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County of Los Angeles
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David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

REMBER GUILLEN and JUAN SALAS, as individuals and on behalf of all others similarly situated,

Plaintiff,

vs.

MOBILE CLEAR SHIELD, LLC, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 22STCV31784

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT:

(1) FAILURE TO PAY ALL OVERTIME WAGES OWED (LABOR CODE §§ 204, 510, 558, 1194, 1198)

(2) FAILURE TO PAY ALL MINIMUM WAGES OWED (LABOR CODE §§ 226.2, 1194, 1194.2, 1197);

(3) FAILURE TO PROVIDE MEAL PERIODS (LABOR CODE §§ 226.7, 512);

(4) FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS (LABOR CODE §§ 226.2, 226.7, 516);

(5) UNLAWFUL DEDUCTIONS FROM WAGES (LABOR CODE § 221);

(6) FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);

(7) FAILURE TO PAY ALL WAGES UPON TERMINATION (LABOR CODE §§ 201-203);

(8) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES (LABOR CODE § 2802);

(9) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*); and

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

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

Plaintiffs Rember Guillen and Juan Salas (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint ("FAC") against Mobile Clear Shield, LLC, a California limited liability company and DOES 1 to 100, inclusive (collectively "Defendants"), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiffs, on behalf of themselves and all others similarly situated, hereby bring this FAC for recovery of unpaid wages and penalties under California Business & Professions Code § 17200 *et. seq*., Labor Code §§ 201-204, 221, 226 *et seq.*, 226.2, 226.7, 226.8, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2750.3, 2802, 2698 *et seq.,* and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"), in addition to seeking declaratory relief and restitution. This FAC is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants' violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have agent(s) within the County of Los Angeles, and/or otherwise are found within the County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiffs are individuals over the age of eighteen (18). At all relevant times herein, Plaintiffs were and currently are, California residents. During the four years immediately preceding the filing of the lawsuit in this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiffs were employed by Defendants as non-exempt employees who were misclassified by Defendants as independent contractors. Plaintiffs were, and are, victims of Defendants' policies and/or practices complained of herein, lost money and/or property, and have been deprived of the rights guaranteed by Labor Code §§ 201-204, 221, 226 *et seq.*, 226.2, 226.7, 226.8, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2750.3, 2802, 2698 *et seq.*; California Business &

Professions Code § 17200 *et seq.* ("Unfair Competition Law"); and Wage Order 4, which sets employment standards for the occupations in the professional, technical, clerical, mechanical and similar occupations, which includes the industry in which Plaintiff worked for Defendants.

4. Plaintiffs are informed and believe, and based thereon allege, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by being a company engaged in automobile paint protection, including installation of scratch protectors on vehicles. Defendants employed Plaintiffs and other, similarly-situated individuals within, among other counties, Los Angeles County and the state of California and, therefore, were (and are) doing business in Los Angeles County and the State of California.

5. Plaintiffs do not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to amend this FAC when such true names and capacities are discovered. Plaintiffs are informed, and believe, and based thereon allege, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiffs and the Classes (as defined in Paragraph 29) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned herein, Defendants were and are the employers of Plaintiffs and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope

of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff Guillen, a former employee of Defendants, was employed by Defendants from approximately 2017 through around January or February 2022. During his employment, Plaintiff Guillen worked as an installer who was paid on a piece-rate basis. Although Plaintiff Guillen was legally an employee of Defendants, he was unlawfully misclassified by Defendants as an independent contractor.

10. Plaintiff Salas, a former employee of Defendants, was employed by Defendants from approximately 2015/2016 through around July 2021. During his employment, Plaintiff Salas worked as an installer who was paid on a piece-rate basis. Although Plaintiff Salas was legally an employee of Defendants, he was unlawfully misclassified by Defendants as an independent contractor.

11. Specifically, Plaintiffs entered into an Independent Contractor Agreement (the "Agreement") with Defendant Mobile Clear Shield, LLC whereby they would provide installation services for Defendants' customers. The Agreement provided that as independent contractor installers, Plaintiffs would be paid on a piece-rate basis for every vehicle serviced.

12. In or around October 2019, Defendants notified Plaintiffs that they and all other independent contractors would be transitioned to employment status effective January 1, 2020. Although this transition occurred in January 2020, Plaintiffs' job titles and duties remained the same thereafter.

13. Plaintiffs and the other independent contractors retained by Defendants were as part of their duties required to, among other things: (i) use their own vehicles to perform their duties; (ii) be available and ready to work at least one Saturday per month; (iii) report at the end of each work day to Defendants the day's activities and accomplishments; (iv) complete at least 25 cars per day; (v) complete at least 125 cars per week; (vi) be responsible for paying $100 per month for all supplies and items associated with daily operations (which amount would be deducted on the last payment check of every month); (vii) be responsible for paying $6.00 for each full car of wasted product; (viii) be responsible for paying for any lost keys; (ix) be responsible for paying for any damages caused; (x) be

responsible for billing Defendants by 6:00 p.m. every day; (xi) be responsible for paying any direct deposit fees; and (xii) be responsible for notifying Defendants within two weeks of taking any time off.

14. Furthermore, during the independent contractor relationship with Defendants, Plaintiffs were not permitted, without the prior written consent of Defendants, to: (i) enter into or engage in any business that competes with the business of Defendants; (ii) promote or assist, financially or otherwise, or invest in any person, firm, association, partnership, corporation, or other entity engaged in any business that competes with the business of Defendants.

