67	363.25			Wed, 03/16/2022	08:13a	05:00p	7.80
						Thu, 03/17/2022	08:00a	05:06p	8.10
						Fri, 03/18/2022	08:01a	05:16p	8.27
						Sat, 03/19/2022	07:57a	05:38p	8.70
Deductions						Accruals			
			Current	YTD		Sick	Accrued	Taken	Bal.
Child Support			197.50	1,125.00		Vacation	Hrs: 13.21	0.00	13.21
							Hrs: 9.89	0.00	9.89
Taxes Withheld									
	Taxable	Taxable YTD	Current	YTD					
FIT	1,704.50	10,329.34	136.87	833.47					
FICA	1,704.50	10,329.34	105.68	640.42					
MEDI	1,704.50	10,329.34	24.72	149.78					
SIT:CA	1,704.50	10,329.34	48.13	303.36					
SDI:CA	1,704.50	10,329.34	18.75	113.63					
Total			334.15	2,040.66					
Net Pay									
			1,182.85	7,163.68					
Checking (3806)			681.80	5,624.95					
Checking (0869)			501.05	1,538.73					
Company Paid Benefits									
			Current	YTD					
FUTA				42.00					
FICA			105.68	640.42					
MEDI			24.72	149.78					
SUTA:CA				434.00					
Total			130.40	1,266.20					

1. For information purposes only. No effect on your net pay.

1 For information purposes only No effect on your net pay.

Exhibit 2

SOUTHERN CALIFORNIA OFFICE
150 N. BRAND BLVD. SUITE 600
GLENDALE, CALIFORNIA 91206
(818) 646-6110

MAILING ADDRESS
2153 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

LAW OFFICES OF
MAYALL HURLEY

A PROFESSIONAL CORPORATION

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

TELEPHONE: (209) 477-3833
FACSIMILE: (209) 473-4818
WWW.MAYALLAW.COM

VLADIMIR F. KOZINA
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JENNY D. BAYSINGER
JOHN P. BRISQOE
VLADIMIR J. KOZINA
ANGELA C. RUSSELL

OF COUNSEL
4 ANTHONY ABBOTT

August 17, 2022

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/308>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

Auto Brakes, Inc.
6179 E. Broadway Blvd.
Tucson, AZ 85711

Brake Masters of Sacramento, Inc.
6179 E. Broadway Blvd.
Tucson, AZ 85711

Re: Cory L. Walker

To Whom It May Concern:

This firm represents Cory Walker relating to his former employment as a brake technician for Auto Brakes, Inc. and Brake Masters of Sacramento, Inc. (collectively herein "Employer"). Auto Brakes, Inc. and Brake Masters of Sacramento, Inc. are related companies that operate as vertically integrated, dual employers pursuant to California law. Under the Labor Code, each qualifies as an employer of Mr. Walker for exercising control over the employment relationship.

In accordance with California Labor Code § 2699.3, this letter shall serve as Mr. Walker's written notice regarding the following violations, and facts and theories supporting the violations, on his behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of current and other former California employees of Employer. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

Employer provides auto repair services at numerous locations in the State of California.

Labor and Workforce Development Agency
Auto Brakes, Inc./Brake Masters of Sacramento, Inc.
Re: Cory Walker
August 17, 2022
Page 2 of 4

At the end December of 2021, Employer hired Mr. Walker to work as a non-exempt, brake technician at the rate of \$28.00 per hour. Employer required Mr. Walker, and other brake technicians to use their own tools. In fact, Mr. Walker had his own personal tools, valued in excess of \$4,000, at the work site. His tools were necessary to provide the services he provided. In addition to Mr. Walker, numerous other California technicians employed by Employer, both current and former, were required to use their own tools. Also, like Mr. Walker, other technicians were not paid twice the applicable wage, which is the required rate of pay for employers to avoid being required to compensate their employees for the use of their tools.

Chris O'Brien, Employer's manager and Mr. Walker's supervisor, was well aware that Employer was underpaying its technicians. In a discussion in 2022, Mr. O'Brien told Mr. Walker he wanted to lower his pay, because he could get "shitters" to do the job for \$10 less per hour than Mr. Walker was being paid. Mr. Walker responded, "actually, you are supposed to be paying me twice the minimum wage (which was \$14.50) because I am required to use my own tools." Mr. O'Brien responded, "it don't work like that for us." Consequently, Employers failure to pay twice the applicable minimum wage, though requiring its California technicians to use their own tools, was a company wide policy.

