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Attorneys for Plaintiffs,

FELIPE GALINDO, an individual, and LEO REICH, an individual,
on behalf of themselves and all others similarly situated**SUPERIOR COURT OF THE STATE OF CALIFORNIA****IN AND FOR THE COUNTY OF LOS ANGELES**FELIPE GALINDO, an individual, and LEO
REICH, an individual, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

SNAP-ON TOOLS COMPANY, LLC a
Delaware corporation, and DOES 1 through
100, inclusive,

Defendants.

Case No. 21STCV45419

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) **FAILURE TO REIMBURSE EXPENSES [LAB. CODE, § 2802];**
- (2) **UNLAWFUL DEDUCTIONS FROM WAGES [LAB. CODE, §§ 221-223];**
- (3) **FAILURE TO PAY OVERTIME [LAB. CODE, § 510];**
- (4) **FAILURE TO PROVIDE MEAL PERIODS [LAB. CODE, § 226.7]**
- (5) **FAILURE TO PROVIDE REST BREAKS [LAB. CODE, § 226.7]**
- (6) **FAILURE TO PAY WAGES WHEN DUE [LAB. CODE, §§ 201-203];**
- (7) **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS [LAB. CODE, § 226, 226.3];**
- (8) **UNFAIR COMPETITION [BUS. & PROF. CODE, § 17200 ET SEQ.];**

REPRESENTATIVE ACTION FOR:

- (9) **CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEY GENERAL ACT ("PAGA").**

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles

10/25/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: R. Lozano Deputy

FELIPE GALINDO and LEO REICH (collectively, “Plaintiffs”), on behalf of themselves and all others similarly situated, bring this action against Defendant SNAP-ON TOOLS COMPANY, LLC, a Delaware corporation (“Snap-On” or “Defendant”), and DOES 1 through 100, inclusive, and allege on information and belief as follows:

INTRODUCTION

1. Snap-On is a manufacturer and distributor of professional automotive repair tools and related equipment. Its primary customers are mechanical service professionals and the shops where these individuals work.

2. Under the guise of its Snap-On Franchise Agreement (“Agreement”), Snap-On obtains the labor of individuals like Plaintiff to carry out necessary services within one of its many distribution channels—mobile tool distributorships (i.e., Snap-On shops built into mobile trucks driven by “Distributors”). These Distributors perform on-site advertising, sales, delivery, and maintenance-related tasks for Snap under its strict supervision and control. These individuals must devote their best efforts to servicing their assigned “List of Calls” – a list of customer stops in need of Snap-On products. Indeed, the Agreement requires that Distributors must “promote aggressively and develop fully the sales of [Snap-On’s] Products at stops on the List of Calls.” Despite the integral nature of the work performed by the Distributors and Snap-On’s vast controls over them, Snap-On attempts to classify these workers as “independent contractors.”

3. By refusing to recognize Distributors as employees, Snap-On cheats these individuals out of protections provided by California law such as overtime pay and reimbursement of business expenses. Snap-On’s misclassification of Distributors also robs the State of important employee tax revenue and gives Snap-On an undue advantage over law-abiding competitors who bear the necessary expenses associated with employing similar workers.

4. This Class Action seeks recovery for violations of California’s Labor Code and Wage Orders as well as derivative recovery under California’s Unfair Competition Law on behalf of Plaintiff and other similarly situated Distributors in California. It also seeks penalties under California’s Private Attorneys General Act for failure to comply with the Labor Code.

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5. This Court has subject matter jurisdiction to hear this case because the restitution

6. Venue is proper pursuant to Code of Civil Procedure, section 395.5, among other

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7. Mr. Galindo is and at all relevant times was a resident of California. He worked as a

8. Mr. Reich is and at all relevant times was a resident of California. He worked as a

9. Defendant Snap-On Tools Company, LLC is a Delaware limited liability company

10. Plaintiff does not know the true names and/or capacities, whether individual, partners,

11. At all times mentioned, Defendants were the agents, alter egos, servants, joint

1 other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or
2 employment. All conduct was ratified by Defendants, and each of them.

3 **GENERAL ALLEGATIONS**

4 **A. Snap-On's Business Model**

5 12. Snap-On manufactures and distributes tools and related products like toolboxes and
6 service equipment ("Products"). It sells Products to mechanics, technicians, and other service
7 professionals as well as businesses providing these services.

8 13. One non-exclusive avenue through which Snap-On distributes its products is through
9 mobile Distributors operating Snap-On Trucks like Plaintiff. These Distributors must purchase and
10 operate a mobile vehicle (or mobile store) stocked with Products within a Snap-On-assigned
11 geographic territory or route. Snap-On heavily controls the mobile store and its appearance. The
12 mobile store may only be used for the operation of the distributorship and may not be altered without
13 Snap-On's express approval. The mobile store and the Franchisee's uniform—which they pay for—
14 must display the Snap-On brand and marks.