15. During the time that Plaintiffs were classified by Defendants as independent contractors while performing services for Defendants, Defendants unlawfully and willfully misclassified Plaintiffs and others as independent contractors. Thus, Defendants willfully and wrongfully denied Plaintiffs and the members of the Classes of their rights to the protections afforded to employees under the California Labor Code and applicable Wage Order of the Industrial Welfare Commission. Indeed, Plaintiffs are informed and believe, and based thereon allege, that, during all relevant times herein mentioned, Defendants knew or should have known that they had a duty to properly classify Plaintiffs and other independent contractors, and properly compensate them, and that Defendants had the financial ability to do so and pay such compensation, but willfully, knowingly, and intentionally failed to do so in order to increase their profits

16. Plaintiffs and the other similarly situated independent contractors provided installation services which are directly part of Defendants' regular business as a car protector installation company. The services they provided to Defendants are the kind of work typically done by an employee under the direction of an employer.

17. While engaged as independent contractors, Defendants controlled and directed Plaintiffs and the other similarly situated independent contractors in connection with the performance of their work, in terms of which jobs to complete, and how to otherwise perform their job duties.

18. While unlawfully and willfully misclassified by Defendant as independent contractors, Plaintiffs and the other similarly situated independent contractors were paid per on a piece rate basis per vehicle serviced. As a result, Plaintiffs and the other similarly situated independent contractors

were not separately compensated for time spent working on tasks unrelated the piece rate work, including, without limitation, waiting for work and/or customers, driving between jobs, fueling their vehicles, performing administrative tasks such as completing paperwork, and taking rest breaks (*e.g.*, non-productive time). *See e.g. Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 40-41 ("*DTLA*") ("…we conclude that class members [paid on a piece-rate] were entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair tasks directed by the employer...."); Lab. Code §226.2. As a result, Plaintiffs and other similarly situated independent contractors were not paid at least the minimum wage for all hours worked.

19. Further, because Plaintiffs and the other similarly situated independent contractors often worked in excess of 8 hours in a day or 40 hours in a week, the failure by Defendants to compensate Plaintiffs and the other similarly situated independent contractors for all their work time due to their unlawful piece rate compensation practices, Plaintiffs and the other similarly situated independent contractors were also deprived of all overtimes wages owed

20. Plaintiffs further contend that Defendants did not properly track the time worked by Plaintiffs and the other similarly situated independent contractors such that they were not compensated for all hours worked which were not tracked, such that they were deprived of minimum wages owed for such time. Further, due to this timekeeping problem, when Plaintiffs and the other similarly situated independent contractors worked in excess of 8 hours in a day or 40 hours in a week, they were also deprived of all overtime wages owed.

21. While performing services for Defendants as independent contractors, Plaintiffs and other similarly situated independent contractors often worked in excess of eight hours per workday and/or more than forty hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Plaintiffs and other similarly situated independent contractors received non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendants' payment of Incentive Pay to Plaintiffs and other similarly situated independent contractors, Defendants' policies and/or procedures failed to include all forms of Incentive Pay when calculating

the regular rate of pay, thereby causing Plaintiffs and other similarly situated independent contractors to be underpaid all of their required overtime wages.

22. While performing services for Defendants as independent contractors, Plaintiffs and other similarly situated independent contractors were not provided all required meal periods due to Defendants' meal period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to their status as independent contractors, Defendants did not have any meal period policies that applied to Plaintiffs and other similarly situated independent contractors. Even so, due to the job duties and the work demands imposed by Defendants, Plaintiffs other similarly situated independent contractors were often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or were at least 30 minutes in length. This policy and practice of Defendants not providing lawful meal periods to Plaintiffs and/or not requiring Plaintiffs and other similarly situated independent contractors to take a meal period before the end of the fifth hour of work or that was at least 30 minutes in length violates California law. Further, when Plaintiffs and other similarly situated independent contractors worked in excess of 10.0 hours per day, Defendants failed to provide them with a second meal period that was at least 30 minutes in length, further violating California law.

23. Although Plaintiffs were not provided with all legally-compliant meal periods to which they were entitled while working as misclassified independent contractors for Defendants, Defendants failed to compensate Plaintiffs with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Plaintiffs and the other similarly situated independent contractors.

24. While performing services for Defendants as independent contractors, Plaintiffs and other similarly situated independent contractors were also not authorized and permitted to take all legally required and properly paid rest periods due to Defendants' unlawful rest period policies and practices. Specifically, due to their status as independent contractors, Defendants did not have any rest

period policies that applied to Plaintiffs and other similarly situated independent contractors. Even so, due to heavy work demands, Plaintiffs and other similarly situated independent contractors were not authorized to take required and paid rest periods. Moreover, Plaintiffs and other similarly situated independent contractors worked shifts in excess of 3.5 hours, and were never provided with a lawfully paid rest period for every 4-hour period worked, or major fraction thereof, because Defendants' piece-rate compensation plan failed to separately compensate Plaintiffs for required rest periods. *See Bluford v. Safeway Inc.,* 216 Cal. App. 4th 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did not separately compensate drivers for their rest periods."); Lab. Code §226.2. As a result, Plaintiffs and other similarly situated independent contractors were not paid at least the minimum wage for all hours worked as well as all higher compensation owed pursuant to Labor Code section 226.2.

25. On those occasions when Plaintiffs and other similarly situated independent contractors were not authorized and permitted to take all legally-compliant paid rest periods to which they were entitled, Defendants failed to compensate Plaintiffs and other similarly situated independent contractors with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

26. As a result of Defendants' failure to pay all minimum and overtime wages, and meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiffs and other similarly situated independent contractors. Nevertheless, because Defendants misclassified Plaintiffs and other similarly situated independent contractors, they failed to provide Plaintiffs and other similarly situated independent contractors with any accurate wage statements as required by Labor Code section 226.