Employer also did not provide paid breaks, or furnish compliant meal breaks, as required by law. Employer required its employees, including Mr. Walker, to work off of the clock during lunch. If a vehicle was being processed and it was approaching lunch break, Employer would have Mr. Walker punch out for lunch, but continue working. In addition, Mr. Walker and other technicians, were handed assignments while on lunch and expected to get to work. As such, Employer failed to relieve Mr. Walker and other employees of work duties during a meal breaks. Employer likewise failed to respect rest breaks. Employer would interrupt breaks by handing assignments to technicians, including Mr. Walker. Consequently, Employer had a practice of not providing non-exempt employees compliant rest breaks because they were not relieved of all duties during rest breaks.

Because Employer required Mr. Walker and other of its California employees, both current and former, to work off of the clock, it did not compensate them for all time worked, or for the correct amount of overtime worked. It also failed to furnish accurate wage statements because it did not account for the correct total hours worked, gross wages earned, net wages earned, or the corresponding number of hours worked at each hourly rate by the employee.

Employer terminated Mr. Walker's employment in July of 2022. When it did so, it failed to compensate Mr. Walker for all wages earned, in violation of Labor Code section 201. Employer has similarly failed to pay all wages due at the cessation of employment for other its California employees, in violation of Labor Code sections 201 and 202.

Labor and Workforce Development Agency
Auto Brakes, Inc./Brake Masters of Sacramento, Inc.
Re: Cory Walker
August 17, 2022
Page 3 of 4

In so acting, as to Mr. Walker, and current and other former California employees of Employer, within the last year, Employer committed violations of the California Labor Code, including:

1. Violation of Labor Code section 2802 – failure to reimburse employees for expenses incurred on behalf of the employer. The civil penalty for these violations is, pursuant Labor Code §2699(f), \$100 per pay period that employees who required to use their own tools were not paid at a rate of twice the applicable minimum wage.
2. Violation of Labor Code section 226(a)(1), (2), (5) and (9) – failure to furnish wage statements that accurately itemize in writing (1) gross wages earned, (2) total hours worked by the employee, . . . (5) net wages earned, . . . 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 Each instance carries a \$250 fine pursuant to Labor Code section 226.3.
3. Violation of Labor Code sections 512, 226.7, and applicable Wage Order(s) – failure furnish compliant meal breaks. The civil penalty for these violations is \$50 per pay period per affected employee pursuant to Labor Code § 558.
4. Violation of Labor Code section 226.7 and applicable IWC Wage Order(s) – failing to provide a paid rest break. The civil penalty for these violations is \$50 per pay period per affected employee pursuant to Labor Code § 558.
5. Violation of Labor Code Sections 201 and 202 – failure to pay all wages due at the cessation of employment. The civil penalty for these violations is, pursuant Labor Code §2699(f), \$100 per violation. Alternatively, a penalty not to exceed 30 days of wages may be applied pursuant to Labor Code § 256.

In addition to these penalties, attorneys' fees and costs are to be awarded to legal counsel to a party acting as proxy to the LWDA pursuant to Labor Code § 2699(g), and any other applicable statute providing for such reimbursement of fees and costs.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or to my client, Mr. Walker.

If the LWDA does not intend to investigate these violations, Mr. Walker intends to file a civil complaint against Employers pursuant to the Labor Code Private Attorneys General Act of

Labor and Workforce Development Agency
Auto Brakes, Inc./Brake Masters of Sacramento, Inc.
Re: Cory Walker
August 17, 2022
Page 4 of 4

2004 (Labor Code §§ 2698 – 2699.5), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By

A handwritten signature in black ink, appearing to read 'William J. Gorham III', is written over a horizontal line.

WILLIAM J. GORHAM III

cc: client

LAW OFFICES

MAYALL, HURLEY
A PROFESSIONAL CORPORATION

2483 GRAND CANAL BOULEVARD

SECOND FLOOR

STOCKTON, CALIFORNIA 95207-8250



9489 0090 0027 6312 4752 28

Label 830-PB, Oct. 2015
Pitney Bowes

US POSTAGE--PITNEY BOWES



ZIP 95207 \$ 006.57⁰
02 4W
0000369527 AUG 17 2022

Brake Masters of Sacramento, Inc.
6179 E. Broadway Blvd.
Tucson, AZ 85711

LAW OFFICES

MAYALL, HURLEY
A PROFESSIONAL CORPORATION

2483 GRAND CANAL BOULEVARD

SECOND FLOOR

STOCKTON, CALIFORNIA 95207-8250



9489 0090 0027 6312 4752 35

Label 830-PB, Oct. 2015
Pitney Bowes

US POSTAGE--PITNEY BOWES



ZIP 95207 \$ 006.57⁰
02 4W
0000369527 AUG 17 2022

Auto Brakes, Inc.
6179 E. Broadway Blvd.
Tucson, AZ 85711



November 2, 2022

Dear Julie Zeyen:

The following is in response to your request for proof of delivery on your item with the tracking number: 9489 0090 0027 6312 4752 28.