15 14. On information and belief, Snap-On also has company trucks and routes where an
16 employee for Snap-On (i.e. an individual Snap-On appropriately classifies as an employee) carries
17 out the same services that Distributors carry out.

18 15. Snap-On also sells and distributes its products through non-mobile channels like
19 eCommerce (i.e., online) and commercial sales representatives (that Snap-On recognizes as
20 employees). These other sales channels provide Products to the same type of clients Distributors
21 service and also sell to "industrial users, railroads, manufacturers, central purchasing offices,
22 government installations and institutions (including schools)," among others. In short, Distributors
23 carry out one among many sales and distribution avenues within Snap-On's tool sale and distribution
24 operation.

25 **B. Snap-On Misclassified Distributors**

26 16. Snap-On strictly controls and regulates Distributors. Distributors must follow the
27 terms of Snap-On's onerous Agreement and Snap-On's Confidential Franchise Operations Manual,
28 along with other written instructions from Snap-On. Under these operating requirements and

standards, Distributors must make weekly in-person customer sales calls to Snap-On's List of Calls at their worksites, make customer deliveries, maintain Snap-On's inventory levels, maintain minimum purchase requirements, provide post-purchase product support and maintenance, meet Snap-On's collection requirements, and use Snap-On's required computer programs, among other things. Snap-On broadly reserves its rights to impose new or modified requirements on Distributors.

17. Being a Distributor is a full-time job. Snap-On requires that Distributors personally¹ work full-time and "devote full business attention and efforts" to "aggressively" promote, market, and increase the sale of Products as well as Snap-On's customer base, as well as providing the service expected by Snap-On customers. This includes Distributors being personally responsible for all sales, collections, inventory management, and other aspects of the distributorship. Distributors cannot outsource these responsibilities without Snap-On's approval.

18. Snap-On controls both the List of Calls Distributors must service and the customers that may be added to a Distributor's territory. Snap-On reserves the right to add to or modify this list at its sole discretion. Snap-On requires Distributors to only sell Products to those on the Distributor's assigned list of stops.

19. Additionally, subject to very limited exceptions, Distributors may only carry Snap-On's products.

20. Snap-On likewise reserves the right to set the price of Products sold to Distributors. Snap-On also functionally sets the price of Products that end-purchasers pay based on Snap-On online catalogs, flyers, and the Snap-On website where Products can be purchased directly from Snap-On, or otherwise reflect Snap-On's "suggested retail prices" for the Products. This has the effect of controlling what Distributors can earn from Product sales.

21. Snap-On provides mandatory training for Distributors before and after they are hired, including a ten-day classroom-based training course in Grapevine, Texas, and at least three weeks of mandatory "ride-alongs" with a district manager to ensure that Distributors adhere to Snap-On's required customer service guidelines and other standards. During this training, Snap-On evaluates

¹ While some Distributors may incorporate or sign the Agreement as a business entity, these individuals remain personally responsible for carrying out the obligations set forth in the Agreement. In short, no matter how it is styled, the Agreement requires full-time, best efforts from a natural person.

1 and coaches Distributors on sales, collections, product knowledge, product display, vehicle
2 appearance, time management, and their business administration skills, among other things. Snap-
3 On rates the Distributors in these areas and makes plans for follow-up and improvement. It also
4 reserves the right to amend or modify Distributor training.

5 22. Distributors also have “managers” in their district/region and when they undergo
6 training. These managers are responsible for ensuring proper, compliant performance by the
7 Distributors. The managers are employees of Snap-On. They review highly detailed information
8 relating to sales, collections, and general performance by Distributors and provide feedback and
9 correction relating to these metrics.

10 23. On information and belief, in addition to training, Distributors must attend regular in-
11 person sales meetings or supplemental training hosted by Snap-On, and Snap-On reserves the right
12 to charge a tuition or attendance fee for such supplemental training.

13 24. Distributors’ performance obligations do not end at making sales to Snap-On’s List
14 of Calls. Distributors also facilitate delivery of products and process customer returns. Likewise,
15 they carry out and fulfill Snap-On’s warranty and repair obligations on Products sold to customers
16 in their territory. Snap-On broadly reserves its right to amend or modify its repair and warranty
17 promises to customers that Distributors must carry out. No compensation is paid for these non-sales-
18 based services.

19 25. Distributors sign contracts with Snap-On for a 10-year term (subject to renewal) that
20 purport to classify Distributors as independent contractors.