27. Additionally, the pay statements issued by Defendants to Plaintiffs and other similarly situated independent contractors during the time they were providing services as independent contractors, independently violated Labor Code sections 226 and 226.2 in that they fail to show: (i)

total hours worked during the pay period; (ii) the number of piece-rate units earned and any applicable piece rate; (iii) the total hours of compensable rest periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and (iv) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

28. As a further result of Defendants' failure to pay all minimum and overtime wages, and failure to pay all meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiffs upon separation of their employment with Defendants.

29. Defendants also failed to reimburse Plaintiffs and other similarly situated independent contractors for necessary business expenses incurred throughout the relevant time period. Specifically, Defendants required those individuals who were misclassified as independent contractors, including Plaintiffs, to pay for, among other things, expenses related to the purchase of supplies and tools, direct deposit fees, damages, lost keys, charges for incomplete vehicles, personal cellular phone usage, and use of a personal vehicle. Despite these requirements, Defendants did not reimburse Plaintiffs and those misclassified as independent contractors for incurring these necessary business expenses in violation of California law. Further, Defendants illegally deducted such expenses from their wages owed, in further violation of California law.

CLASS ACTION ALLEGATIONS

30. **Class Definitions**: Plaintiffs bring this action on behalf of themselves and the following Classes pursuant to § 382 of the Code of Civil Procedure:

a. The Overtime Class consists of all current and former individuals classified as independent contractors by Defendants in California who worked in excess of 8 hours in a work day and/or in excess of 40 hours in a work week, and who were paid, at least in part, on a piece-rate basis, during the four years preceding the filing of this lawsuit through the present (but only during the time that they were classified as independent contractors).

b. The Minimum Wage Class consists of all current and former individuals classified as independent contractors by Defendants in California who were paid, at least in part, on a piece-rate basis, during the four years preceding the filing of this lawsuit through the present (but only during the time that they were classified as independent contractors).

c. The Meal Period Class consists of all current and former individuals classified as independent contractors by Defendants in California who were paid, at least in part, on a piece-rate basis and who worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of this lawsuit through the present (but only during the time that they were classified as independent contractors).

d. The Rest Period Class consists of all current and former individuals classified as independent contractors by Defendants in California who were paid, at least in part, on a piece-rate basis and worked at least one shift of 3.5 hours or more during the four years immediately preceding the filing of the lawsuit through the present (but only during the time that they were classified as independent contractors).

e. The Expense Reimbursement Class consists of all current and former individuals classified as independent contractors by Defendants and who incurred expenses in the discharge of their duties, during the four years immediately preceding the filing of the lawsuit through the present (but only during the time that they were classified as independent contractors).

f. The Unlawful Wage Deductions Class consists of all current and former individuals classified as independent contractors by Defendants in California, during the four years immediately preceding the filing of the lawsuit through the present (and only during the time that they were classified as independent contractors).

g. The Wage Statement Class consists of all members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class; and/or (v) Unlawful Wage Deductions Class, who received a compensation and/or wage statement, during the one year immediately preceding the filing of the lawsuit through the present (but only during the time that they were classified as independent contractors).

h. The Waiting Time Class consists of members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class; and/or (v) Unlawful Wage Deductions Class, and who separated from employment and/or independent contractor relationship with Defendants during the three years immediately preceding the filing of the lawsuit through the present.

i. The UCL Class consists of members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Unlawful Wage Deductions Class; (vi) Waiting Time Class; and/or (vii) Expense Reimbursement Class, during the four years immediately preceding the filing of the lawsuit through the present.

31. Plaintiffs reserve the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

32. **Numerosity/Ascertainability**: The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the members of the Classes could number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

33. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest**: There are common questions of law and fact as to Plaintiffs and all other similarly situated individuals, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether, when Defendants classified individuals as independent contractors, such classification was unlawful pursuant to Labor Code § 2750.3 and California law;

ii. Whether Defendants properly paid all minimum wages, and/or overtime wages at the regular rate to members of the Minimum Wage and Overtime Classes pursuant to Labor Code §§ 204, 226.2, 510, 558, 1194, 1194.2, 1197, 1197.1 and 1198;

iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iv. Whether Defendants authorized and permitted all legally compliant and properly compensated rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.2, 226.7 and 516;

v. Whether it was necessary for members of the Expense Reimbursement Class to incur expenses to perform and discharge their job duties, and whether Defendants knew or should have known of said incurring of such business expenses;

vi. Whether Defendants' policies and practices for unlawfully deducting wages from members of the Unlawful Wage Deductions Class violated California law;

vii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code §§ 226, 226.2 and 226.3;

viii. Whether Defendants properly paid all wages upon separation of employment to members of the Waiting Time Class pursuant to Labor Code §§ 201-204; and

ix. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

34. **Predominance of Common Questions**: Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' independent contractor classification policies, uniform timekeeping policies/practices, piece-rate compensation, minimum wage payment, overtime wage payment, meal and rest period policies/practices, wage deduction practices, expense reimbursement policies/practices, payment upon separation policies, and wage statement practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

35. **Typicality**: The claims of Plaintiffs are typical of the claims of the Classes because Plaintiffs were improperly classified by Defendants as independent contractors paid, at least in part, on a piece-rate basis, in California during the statute(s) of limitations period applicable to each cause of

action pled in the lawsuit. As alleged herein, Plaintiffs, like the members of the Classes, were not provided all legally required minimum wages and overtime wages, were not provided with all required meal periods, were not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when they were not provided compliant meal and rest periods, had wages unlawfully deducted, were not paid all wages upon their separation, were not reimbursed for necessarily incurred business expenses, and were not provided with accurate, itemized wage statements.