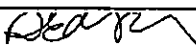
Item Details

Status:	Delivered, Left with Individual
Status Date / Time:	August 22, 2022, 12:15 pm
Location:	TUCSON, AZ 85711
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic

Shipment Details

Weight:	1lb, 12.7oz
----------------	-------------

Recipient Signature

Signature of Recipient:	
Address of Recipient:	DEAN LIFE BROADWAY 85711

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004



November 2, 2022

Dear Julie Zeyen:

The following is in response to your request for proof of delivery on your item with the tracking number:
9489 0090 0027 6312 4752 35.

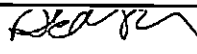
Item Details

Status:	Delivered, Left with Individual
Status Date / Time:	August 22, 2022, 12:15 pm
Location:	TUCSON, AZ 85711
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™
	Return Receipt Electronic

Shipment Details

Weight:	1lb, 14.2oz
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Recipient Signature

Signature of Recipient:	
Address of Recipient:	DEYAN LIFE BROADCASTING 85711

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

Exhibit 3

SOUTHERN CALIFORNIA OFFICE
430 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91206
(818) 648-6440

MAILING ADDRESS:
2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

LAW OFFICES OF
MAYALL HURLEY

A PROFESSIONAL CORPORATION

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

TELEPHONE: (209) 477-3833
FACSIMILE: (209) 473-4818
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JOHN P. BRINCOE
VLADIMIR J. KOZINA
ANGELA C. RUSSELL

OF COUNSEL
J. ANTHONY ARBUTT

August 23, 2022

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/308>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

Auto Brakes, Inc.
6179 E. Broadway Blvd.
Tucson, AZ 85711

Brake Masters of Sacramento, Inc.
6179 E. Broadway Blvd.
Tucson, AZ 85711

Re: Cory L. Walker
LWDA Case No. LWDA-CM-902397-22

To Whom It May Concern:

On August 17, 2022, and, pursuant to California Labor Code section 2699.3, this firm provided notice, to the Labor and Workforce Development Agency ("LWDA") and Auto Brakes, Inc. and Brake Masters of Sacramento, Inc. (collectively herein "Employer"), of alleged violations of the California Labor Code. That letter is attached as Exhibit "A" and is incorporated by this reference. The LWDA assigned the above-referenced case number.

We write to supplement the August 17, 2022, notice as set forth below. Again, this notice is made on Mr. Walker's behalf and, as a proxy for the LWDA, on behalf of current and other former employees of Employer. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

Mr. Walker worked as a non-exempt technician for Employer. As part of his employment, Mr. Walker was paid commissions, spiffs or bonuses ("spiffs"), as earned while servicing Employer's customers. Attached as Exhibit "B" is a wage statement reflecting such a

Labor and Workforce Development Agency
Auto Brakes, Inc./Brake Masters of Sacramento, Inc.

Re: Cory Walker

LWDA Case No. LWDA-CM-902397-22

August 23, 2022

Page 2 of 3

payment. As indicated in Exhibit B, Employer failed to include the spiffs earned by Mr. Waker when calculating the "regular rate" for the purpose of calculating the applicable overtime rate. In failing to account for the non-discretionary earnings earned by Mr. Walker and its other former and current employees in calculating the applicable regular rate, Employer violated Labor Code §§ 510, 558 and applicable IWC Wage Orders. The civil penalty for these violations is \$50 per pay period per affected employee pursuant to Labor Code § 558.

On information and belief, Mr. Walker believes Employer likewise miscalculated the regular rate for the payment of other employees, current and former, who earned a spiff and were paid sick time during the same pay period. In so doing, Employer underpaid its California employees and violated Labor Code section 246(1)(1).