21 26. Snap-On broadly reserves the right to terminate Distributors. For example, Snap-On
22 may terminate a Franchisee for selling to customers that are not on Snap-On’s list of customers, even
23 if the customer is within the Franchisee’s territory. Snap-On may terminate a Distributor for failing
24 to call on every customer at stops on the List of Calls at least once a week. Snap-On can also
25 terminate a Franchisee for failing to transmit business records weekly to Snap-On using Snap-On
26 mandated business software. It can also terminate Distributors for generally failing to use their “best
27 efforts to promote aggressively and develop fully the sales of Products at stops on the List of Calls.”
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27. Snap-On uses individuals it recognizes as employees to operate some mobile tools stores or “company stores.” These individuals perform very similar work as Distributors but enjoy the benefits of being classified as an employee under state and federal law.

C. Snap-On’s Illegal Deductions and Failure to Reimburse

28. Distributors pay for the right to work for Snap-On. On information and belief, this includes, but is not limited to, paying a non-refundable \$15,000 “initial fee” upon becoming a Franchisee, paying a non-refundable monthly license fee, paying for the cost of attending training in Texas, paying to “restock” returned Products that are not purchased and/or are returned by Snap-On’s customers, and paying for shipping and handling of Products.

29. Distributors also shoulder many other unreimbursed business expenses for Snap-On including but not limited to fuel/mileage, travel and meals, clothing and uniforms, the computer system required to run Snap-On’s mandatory business software, mobile distributorship truck payments, and business, vehicle, and health insurance. Snap-On is well aware of these expenses and, on information and belief, tracks them through form documents.

D. Snap-On’s Failure to Comply with California Wage and Hour Laws

30. As explained further below, as a result of its unlawful misclassification, Snap-On fails to provide Distributors overtime pay, fails to make meal and rest breaks available to Distributors, and fails to provide Distributors compliant wage statements in violation of California law.

CLASS ALLEGATIONS

31. Pursuant to Code of Civil Procedure, section 382, Plaintiffs bring this lawsuit as a class action on behalf of themselves and all other similarly situated members of the Class, defined below. This action satisfies the ascertainability, numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of class actions.

32. **Class Period.** The Class Period shall be defined as: from four years preceding the date that the first Complaint in this action is filed, until the full resolution of this action, plus any time that may be attributed to equitable or other forms of tolling.

33. Plaintiffs seek to represent the following Class of persons:

1 i. Plaintiffs seek to represent: All individuals during the Class Period who
2 personally operated a Snap-On mobile tool store as “Distributors,”
3 “Franchisees,” or under any similar title, in California and who were not
4 classified as employees (the “Class”).

5 ii. This Class does not include Defendant, its officers, and/or its directors; the
6 Judge to whom this case is assigned; or the Judge’s immediate family or staff.

7 34. Plaintiffs reserve the right to amend the above Class and to add additional classes and
8 subclasses as appropriate based on investigation, discovery, and the specific theories of liability,
9 among other reasons.

10 35. **Numerosity.** The potential members of the Class as defined are so numerous that
11 joinder of all the members is impracticable. While the precise number of the members of the Class
12 has not been determined, Plaintiffs are informed and believe that there are over three hundred
13 individuals meeting the Class definition. Defendant has access to data sufficient to identify the
14 members of the Class, namely their list of Distributors maintained internally and used as part of their
15 franchise filings with various states each year.

16 36. **Adequacy of Representation.** The named Plaintiffs are fully prepared to take all
17 necessary steps to fairly and adequately represent the interests of the Class defined above. Plaintiffs’
18 attorneys are ready, willing, and able to fully and adequately represent the Class and Plaintiffs.
19 Plaintiffs’ attorneys are highly experienced in employment Class action litigation. Plaintiffs intend
20 to prosecute this action vigorously.

21 37. **Common Questions of Law and Fact.** There are predominant common questions
22 and answers of law and fact and a community of interest amongst Plaintiffs and the claims of the
23 Class as follows:

24 i. Class:

25 a. Whether Defendant misclassified Distributors as “independent
26 contractors” instead of employees (e.g., whether Snap-On can meet its
27 burden to meet each Prong of California’s ABC test and/or its *Borello*
28 test for employment status);

- b. Whether Defendant failed to reimburse Distributors for reasonable business expenses;
- c. Whether Defendant made illegal deductions from Distributors' earnings;
- d. Whether Defendant properly provided meal and rest breaks to Distributors;
- e. Whether Defendant paid Distributors all wages when due;
- f. Whether Defendant failed to properly pay Distributors overtime; and
- g. Whether Defendants engaged in an unlawful, unfair and/or fraudulent business practice or act in violation of Business and Professions Code, section 17200 *et seq.* as it relates to Distributors.