36. **Adequacy of Representation**: Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiffs. Plaintiffs' attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

37. **Superiority**: The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiffs and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications

with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 29 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES OWED

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

38. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

39. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

40. At all times relevant herein, Defendants were required to properly compensate Plaintiffs and the members of the Overtime Class for all overtime hours worked pursuant to California Labor Code §§ 510 and 1194, and Wage Order 4. Labor Code § 510 and Wage Order 4, Section 3 require an employer to pay an employee "one and one-half (1½) times the regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and Wage Order 4, Section 3 also require an employer to pay an employee double the employee's regular rate for work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiffs and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiffs and the members of Overtime Class at one and one-half their regular rate of pay for such hours.

41. The foregoing practices and policies are unlawful and create entitlement to recovery by

Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order 4, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM WAGES OWED

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

42. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

43. This cause of action is brought pursuant to Labor Code §§ 204, 226.2, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all minimum wages for all hours worked, and provide a private right of action for the failure to pay all minimum wage compensation for all work performed.

44. At all times relevant herein, Defendants were required to properly compensate Plaintiffs and the members of the Minimum Wage Class for all hours worked pursuant to California Labor Code §§ 226.2, 1194, 1197 and 1198, and Wage Order 4. Wage Order 4, Section 4 requires an employer to pay to every employee on the established payday for the period involved not less than the applicable minimum wage for all hours worked in the payroll period. Defendants caused Plaintiffs and the members of the Minimum Wage Class to work hours in a workweek but did not properly compensate Plaintiffs and the members of the Minimum Wage Class at least minimum wages for such hours.

45. At all times relevant herein, Defendants lacked good faith and had no reasonable grounds for believing that their practices in failing to pay all minimum wages owed at the applicable rate was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the Industrial Welfare Commission. Defendants, therefore, in addition to owing minimum wages to Plaintiffs and the members of the Minimum Wage Class, also owe liquidated damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to Labor Code § 1194.2.

46. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiffs and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, as well as statutory penalties, liquidated damages,

civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 4, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

47. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

48. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed in their affirmative obligation to provide all of their improperly classified independent contractors, including Plaintiffs and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 4, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiffs and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

49. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 4, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

50. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

51. Wage Order 4, § 12 and California Labor Code §§ 226.2, 226.7 and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

52. As alleged herein, Defendants failed to authorize and permit Plaintiffs and members of the Rest Period Class to take all required and properly paid rest periods.

53. The foregoing violations create an entitlement to recovery by Plaintiffs and members of

the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing and compensation required under Labor Code sections 226.2 and 226.7 for rest periods, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.2, 226.7, 516, 558, Wage Order 4, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

UNLAWFUL DEDUCTIONS FROM WAGES OWED

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

54. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully set forth herein.

55. This cause of action is brought pursuant to Labor Code § 221 which provide that "[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

56. As a matter of practice and policy, during the time that Plaintiffs and members of the Unlawful Wage Deductions Class were misclassified as independent contractors, Defendants regularly deducted from the wages owed to Plaintiffs and members of the Unlawful Wage Deductions Class to cover various work-related expenses incurred in the direct discharge of their job duties.

57. Defendants knew or should have known that it is unlawful to deduct from wages owed to Plaintiff and members of the Unlawful Wage Deductions Class.

58. As a proximate result of Defendants' policies and/or practices in violation of Labor Code § 221, Plaintiffs and members of the Unlawful Wage Deductions Class were damaged in sums, which will be shown according to proof.

59. Plaintiffs and members of the Unlawful Wage Deductions Class are entitled to attorneys' fees and costs of suit, and interest and penalties for bringing this action.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

60. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

61. Plaintiffs are informed and believe, and based thereon allege, that Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiffs and the Wage Statement Class Members with accurate, itemized wage statements that included among other requirements, total hours worked during the pay period, the number of piece-rate units earned and any applicable piece rate, the total hours of compensable rest periods, the rate of compensation, and the gross wages paid for those periods during the pay period, the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period, and meal and rest period premium wages, all in violation of Labor Code §§ 226 *et seq*. and 226.2

62. Defendants' failures in furnishing Plaintiffs and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

63. Defendants' failures create an entitlement to recovery by Plaintiffs and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code §§ 226 *et seq*. and 226.2, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq*.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES UPON TERMINATION

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

64. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

65. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

66. Defendants failed to timely pay Plaintiffs and members of the Waiting Time Class all of their final wages at the time of termination, which include, among other things, underpaid minimum

and overtime wages, and meal and rest period premium wages. Further, Plaintiffs are informed and believe, and based thereon allege, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

<u>EIGHTH CAUSE OF ACTION</u>

FAILURE TO REIMBURSE BUSINESS EXPENSES

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

67. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

68. It was necessary and at the obedience and/or direction of Defendants for Plaintiffs and members of the Expense Reimbursement Class to incur expenses in the direct discharge of their job duties, including but certainly not limited to expenses related to the purchase of supplies and tools, direct deposit fees, charges for incomplete vehicles, personal cellular phone usage, and use of a personal vehicle. It was also necessary for members of the Expense Reimbursement Class to necessarily incur other business expenses in the direct discharge of their duties

69. Defendants knew or should have known that Plaintiffs and members of the Expense Reimbursement Class necessarily incurred expenses as part of the discharge of their duties at Defendants' direction, and also incurred other business expenses.

70. Although Plaintiffs and members of the Expense Reimbursement Class incurred these expenses in the direct discharge of their job duties, Defendants did not reimburse these employees for such necessary work expenditures during the four years preceding the filing of the lawsuit.

71. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer."

72. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 4, Plaintiffs and members of the Expense Reimbursement Class were damaged in sums, which will be shown according to proof.

73. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiffs and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure. They shall also be entitled to attorneys' fees and costs incurred in recovering such business expenses.

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

74. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

75. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by misclassifying employees as independent contractors, failing to pay all overtime and minimum wages owed, failing to provide all required meal periods and failing to authorize and permit all required rest periods, failing to pay meal and rest period premium wage payments, failing to reimburse all necessarily incurred business expenses, unlawfully deducting wages, failing to pay all wages upon separation of employment, and failing to issue accurate, itemized wage statements.

76. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiffs and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

77. Because Plaintiffs are the victims of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiffs for themselves and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

78. The acts complained of herein occurred within the last four years immediately preceding the filing of the lawsuit in this action.

79. Plaintiffs were compelled to retain the services of counsel to file this court action to

protect their interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' non-exempt employees, and to enforce important rights affecting the public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under Code of Civil Procedure § 1021.5.

TENTH CAUSE OF ACTION

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(AGAINST ALL DEFENDANTS)

80. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

81. Defendants have committed several Labor Code violations against Plaintiffs and other Aggrieved Employees. Plaintiffs, each an "Aggrieved Employee" within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other Aggrieved Employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiffs, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) $250.00 for each initial violation and $1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (2) $100.00 for each initial violation and $200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiffs and other Aggrieved Employees the statutory minimum wage for all hours worked;
b) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiffs and other Aggrieved Employees all overtime compensation earned;
c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiffs and other Aggrieved Employees;
d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Plaintiffs and other Aggrieved Employees;

e) Defendants violated Labor Code § 221 by unlawfully deducting from wages owed to Plaintiffs and other Aggrieved Employees for all certain work-related expenses;

f) Defendants violated Labor Code § 2802 by failing to reimburse Plaintiffs and other Aggrieved Employees for necessary work expenditures;

g) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Plaintiffs and other Aggrieved Employees;

h) Defendants violated Labor Code § 226 by failing to furnish Plaintiffs and other Aggrieved Employees with accurate and compliant itemized wage statements;

i) Defendants violated Labor Code § 226.8 by willfully misclassifying Plaintiffs and other Aggrieved Employees as independent contractors and by illegally charging and deducting from their wages;

j) Defendants violated Labor Code § 204 by failing to pay Plaintiffs and other Aggrieved Employees all earned wages at least twice during each calendar month; and

k) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiffs and other Aggrieved Employees.

82. On September 28, 2022, Plaintiffs notified Defendants via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via e-mail, of Defendants' violations of the California Labor Code and Plaintiffs' intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 81 (a)-(k). Attached hereto as **Exhibit 1** is a true and correct copy of the September 28, 2022 correspondence. Now that sixty-five days have passed from Plaintiffs notifying Defendants of these violations, Plaintiffs have exhausted their administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

83. Plaintiffs were compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

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PRAYER

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiffs as the representatives of the Classes;

3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;

4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198.

5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.2, 204, 558, 1194, 1197, 1197.1 and 1198;

6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.2, 226.7, 516, and 558;

8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 221, 1194, 1194.2, 1197, 1197.1 and 1198;

9. Upon the Sixth Cause of Action, for penalties pursuant to Labor Code §§ 226, 226.2, and 226.3;

10. Upon the Seventh Cause of Action, for penalties pursuant to Labor Code §§ 201-204;

11. Upon the Eight Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code § 2802;

12. Upon the Ninth Cause of Action for restitution to Plaintiffs and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq*.;

13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200.00 for each subsequent violation or willful or intentional violation pursuant to

Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $250.00 for each initial violation and $1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) $50.00 for each initial violation and $100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) $100.00 for each initial violation and $200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 81 (a)-(k) above.

14. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

15. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

16. For such other and further relief the Court may deem just and proper.

Dated: November 21, 2023

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________________
Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiffs
REMBER GUILLEN and JUAN SALAS

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial with respect to all issues triable by jury.

Dated: November 21, 2023

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________________
Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiffs
REMBER GUILLEN and JUAN SALAS

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW
2155 Campus Drive, Suite 150, El Segundo, CA 90245
Office: (424) 322-4772
Fax: (424) 322-4775

September 28, 2022

VIA LWDA WEBSITE
Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Mobile Clear Shield, LLC
c/o Brandon Frazier, Agent for Service of Process
17644 Chatsworth Street
Granada Hills, CA 91344

Re: *Rember Guillen and Juan Salas v. Mobile Clear Shield, LLC*

To Whom It May Concern:

Please be advised that this law firm represents Rember Guillen and Juan Salas in claims arising from their employment with Mobile Clear Shield, LLC ("Defendant"). Messrs. Guillen and Salas are each an "aggrieved employee" as defined by Labor Code sections 2699, *et seq*. due to Defendant's numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires Aggrieved Employees to notify their employer and the Labor and Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Messrs. Guillen and Salas intend to pursue a lawsuit on behalf of other "Aggrieved Employees", which should be considered to include all current and former individuals classified as independent contractors by Defendants in California who have worked for Defendant, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Guillen, a former employee of Defendant, was employed by Defendant from approximately 2017 through around January or February 2022. During his employment, Mr. Guillen worked as an installer who was paid on a piece-rate basis. Although Mr. Guillen was legally an employee of Defendant, he was unlawfully misclassified by Defendant as an independent contractor.

Mr. Salas, a former employee of Defendant, was employed by Defendant from approximately 2015/2016 through around July 2021. During his employment, Mr. Salas worked as an installer who was paid on a piece-rate basis. Although Mr. Salas was legally an employee of Defendant, he was unlawfully misclassified by Defendant as an independent contractor.