Because Employer improperly determined the regular rate for employees that earned spiffs and worked overtime, and who earned spiffs and took sick time, Employer failed to pay Mr. Walker and other former and current employees all wages earned during employment. As to former employees, such as Mr. Walker, Employer therefore failed to pay all wages due at termination in violation Labor Code §§ 201, 202 and 203. The civil penalty for these violations is, pursuant Labor Code §2699(f), \$100 per violation. Alternatively, a penalty not to exceed 30 days of wages may be applied pursuant to Labor Code § 256.

In addition, for each pay period that Employer failed to properly calculate the correct regular rate because violations set forth above, the wage statements furnished by Employer to its non-exempt California employees violated California Labor Code section 226(a) insofar as they failed to accurately show:

- a. The gross wages earned, in violation of section 226(a)(1);
- b. The total hours worked, in violation of section 226(a)(2)
- c. The net wages earned, in violation of section 226(a)(5); and
- d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

Each violation carries a \$250 fine pursuant to Labor Code section 226.3.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

Labor and Workforce Development Agency
Auto Brakes, Inc./Brake Masters of Sacramento, Inc.

Re: Corv Walker

LWDA Case No. LWDA-CM-902397-22

August 23, 2022

Page 3 of 3

For the reasons set forth in this letter, as well as the reasons set forth in my letter dated August 17, 2022 (Exhibit A), if the LWDA does not intend to investigate these violations, Mr. Walker intends to file a civil complaint against Employer pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By



WILLIAM J. GORHAM III

cc: client

EXHIBIT A

SOUTHERN CALIFORNIA OFFICE
150 N. BRAND BLVD. SUITE 600
GLENDALE, CALIFORNIA 91206
(626) 416-6140
MAILING ADDRESS
2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

LAW OFFICES OF
MAYALL HURLEY
A PROFESSIONAL CORPORATION

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

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JESSE D. BAYBINDER
JOHN P. DRISCOLL
VLADIMIR J. KOZINA
ANGELA C. RUSSELL
OF COUNSEL
J. ANTHONY ARBUTT

August 17, 2022

SUBMITTED VIA ONLINE CLAIM NOTICE
<https://dir.tfaforms.net/308>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

Auto Brakes, Inc.
6179 E. Broadway Blvd.
Tucson, AZ 85711

Brake Masters of Sacramento, Inc.
6179 E. Broadway Blvd.
Tucson, AZ 85711

Re: Cory L. Walker

To Whom It May Concern:

This firm represents Cory Walker relating to his former employment as a brake technician for Auto Brakes, Inc. and Brake Masters of Sacramento, Inc. (collectively herein "Employer"). Auto Brakes, Inc. and Brake Masters of Sacramento, Inc. are related companies that operate as vertically integrated, dual employers pursuant to California law. Under the Labor Code, each qualifies as an employer of Mr. Walker for exercising control over the employment relationship.

In accordance with California Labor Code § 2699.3, this letter shall serve as Mr. Walker's written notice regarding the following violations, and facts and theories supporting the violations, on his behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of current and other former California employees of Employer. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

Employer provides auto repair services at numerous locations in the State of California.

Labor and Workforce Development Agency
Auto Brakes, Inc./Brake Masters of Sacramento, Inc.
Re: Cory Walker
August 17, 2022
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At the end December of 2021, Employer hired Mr. Walker to work as a non-exempt, brake technician at the rate of \$28.00 per hour. Employer required Mr. Walker, and other brake technicians to use their own tools. In fact, Mr. Walker had his own personal tools, valued in excess of \$4,000, at the work site. His tools were necessary to provide the services he provided. In addition to Mr. Walker, numerous other California technicians employed by Employer, both current and former, were required to use their own tools. Also, like Mr. Walker, other technicians were not paid twice the applicable wage, which is the required rate of pay for employers to avoid being required to compensate their employees for the use of their tools.

Chris O'Brien, Employer's manager and Mr. Walker's supervisor, was well aware that Employer was underpaying its technicians. In a discussion in 2022, Mr. O'Brien told Mr. Walker he wanted to lower his pay, because he could get "shitters" to do the job for \$10 less per hour than Mr. Walker was being paid. Mr. Walker responded, "actually, you are supposed to be paying me twice the minimum wage (which was \$14.50) because I am required to use my own tools." Mr. O'Brien responded, "it don't work like that for us." Consequently, Employers failure to pay twice the applicable minimum wage, though requiring its California technicians to use their own tools, was a company wide policy.