38. **Typicality.** Plaintiffs' claims are typical of the claims of all members of the Class because Defendant applied and continues to apply its illegal classification, pay, and interest practices to all Distributors.

39. **Superiority of a Class Action.** A Class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all members of the Class is not practicable, and questions of law and fact common to the Class predominate over questions affecting only individual Class members. Each Class member has been damaged and is entitled to recovery due to Defendant's conduct described in this Complaint. A Class action will allow those similarly situated to litigate their claims in the most efficient and economical manner for the parties and the judiciary. Plaintiffs are unaware of any difficulties likely to be encountered in this action that would preclude its maintenance as a Class action.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**Failure to Reimburse Expenses—Lab. Code, § 2802 and Wage Orders
By Plaintiff Reich On Behalf of Himself and the Class
Against Defendant and DOES 1-100**

40. Plaintiff Reich incorporates by reference every allegation contained above.

1 41. Plaintiff Reich brings this cause of action as a Class action on behalf of himself and
2 the Class.

3 42. As alleged above, Plaintiff and the Class members incurred reasonable and necessary
4 business expenses on Snap-on's behalf. They were never reimbursed because they were
5 misclassified as independent contractors under Snap-On's standard Agreement. The expenses
6 include but are not limited to: fuel to operate the required mobile tool truck, maintenance, licensing,
7 and repairs for the required mobile tool truck, credit card processing expenses, software, and other
8 mandatory fees imposed by Snap-On.

9 43. The California Labor Code, section 2802, and California's Wage Orders require that
10 employers reimburse employees for business expenses reasonably incurred. Defendant failed to do
11 so.

12 44. Plaintiff and the Class have been damaged by Defendant's failures in this respect in
13 an amount to be proven at trial.

14 45. Plaintiff and the Class are entitled to recover their damages, penalties, interest, costs,
15 and attorneys' fees based on these violations.

16 **SECOND CAUSE OF ACTION**
17 **Unlawful Deductions From Wages—Lab. Code, §§ 221-223 and Wage Orders**
18 **By Plaintiff Reich On Behalf of Himself and the Class**
 Against Defendant and DOES 1-100

19 46. Plaintiff Reich incorporates each and every allegation contained above.

20 47. Plaintiff Reich brings this cause of action as a Class action on behalf of himself and
21 the Class.

22 48. Under Labor Code, section 221, it is "unlawful for any employer to collect or receive
23 from an employee any part of wages theretofore paid by said employer to said employee." This
24 protection extends to deductions for mistakes in employees' work or other non-malicious conduct.
25 The IWC Wage Orders further provide that the only circumstances under which an employer can
26 make a deduction from an employee's wage are due to cash shortage, breakage, or loss of equipment
27 if the employer can show that the shortage, breakage, or loss was the result of the employee's gross
28 negligence or dishonest or willful act.

49. Despite this, Snap-On made and continues to make numerous deductions from the wages of its misclassified Distributors. Defendant, for example, unlawfully deducts money for franchise fees, software licensing fees, and other expenses.

50. Plaintiff and the Class are entitled to recover their damages, penalties, interest, costs, and attorneys' fees based on Defendant's violations.

THIRD CAUSE OF ACTION

Failure to Provide Overtime—Lab. Code, § 510 and Wage Orders By Plaintiff Reich On Behalf of Himself and the Class Against Defendant and DOES 1-100

51. Plaintiff Reich incorporates by reference every allegation contained above.

52. Plaintiff Reich brings this cause of action as a Class action on behalf of himself and the Class.

53. Labor Code, section 510, and Wage Orders require overtime pay of at least 1.5 times an employee's regular rate of pay for all hours worked over 8 in a day or 40 in a week.

54. Snap-On has a policy not to pay overtime to Distributors. It also expects and requires full-time work, over 40 hours in a week and 8 in a day. Consistent with these expectations and requirements, Distributors work well over 8 hours, five days per week, and well over 40 hours per week to complete the work assigned to them. Despite this, they receive no overtime pay in violation of California law.

55. Defendant is liable to Plaintiff and the Class for unpaid overtime, interest, reasonable attorney's fees and costs, and any related statutory penalties.