Specifically, Messrs. Guillen and Salas entered into an Independent Contractor Agreement (the "Agreement") with Defendant Mobile Clear Shield, LLC whereby he would provide installation services for Defendant's customers. The Agreement provided that as independent contractor installers, Messrs. Guillen and Salas would be paid on a piece-rate basis for every vehicle serviced.

In or around October 2019, Defendants notified Messrs. Guillen and Salas that they and all other independent contractors would be transitioned to employment status effective January 1, 2020. Although this transition occurred in January 2020, Messrs. Guillen and Salas' job title and duties remained the same thereafter.

Messrs. Guillen and Salas and the other independent contractors retained by Defendant were as part of their duties required to, among other things: (i) use their own vehicles to perform their duties; (ii) be available and ready to work at least one Saturday per month; (iii) report at the end of each work day to Defendant the day's activities and accomplishments; (iv) complete at least 25 cars per day; (v) complete at least 125 cars per week; (vi) be responsible for paying $100 per month for all supplies and items associated with daily operations (which amount would be deducted on the last payment check of every month); (vii) be responsible for paying $6.00 for each full car of wasted product; (viii) be responsible for paying for any lost keys; (ix) be responsible for paying for any damages caused; (x) be responsible for billing Defendant by 6:00 p.m. every day; (xi) be responsible for paying any direct deposit fees; and (xii) be responsible for notifying Defendant within two weeks of taking any time off.

Furthermore, during the independent contractor relationship with Defendant, Messrs. Guillen and Salas were not permitted, without the prior written consent of Defendant, to: (i) enter into or engage in any business that competes with the business of Defendant; (ii) promote or assist, financially or otherwise, or invest in any person, firm, association, partnership, corporation, or other entity engaged in any business that competes with the business of Defendant.

During the time that Messrs. Guillen and Salas were classified by Defendant as independent contractors while performing services for Defendant, Defendant unlawfully and willfully misclassified Messrs. Guillen and Salas and others independent contractors. Thus, Defendant willfully and wrongfully denied Messrs. Guillen and Salas and the members of the Classes of their rights to the protections afforded to employees under the California Labor Code and applicable Wage Order of the Industrial Welfare Commission. Indeed, Messrs. Guillen and Salas are informed and believes, and based thereon alleges, that, during all relevant times herein mentioned, Defendant knew or should have known that they had a duty to properly classify Messrs. Guillen and Salas and other independent contractors, and properly compensate them, and that Defendant had the financial ability to do so and pay such compensation, but willfully, knowingly, and intentionally failed to do so in order to increase their profits

Messrs. Guillen and Salas and the other similarly situated independent contractors provided installation services which are directly part of Defendant's regular business as a car protector installation company. The services they provided to Defendant are the kind of work typically done by an employee under the direction of an employer.

While engaged as an independent contractor, Defendant controlled and directed Messrs. Guillen and Salas and the other similarly situated independent contractors in connection with the performance of their work, in terms of which jobs to complete, and how to otherwise perform their job duties.

While unlawfully and willfully misclassified by Defendant as independent contractors, Messrs. Guillen and Salas and the other similarly situated independent contractors were paid per on a piece rate basis per vehicle serviced. As a result, Messrs. Guillen and Salas and the other similarly situated independent contractors were not separately compensated for time spent working on tasks unrelated the piece rate work, including, without limitation, waiting for work and/or customers, driving between jobs, fueling their vehicles, performing administrative tasks such as completing paperwork, and taking rest breaks (e.g., non-productive time). *See e.g. Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 40-41 ("DTLA") ("…we conclude that class members [paid on a piece-rate] were entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair tasks directed by the employer...."); Lab. Code §226.2. As a result, Messrs. Guillen and Salas and other similarly situated independent contractors were not paid at least the minimum wage for all hours worked.

Further, because Messrs. Guillen and Salas and the other similarly situated independent contractors often worked in excess of 8 hours in a day or 40 hours in a week, the failure by Defendant to compensate Messrs. Guillen and Salas and the other similarly situated independent contractors for all their work time due to their unlawful piece rate compensation practices, Messrs. Guillen and Salas and the other similarly situated independent contractors were also deprived of all overtimes wages owed

Messrs. Guillen and Salas further contend that Defendant did not properly track the time worked by Messrs. Guillen and Salas and the other similarly situated independent contractors such that they were not compensated for all hours worked which were not tracked, such that they were deprived of minimum wages owed for such time. Further, due to this timekeeping problem, when Messrs. Guillen and Salas and the other similarly situated independent contractors worked in excess of 8 hours in a day or 40 hours in a week, they were also deprived of all overtime wages owed.

While performing services for Defendant as independent contractors, Messrs. Guillen and Salas and other similarly situated independent contractors often worked in excess of eight hours per workday and/or more than forty hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Messrs. Guillen and Salas and other similarly situated independent contractors received non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Messrs. Guillen and Salas and other similarly situated independent contractors, Defendant's policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Messrs. Guillen and Salas and other similarly situated independent contractors to be underpaid all of their required overtime wages.

While performing services for Defendant as independent contractors, Messrs. Guillen and Salas and other similarly situated independent contractors were not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to their status as independent contractors, Defendant did not have any meal period policies that applied to Messrs. Guillen and Salas and other similarly situated independent contractors. Even so, due to the job duties and the work demands imposed by Defendant, Messrs. Guillen and Salas other similarly situated independent contractors were often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or were at least 30 minutes in length. This policy and practice of Defendant not providing lawful meal periods to Messrs. Guillen and Salas and/or not requiring Messrs. Guillen and Salas and other similarly situated independent contractors to take a meal period before the end of the fifth hour of work or that was at least 30 minutes in length violates California law. Further, when Messrs. Guillen and Salas and other similarly situated independent contractors worked in excess of 10.0 hours per day, Defendant failed to provide them with a second meal period that was at least 30 minutes in length, further violating California law.