Employer also did not provide paid breaks, or furnish compliant meal breaks, as required by law. Employer required its employees, including Mr. Walker, to work off of the clock during lunch. If a vehicle was being processed and it was approaching lunch break, Employer would have Mr. Walker punch out for lunch, but continue working. In addition, Mr. Walker and other technicians, were handed assignments while on lunch and expected to get to work. As such, Employer failed to relieve Mr. Walker and other employees of work duties during a meal breaks. Employer likewise failed to respect rest breaks. Employer would interrupt breaks by handing assignments to technicians, including Mr. Walker. Consequently, Employer had a practice of not providing non-exempt employees compliant rest breaks because they were not relieved of all duties during rest breaks.

Because Employer required Mr. Walker and other of its California employees, both current and former, to work off of the clock, it did not compensate them for all time worked, or for the correct amount of overtime worked. It also failed to furnish accurate wage statements because it did not account for the correct total hours worked, gross wages earned, net wages earned, or the corresponding number of hours worked at each hourly rate by the employee.

Employer terminated Mr. Walker's employment in July of 2022. When it did so, it failed to compensate Mr. Walker for all wages earned, in violation of Labor Code section 201. Employer has similarly failed to pay all wages due at the cessation of employment for other its California employees, in violation of Labor Code sections 201 and 202.

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Re: Cory Walker
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In so acting, as to Mr. Walker, and current and other former California employees of Employer, within the last year. Employer committed violations of the California Labor Code, including:

1. Violation of Labor Code section 2802 – failure to reimburse employees for expenses incurred on behalf of the employer. The civil penalty for these violations is, pursuant Labor Code §2699(f), \$100 per pay period that employees who required to use their own tools were not paid at a rate of twice the applicable minimum wage.
2. Violation of Labor Code section 226(a)(1), (2), (5) and (9) – failure to furnish wage statements that accurately itemize in writing (1) gross wages earned, (2) total hours worked by the employee, . . . (5) net wages earned, . . . 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 Each instance carries a \$250 fine pursuant to Labor Code section 226.3.
3. Violation of Labor Code sections 512, 226.7, and applicable Wage Order(s) – failure furnish compliant meal breaks. The civil penalty for these violations is \$50 per pay period per affected employee pursuant to Labor Code § 558.
4. Violation of Labor Code section 226.7 and applicable IWC Wage Order(s) – failing to provide a paid rest break. The civil penalty for these violations is \$50 per pay period per affected employee pursuant to Labor Code § 558.
5. Violation of Labor Code Sections 201 and 202 – failure to pay all wages due at the cessation of employment. The civil penalty for these violations is, pursuant Labor Code §2699(f), \$100 per violation. Alternatively, a penalty not to exceed 30 days of wages may be applied pursuant to Labor Code § 256.

In addition to these penalties, attorneys' fees and costs are to be awarded to legal counsel to a party acting as proxy to the LWDA pursuant to Labor Code § 2699(g), and any other applicable statute providing for such reimbursement of fees and costs.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or to my client, Mr. Walker.

If the LWDA does not intend to investigate these violations, Mr. Walker intends to file a civil complaint against Employers pursuant to the Labor Code Private Attorneys General Act of

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Re: Cory Walker
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2004 (Labor Code §§ 2698 – 2699.5), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By



WILLIAM J. GORHAM III

cc: client

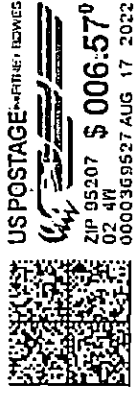
LAW OFFICES
MAYALL, HURLEY
A PROFESSIONAL CORPORATION
2453 GRAND CANAL BOULEVARD
SECOND FLOOR

STOCKTON, CALIFORNIA 95207-8250



9489 0090 0027 6312 4752 28

LAST DAY FOR POSTAGE
FEBRUARY 17, 2015



Brake Masters of Sacramento, Inc.
6179 E. Broadway Blvd.
Tucson, AZ 85711

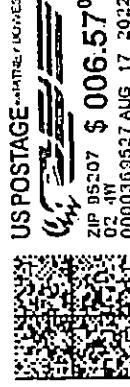
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STOCKTON, CALIFORNIA 95207-8250



9489 0090 0027 6312 4752 35

LAST DAY FOR POSTAGE
FEBRUARY 17, 2015



Auto Brakes, Inc.
6179 E. Broadway Blvd.
Tucson, AZ 85711

EXHIBIT B

Brake Masters of Sacramento, Inc
6179 East Broadway Boulevard
Tucson, AZ 85711

Pay Date: 03/25/2022
Voucher #: (72027)