FOURTH CAUSE OF ACTION

Failure to Provide Meal Periods—Lab. Code § 226.7 and Wage Orders By Plaintiff Reich On Behalf of Himself and the Class Against Defendant and DOES 1-100

56. Plaintiff Reich incorporates by reference every allegation contained above.

57. Plaintiff Reich brings this cause of action as a Class action on behalf of himself and the Class.

58. Under Labor Code, sections 226.7 and 512, as well as applicable IWC Wage Orders, employers must provide a 30-minute uninterrupted, off-duty meal period for each work shift of more

1 than five hours. Where an adequate meal period is not provided, employees are entitled to one hour's
2 compensation at their regular rate of pay.

3 59. Snap-On does not provide, track, or otherwise make available meal breaks for its
4 Distributors. Likewise, it fails to provide compensation in lieu of these breaks as required by law.

5 60. Because Snap-On does not keep records relating to meal breaks, it is presumed they
6 are not taken or made available. Snap-On will not be able to meet its burden to overcome this
7 assumption.

8 61. Distributors have not waived their entitlement to meal breaks.

9 62. As a proximate result of Defendant's unlawful conduct, Plaintiff and the Class
10 sustained damages and are entitled to recover unpaid wages, liquidated damages, interest, applicable
11 penalties, attorneys' fees, and costs.

12 **FIFTH CAUSE OF ACTION**

13 **Failure to Provide Rest Breaks—Lab. Code, § 226.7 and Wage Orders** 14 **By Plaintiff Reich On Behalf of Himself and the Class** **Against Defendant and DOES 1-100**

15 63. Plaintiff Reich incorporates by reference every allegation contained above.

16 64. Plaintiff Reich brings this cause of action as a Class action on behalf of himself and
17 the Class.

18 65. Pursuant to Labor Code, sections 226.7 and 226.2, as well as applicable IWC Wage
19 Orders, employers must provide a 10-minute uninterrupted, off-duty rest break for each work shift
20 of 3.5 hours or more. This rest break must be separately compensated at the workers' regular rate of
21 pay. During these periods, an employer must relieve the employee of all duties and relinquish all
22 control over how an employee spends his/her time. Where a rest break is not provided, employees
23 are entitled to one hour's compensation at their regular rate of pay.

24 66. Defendant failed to provide for rest breaks or pay Distributors for rest breaks if taken.
25 It also failed to pay compensation in lieu of these breaks.

26 67. As a proximate result of Defendant's unlawful conduct, Plaintiff and the Class
27 sustained damages and are entitled to recover unpaid wages, liquidated damages, interest, applicable
28 penalties, attorneys' fees, and costs.

SIXTH CAUSE OF ACTION
Failure to Pay Wages When Due—Lab. Code, §§201-203
By Plaintiff Reich On Behalf of Himself and the Class
Against Defendant and DOES 1-60

68. Plaintiff Reich incorporates by reference every allegation contained above.

69. Plaintiff Reich brings this cause of action as a Class action on behalf of himself and all members of the Class who are no longer working for Defendant.

70. Defendant failed to pay all wages due, including the above-mentioned missing overtime wages, missing wages that were improperly deducted, that went unreimbursed, that were not paid-for breaks or meal periods, upon separation of employment as required by Labor Code sections 201 through 203. As such Plaintiff Reich and other former Distributors in the Class are owed penalties of up to 30 days wages.

71. Defendant's actions in this respect were willful within the meaning of Labor Code, section 203, entitling Plaintiff and the Class Members to recover waiting time penalties. Snap-On failed to pay the above wages pursuant to its standard policies and procedures not to provide employment protections to Distributors. Snap-On knows or should know Distributors are misclassified as independent contractors. Snap-On and its parent company are represented by sophisticated counsel with a deep understanding of California law who surely understand Snap-On cannot meet its burden to prove Distributors are independent contractors. Snap-On has been sued for misclassification in the past as well, further highlighting their knowledge of this issue and intent to disregard the law.

72. Plaintiff and the Class are entitled to recover waiting time penalties and unpaid wages, as well as interest, applicable penalties, attorneys' fees, and costs.

SEVENTH CAUSE OF ACTION
Failure to Provide Accurate Wage Statements —Lab. Code, § 226 and Wage Orders
By Plaintiff Reich On Behalf of Himself and the Class
Against Defendant and DOES 1-60

73. Plaintiff Reich incorporates by reference every allegation contained above.

74. Plaintiff Reich brings this cause of action as a Class action on behalf of himself and all members of the Class who are no longer working for Snap-On.

1 75. Pursuant to California Labor Code § 226(a) and IWC Wage Orders, Defendant has
2 at all relevant times been required, semimonthly or at the time of each payment of wages, to furnish
3 Plaintiff Reich and the Class accurate, itemized written statements containing all the information
4 described in these statutes and regulations, including, but not limited to, the total hours worked by
5 the employees.