Although Messrs. Guillen and Salas were not provided with all legally-compliant meal periods to which they were entitled while working as misclassified independent contractors for Defendant, Defendant failed to compensate Messrs. Guillen and Salas with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Messrs. Guillen and Salas and the other similarly situated independent contractors.

While performing services for Defendant as independent contractors, Messrs. Guillen and Salas and other similarly situated independent contractors were also not authorized and permitted to take all legally required and properly paid rest periods due to Defendant's unlawful rest period policies and practices. Specifically, due to their status as independent contractors, Defendant did not have any rest period policies that applied to Messrs. Guillen and Salas and other similarly situated independent contractors. Even so, due to heavy work demands, Messrs. Guillen and Salas and other similarly situated independent contractors were not authorized to take required and paid rest periods. Moreover, Messrs. Guillen and Salas and other similarly situated independent contractors worked shifts in excess of 3.5 hours, and were never provided with a lawfully paid rest period for every 4-hour period worked, or major fraction thereof, because Defendant's piece-rate compensation plan failed to separately compensate Messrs. Guillen and Salas for required rest periods. See *Bluford v. Safeway Inc.*, 216 Cal. App. 4th 864 (2013)

("There is no dispute that Safeway's activity-based compensation system did not separately compensate drivers for their rest periods."); Lab. Code §226.2. As a result, Messrs. Guillen and Salas and other similarly situated independent contractors were not paid at least the minimum wage for all hours worked as well as all higher compensation owed pursuant to Labor Code section 226.2.

On those occasions when Messrs. Guillen and Salas and other similarly situated independent contractors were not authorized and permitted to take all legally-compliant paid rest periods to which they were entitled, Defendant failed to compensate Messrs. Guillen and Salas and other similarly situated independent contractors with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

As a result of Defendant's failure to pay all minimum and overtime wages, and meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Messrs. Guillen and Salas and other similarly situated independent contractors. Nevertheless, because Defendant misclassified Messrs. Guillen and Salas and other similarly situated independent contractors, they failed to provide Messrs. Guillen and Salas and other similarly situated independent contractors with any accurate wage statements as required by Labor Code section 226.

Additionally, the pay statements issued by Defendant to Messrs. Guillen and Salas and other similarly situated independent contractors during the time they were providing services as independent contractors, independently violated Labor Code sections 226 and 226.2 in that they fail to show: (i) total hours worked during the pay period; (ii) the number of piece-rate units earned and any applicable piece rate; (iii) the total hours of compensable rest periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and (iv) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

As a further result of Defendant's failure to pay all minimum and overtime wages, and failure to pay all meal and rest period premium wages, Defendant failed to pay all wages owed to Messrs. Guillen and Salas upon separation of their employment with Defendant.

Defendant also failed to reimburse Messrs. Guillen and Salas and other similarly situated independent contractors for necessary business expenses incurred throughout the relevant time period. Specifically, Defendant required those individuals who were misclassified as independent contractors, including Messrs. Guillen and Salas, to pay for, among other things, expenses related to the purchase of supplies and tools, direct deposit fees, damages, lost keys, charges for incomplete vehicles, personal cellular phone usage, and use of a personal vehicle. Despite these requirements, Defendant did not reimburse Messrs. Guillen and Salas and those misclassified as independent contractors for incurring these necessary business expenses in violation of California law. Further, Defendant illegally deducted such expenses from their wages owed, in further violation of California law.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 4 ("Wage Order 4"):

<u>Overtime Violations</u>

Defendant was required to pay Messrs. Guillen and Salas and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 4, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked."

As described above, while unlawfully and willfully misclassified by Defendant as independent contractors, Messrs. Guillen and Salas and other Aggrieved Employees were paid per on a piece rate basis per vehicle serviced. As a result, Messrs. Guillen and Salas and other Aggrieved Employees were not separately compensated for time spent working on tasks unrelated the piece rate work, including, without limitation, waiting for work and/or customers, driving between jobs, fueling their vehicles, performing administrative tasks such as completing paperwork, and taking rest breaks (e.g., non-productive time). *See e.g. Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 40-41 ("DTLA") ("…we conclude that class members [paid on a piece-rate] were entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair tasks directed by the employer...."); Lab. Code §226.2. Because Messrs. Guillen and Salas and other Aggrieved Employees often worked in excess of 8 hours in a day or 40 hours in a week, the failure by Defendant to compensate Messrs. Guillen and Salas and other Aggrieved Employees for all their work time due to their unlawful piece rate compensation practices, Messrs. Guillen and Salas and the other Aggrieved Employees were deprived of all overtimes wages owed

Messrs. Guillen and Salas further contend that Defendant did not properly track the time worked by Messrs. Guillen and Salas and other Aggrieved Employees such that they were not compensated for all hours worked which were not tracked. Due to this timekeeping problem, when Messrs. Guillen and Salas and the other Aggrieved Employees worked in excess of 8 hours in a day or 40 hours in a week, they were also deprived of all overtime wages owed.

While performing services for Defendant as independent contractors, Messrs. Guillen and Salas and other Aggrieved Employees often worked in excess of eight hours per workday and/or more than forty hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Messrs. Guillen and Salas and other Aggrieved Employees received non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Messrs. Guillen and Salas and other Aggrieved Employees, Defendant's policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Messrs. Guillen and Salas and other Aggrieved Employees to be underpaid all of their required overtime wages.