Deposited To The Account(s) Of	Deposit #	Account Type	Account #	Transit ABA	Deposit
Cory Lewis Walker	1	Checking	XXXX3806	321175261	681.90
	2	Checking	XXXXXX0869	321175261	501.05
					1,182.95

5191 03/25/2022 (72027)

Cory Lewis Walker

Non-Negotiable - This Is Not A Check

#5191 - Cory Lewis Walker		Voucher # (72027)		Pay Date: 03/25/2022	
				Pay Period: 03/06/2022-03/19/2022	
Earnings			Timesheet		
	Rate	Hours	YTD	Current	YTD
OVT	42.00	1.41	8.31	59.22	349.02
REG	28.00	57.26	354.94	1,603.28	9,938.32
Schl				42.00	42.00
Gross Pay				1,704.50	10,329.34
Hours Worked		58.67	363.25		
Deductions			Accruals		
			Current	YTD	
Child Support			187.50	1,125.00	
Taxes Withheld					
	Taxable	Taxable YTD	Current	YTD	
FIT	1,704.50	10,329.34	136.87	833.47	
FICA	1,704.50	10,329.34	105.68	640.42	
MEDI	1,704.50	10,329.34	24.72	149.78	
SIT:CA	1,704.50	10,329.34	48.13	303.36	
SDI:CA	1,704.50	10,329.34	18.75	113.63	
Total			334.15	2,040.66	
Net Pay			1,182.85	7,163.68	
	Checking (3806)		681.80	5,624.95	
	Checking (0869)		501.05	1,538.73	
Company Paid Benefits					
			Current	YTD	
FUTA				42.00	
FICA			105.68	640.42	
MEDI			24.72	149.78	
SUTA:CA				434.60	
Total			130.40	1,266.20	

1 For information purposes only. No effect on your net pay.

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MAYALL, HURLEY
A PROFESSIONAL CORPORATION
2453 GRAND CANAL BOULEVARD
SECOND FLOOR

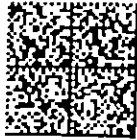
STOCKTON, CALIFORNIA 95207-8253

 **CERTIFIED MAIL**



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Label 850-PB, Oct. 2015
Pitney Bowes



US POSTAGE



ZIP 95207
02 4M
\$ 006.81⁰
0000369527 AUG 23 2022

Auto Brakes, Inc.
6179 E. Broadway Blvd.
Tucson, AZ 85711

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MAYALL, HURLEY
A PROFESSIONAL CORPORATION
2453 GRAND CANAL BOULEVARD
SECOND FLOOR

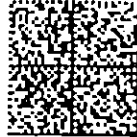
STOCKTON, CALIFORNIA 95207-8253

 **CERTIFIED MAIL**



9489 0090 0027 6312 4751 50

Label 850-PB, Oct. 2015
Pitney Bowes



US POSTAGE



ZIP 95207
02 4M
\$ 006.81⁰
0000369527 AUG 23 2022

Brake Masters of Sacramento, Inc.
6179 E. Broadway Blvd.
Tucson, AZ 85711



August 26, 2022

Dear Julie Zeyen:

The following is in response to your request for proof of delivery on your item with the tracking number:
9489 0090 0027 6312 4751 50.

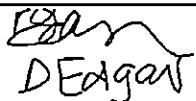
Item Details

Status:	Delivered, Front Desk/Reception/Mail Room
Status Date / Time:	August 26, 2022, 11:32 am
Location:	TUCSON, AZ 85711
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™
	Return Receipt Electronic

Shipment Details

Weight:	4lb, 5.9oz
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Recipient Signature

Signature of Recipient:	
Address of Recipient:	474 E Broadway

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004



August 26, 2022

Dear Julie Zeyen:

The following is in response to your request for proof of delivery on your item with the tracking number: 9489 0090 0027 6312 4751 67.

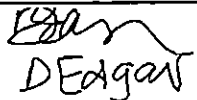
Item Details

Status:	Delivered, Front Desk/Reception/Mail Room
Status Date / Time:	August 26, 2022, 11:32 am
Location:	TUCSON, AZ 85711
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™
	Return Receipt Electronic

Shipment Details

Weight:	4lb, 5.7oz
----------------	------------

Recipient Signature

Signature of Recipient:	
Address of Recipient:	474 E Broadway

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004