6 76. Defendant knowingly and intentionally failed to comply with § 226 by knowingly
7 and intentionally failing to furnish Plaintiff and Class Members with accurate, itemized written
8 statements showing their actual and total hours worked.

9 77. Defendants have also failed to accurately record meal periods as detailed above, to
10 pay meal and rest period premium wages for missed meal periods, and to report those meal and rest
11 period premium payments on wage statements.

12 78. Under California Labor Code § 226(e), an employee suffering injury as a result of
13 knowing and intentional failure of an employer to comply with § 226(a) is entitled to recover the
14 greater of all actual damages or fifty (\$50) for the initial pay period in which a violation occurs and
15 one hundred dollars (\$100) for each violation in a subsequent pay period, up to a maximum amount
16 of \$4,000.

17 79. In addition, upon information and belief, and in violation of these same statutes and
18 regulations, Defendant failed to keep the required payroll records showing the actual hours worked
19 each day by Plaintiff and the Class. As a direct and proximate result of Defendants' actions, Plaintiff
20 and the Class suffered economic harm as they have been precluded from accurately monitoring the
21 number of hours worked or other necessary information to be included on wage statements.

22 80. As a direct and proximate result of Defendant's unlawful conduct as set forth herein,
23 Plaintiff and Class Members have been injured by not receiving the information required by
24 California Labor Code § 226(a), not being paid their overtime hours, not having records showing
25 their total hours worked, not being able to ascertain from their wage statements whether or how they
26 have been lawfully compensated for all hours worked, among other things, in an amount to be
27 determined at trial.

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1 81. Plaintiff and the Class may recover damages and penalties provided for under
2 California Labor Code § 226(e), plus interest thereon, reasonable attorneys' fees, and costs.

3 **EIGHTH CAUSE OF ACTION**
4 **Unfair Business Practices—Bus. & Prof. Code, § 17200 et seq.**
5 **By Plaintiffs Galindo and Reich On Behalf of Themselves and the Class**

6 82. Plaintiffs incorporate by reference every allegation contained above.

7 83. Plaintiffs bring this cause of action on behalf of themselves and the Class.

8 84. Snap-On knowingly and willfully engaged in the unlawful practices described above,
9 which include but are not limited to:

- 10 i. Intentionally misclassifying its employee Distributors as “independent contractors;”
- 11 ii. Imposing unreimbursed business expenses on and illegally deducting wages from
12 misclassified employees in violation of Labor Code, sections 221 and 2802. As
13 alleged above, Plaintiff and the Class members incurred reasonable and necessary
14 business expenses on Snap-On's behalf. They were never reimbursed because they
15 were misclassified as independent contractors under Snap-On's standard Agreement.
16 Under Labor Code, section 221, it is “unlawful for any employer to collect or receive
17 from an employee any part of wages theretofore paid by said employer to said
18 employee.” This protection extends to deductions for mistakes in employees' work
19 or other non-malicious conduct. The IWC Wage Orders further provide that the only
20 circumstances under which an employer can make a deduction from an employee's
21 wage are due to cash shortage, breakage, or loss of equipment if the employer can
22 show that the shortage, breakage, or loss was the result of the employee's gross
23 negligence or dishonest or willful act. Despite this, Snap-On made and continues to
24 make numerous deductions from the wages of their misclassified Distributors.
25 Defendant, for example, unlawfully deducts money for franchise fees, software
26 licensing fees, and other expenses;
- 27 iii. Failing to pay overtime to Distributors. Labor Code, section 510, and Wage Orders
28 require overtime pay of at least 1.5 times an employee's regular rate of pay for all
hours worked over 8 in a day or 40 in a week. Consistent with Snap-On's expectations

1 and requirements, Distributors work well over 8 hours, five days per week, and well
2 over 40 hours per week to complete the work assigned to them by Snap-On. Despite
3 this, they receive no overtime pay in violation of California law;

4 iv. Failing to provide adequate meal periods. Under Labor Code, sections 226.7 and 512,
5 as well as applicable IWC Wage Orders, employers must provide a 30-minute
6 uninterrupted, off-duty meal period for each work shift of more than five hours.
7 Where an adequate meal period is not provided, employees are entitled to one hour's
8 compensation at their regular rate of pay. Snap-On does not provide meal breaks for
9 its Distributors and provides no such compensation in lieu of these breaks as required
10 by law. And Distributors have not otherwise waived their entitlement to meal breaks.
11 Snap-On does not document, or record hours worked by Distributors, including when
12 they take breaks. This triggers a rebuttable presumption no break is made available
13 to Distributors.

14 v. Failing to provide adequate rest periods. Pursuant to Labor Code, sections 226.7 and
15 226.2, as well as applicable IWC Wage Orders, employers must provide a 10-minute
16 uninterrupted, off-duty rest break for each work shift of 3.5 hours or more. This rest
17 break must be separately compensated at the workers' regular rate of pay. See e.g.,
18 Labor Code section 226.2. During these periods, an employer must relieve the
19 employee of all duties and relinquish all control over how an employee spends his/her
20 time. Where a rest break is not provided, employees are entitled to one hour's
21 compensation at their regular rate of pay.

22 85. Snap-On intended to, and did, profit from these illegal acts.

23 86. As a direct and proximate result of the above, Plaintiffs and the Class have lost money
24 or property, thereby entitling these individuals to restitution.

25 87. Pursuant to the Business and Professions Code, Plaintiffs and Class Members are
26 entitled to restitution of money or property acquired by Defendant by means of such unlawful
27 business practices, in amounts not yet known, but to be ascertained at trial.

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88. Pursuant to the Business and Professions Code, the Class and the public are also entitled to injunctive relief against Snap-On's ongoing continuation of such unlawful business practices, including public injunctive relief.

89. If Snap-On is not enjoined from engaging in the unlawful business practices described above, Plaintiffs, Class members, and the public will be irreparably injured. The exact extent, nature, and amount of such injury are difficult to ascertain now.

90. The Class, including Plaintiffs, have no plain, speedy, and adequate remedy at law.

91. Snap-On will continue to engage in the unlawful business practices described above in violation of the Business and Professions Code, in derogation of the rights of Plaintiffs, the Class, and of the public, if not enjoined by this Court.

92. The success of Plaintiffs in this action will result in the enforcement of important rights affecting the public interest by conferring a significant benefit upon the public.

93. Private enforcement of these rights is necessary as no public agency has pursued enforcement. There is a financial burden incurred in pursuing this action, and it would be against the interests of justice to require the payment of attorneys' fees from any recovery in this action. Plaintiffs are therefore entitled to an award of attorneys' fees and costs of suit under the "common fund," "substantial benefit," and other important doctrines.

NINTH CAUSE OF ACTION
Civil Penalties Under Labor Code Private Attorneys General Act
Labor Code §§ 2699 et seq.
Representative Action By Plaintiff Reich for Penalties

94. Snap-On employed Plaintiff Reich through the end of his tenure with the company despite Defendant's attempt to disclaim an employment relationship.

95. Plaintiff Reich suffered the above-enumerated Labor Code violations in addition to being willfully misclassified through the end of his tenure with Snap-On. As such he is an “aggrieved employee” with standing to pursue claims under PAGA, the Private Attorneys General Act of 2004, California Labor Code § 2698 et seq. *See* Labor Code, § 2699(c).

1 96. PAGA permits “aggrieved employees” like Reich to pursue penalties for violations
2 of the Labor Code that occurred against themselves and other employees like the other Distributor
3 workers that Snap-On employs.

4 97. Plaintiff seeks to recover penalties under PAGA for the Labor Code violations that
5 occurred and are occurring against himself and other Snap-On Distributors. To the extent Plaintiff
6 is compelled to arbitrate the “individual PAGA claims” or other Labor Code violations that occurred
7 against him, he continues to seek penalties for the “non-individual PAGA claims” that occurred
8 against other Distributors. As an aggrieved employee, he is entitled to seek all penalties under PAGA
9 individual and non-individual alike.

10 98. PAGA grants California employees the right to bring a civil action for the violation
11 of any provision of the Labor Code on behalf of themselves and other current or former employees
12 in order to recover civil penalties. PAGA is intended to assist in the achievement of maximum
13 compliance with state labor laws by empowering aggrieved employees to act as private attorneys
14 general in order to recover civil penalties for Labor Code violations that would otherwise be
15 prosecuted by the state. *See Arias v. Super. Ct.* (2009) 46 Cal. 4th 969, 980.

16 99. PAGA permits an aggrieved employee to collect the civil penalty authorized by law
17 and normally collectible by the California Labor and Workforce Development Agency. To address
18 violations for which no penalty has been established, § 2699(f) creates a private right of action for
19 aggrieved employees and a default penalty in the amount of \$100 for each aggrieved employee per
20 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
21 subsequent violation. *See Cal. Lab. Code § 2699(f).*

22 100. Plaintiff hereby seeks to collect these civil penalties for the above-described Labor
23 Code violations, including:

- 24 i. Under California Labor Code § 2699(f)(2), a civil penalty of one hundred dollars
25 (\$100) for Plaintiff and each aggrieved employee per pay period for the initial
26 violation of Labor Code § 2802, for failure to indemnify employees for business
27 expenses as alleged in Plaintiff’s First Cause of Action, and two hundred dollars
28

(\$200) for Plaintiff and each aggrieved employee per pay period for each subsequent violation of Labor Code § 2802.

ii. Under California Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period for the initial violation of Labor Code § 221, for withholding or collecting wages from employees as alleged in Plaintiff's Third Cause of Action, and two hundred dollars (\$200) for Plaintiff and each aggrieved employee per pay period for each subsequent violation of Labor Code § 221.

iii. Under California Labor Code § 558, a civil penalty of fifty dollars (\$50) for Plaintiff and each aggrieved employee per pay period for the initial violation of Labor Code § 510 for Defendants' failure to pay overtime premiums as alleged in Plaintiff's Second Cause of Action, and one hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period for each subsequent violation of Labor Code § 510.

iv. Under California Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period for the initial violation of Labor Code § 226.7 for failing to provide meal periods as alleged in Plaintiff's Fourth Cause of Action, and two hundred dollars (\$200) for Plaintiff and each aggrieved employee per pay period for each subsequent violation of Labor Code § 226.7 for failing to provide meal periods.

v. Under California Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period for the initial violation of Labor Code § 226.7 for failing to provide rest periods as alleged in Plaintiff's Fifth Causes of Action, and two hundred dollars (\$200) for Plaintiff and each aggrieved employee per pay period for each subsequent violation of Labor Code § 226.7 for failing to provide rest periods.

vi. Under California Labor Code § 226.3, which provides for civil penalties for violations of California Labor Code § 226(a), a civil penalty of two hundred fifty dollars (\$250) for Plaintiff and each aggrieved employee for the first violation, and

one thousand dollars (\$1,000) for Plaintiff and each aggrieved employee for each subsequent violation of Labor Code § 226(a) for failure to provide timely, accurate, itemized wage statements, as described in Plaintiff's Sixth Cause of Action.

vii. Under California Labor Code § 203 (or § 2699(f)(2) if by default), a civil penalty for each terminated aggrieved employee who was not paid all wages when due upon termination in the amount of 30 days of that employees' daily wages.

viii. Under California Labor Code § 226.8, a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation against Plaintiff and each aggrieved employee, and if the court finds that Defendants have engaged in a pattern or practice of violation of § 226.8(a), a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation.

ix. Under California Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period for the initial violation of Labor Code § 450, for compelling or coercing Plaintiff and Class Members to patronize Defendants in the purchase of a thing of value, and two hundred dollars (\$200) for Plaintiff and each aggrieved employee per pay period for each subsequent violation of Labor Code § 450.

101. Additionally, as a result of violations under California Labor Code § 226.8(a), Plaintiff requests that the Court order Defendants to take certain steps to notify employees and the general public of the determination that they have violated § 226.8, pursuant to § 226.8(e).

102. California Labor Code § 2699(g) further provides that any employee who prevails in an action for civil penalties is entitled to an award of reasonable attorneys' fees and costs. Plaintiff hereby seeks to recover his attorneys' fees and costs under this fee and cost-shifting statute.

103. On August 3, 2022, pursuant to California Labor Code § 2699.3, Plaintiff sent notice by certified mail to the Labor and Workforce Development Agency (LWDA) and Defendants of the specific provisions of the Labor Code that have been violated, including the facts and theories to support the violations. The LWDA received this notice on the same day. The sixty-five-day time

1 limit for the agency to respond has expired, such that Plaintiff has exhausted his administrative
2 remedies.

3 **PRAYER FOR RELIEF**

4 Plaintiffs pray for judgment against Defendants, as follows:

- 5 1. For an order certifying the Class as described herein, appointing Plaintiffs as class
6 representative, and his counsel as class counsel;
- 7 2. For restitution according to proof;
- 8 3. For pre-judgment and post-judgment interest where allowable;
- 9 4. For costs of suit;
- 10 5. For injunctive relief, including public injunctive relief, as described herein;
- 11 6. For restitution as described herein;
- 12 7. For reasonable attorneys' fees and costs; and
- 13 8. For such other and further relief as this Court may deem just and proper.

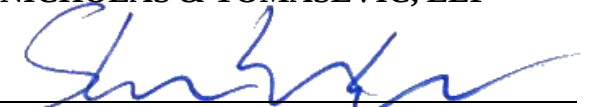
14 **DEMAND FOR JURY TRIAL**

15 Plaintiffs demand a trial by jury.

16 Respectfully submitted:

17 Dated: October 25, 2022

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24 Attorneys for Plaintiffs,
25 FELIPE GALINDO, an individual, and LEO REICH,
26 an individual, on behalf of themselves and all others
27 similarly situated
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