<u>Minimum Wage Violations</u>

Defendant was required to pay Messrs. Guillen and Salas and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; the Wage Order 4, § 4. Mr. Guillen and other Aggrieved Employees were not paid for all hours worked due to Defendant's timekeeping and compensation practices. As alleged above, while unlawfully and willfully misclassified by Defendant as independent contractors, Messrs. Guillen and Salas and other Aggrieved Employees were paid per on a piece rate basis per vehicle serviced. As a result, Messrs. Guillen and Salas and other Aggrieved Employees were not separately compensated for time spent working on tasks unrelated the piece rate work, including, without limitation, waiting for work and/or customers, driving between jobs, fueling their vehicles, performing administrative tasks such as completing paperwork, and taking rest breaks (e.g., non-productive time). *See e.g. Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 40-41 ("DTLA") ("…we conclude that class members [paid on a piece-rate] were entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair tasks directed by the employer...."); Lab. Code §226.2. Messrs. Guillen and Salas further contend that Defendant did not properly track the time worked by Messrs. Guillen and Salas and the other similarly situated independent contractors such that they were not compensated for all hours worked which were not tracked, such that they were deprived of minimum wages owed for such time. As a result, Defendant failed to pay Messrs. Guillen and Salas and other Aggrieved Employees all required minimum wages.

<u>Meal Period Violations</u>

As alleged above, Defendant failed to provide Messrs. Guillen and Salas and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; the Wage Order 4, § 11. Specifically, due to their status as independent contractors, Defendant did not have any meal period policies that applied to Messrs. Guillen and Salas and other Aggrieved Employees. Even so, due to the job duties and the work demands imposed by Defendant, Messrs. Guillen and Salas other Aggrieved Employees were often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or were at least 30 minutes in length. This policy and practice of Defendant not providing lawful meal periods to Messrs. Guillen and Salas and/or not requiring Messrs. Guillen and Salas and other Aggrieved Employees to take a meal period before the end of the fifth hour of work or that was at least 30 minutes in length violates California law. Further, when Messrs. Guillen and Salas and other Aggrieved Employees worked in excess of 10.0 hours per day, Defendant failed to provide them with a second meal period that was at least 30 minutes in length, further violating California law. Therefore, Messrs. Guillen and Salas and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with … [an] order of the Industrial Welfare Commission … the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Messrs. Guillen and Salas and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Messrs. Guillen and Salas and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

<u>Rest Period Violations</u>

Defendant also failed to authorize and permit Messrs. Guillen and Salas and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 4, § 12. Specifically, due to their status as independent contractors, Defendant did not have any rest period policies that applied to Messrs. Guillen and Salas and other Aggrieved Employees. Even so, due to heavy work demands, Messrs. Guillen and Salas and other Aggrieved Employees were not authorized to take required and paid rest periods. Moreover, Messrs. Guillen and Salas and other similarly situated independent contractors worked shifts in excess of 3.5 hours, and were never provided with a lawfully paid rest period for every 4-hour period worked, or major fraction thereof, because Defendant's piece-rate compensation plan failed to separately compensate Messrs. Guillen and Salas for required rest periods. *See Bluford v. Safeway Inc.*, 216 Cal. App. 4th 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did not separately compensate drivers for their rest periods."); Lab. Code §226.2. As a result, Messrs. Guillen and Salas and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

<u>Unlawful Fees and Deductions (Labor Code section 226.8)</u>

Pursuant to Labor Code section 226.8(a)(2): "It is unlawful for any person or employer to engage in any of the following activities: ...

(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified." (Cal. Labor Code § 226.8(a))."

Labor Code section 226.8(i)(4) defines "willful misclassification" as "avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor."

Defendant exercises a great amount of control over Messrs. Guillen and Salas and other Aggrieved Employees in the performance of their work. As a result, Defendant cannot demonstrate that the conditions set forth in Labor Code section 2750.3(A) are satisfied with respect to the employment of Messrs. Guillen and Salas and other Aggrieved Employees. Messrs. Guillen and Salas and other Aggrieved Employees perform work which is within the Defendant's usual course of business. As a result, Defendant cannot demonstrate that the conditions set forth in Labor Code section 2750.3(B) are satisfied with respect to the employment of the Aggrieved Employees.

Messrs. Guillen and Salas and other Aggrieved Employees are not customarily engaged in the business of providing installation services. As a result, Defendant cannot demonstrate that the conditions set forth in Labor Code section 2750.3(C) are satisfied with respect to the employment of the Aggrieved Employees.

Because Defendant cannot demonstrate that any of the conditions set forth in Labor Code section 2750.3(A-C) are satisfied with respect to the employment of the aggrieved employees, the Messrs. Guillen and Salas and other Aggrieved Employees should have been properly classified as employees entitled to the protections and benefits of the California Labor Code and applicable IWC Wage Orders.

Messrs. Guillen and Salas are informed and believe, and based thereon allege, that Defendant has a policy and practice of charging Aggrieved Employees unlawful fees and making unlawful deductions from their compensation, in violation of Labor Code section 226.8(a)(2).

Pursuant to Labor Code section 226.8(b):

"If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars ($5,000) and not more than fifteen thousand dollars ($15,000) for each violation, in addition to any other penalties or fines permitted by law."

Pursuant to Labor Code section 226.8(c):

"If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to 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, in addition to any other penalties or fines permitted by law."

As alleged herein, Defendant has engaged, and continues to engage in an unlawful pattern and practice of charging unlawful fees and making unlawful deductions from the Aggrieved Employees' compensation, after voluntarily, knowingly, and willfully misclassifying those individuals as independent contractors, in violation of Labor Code section 226.8(a)(2).

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Messrs. Guillen and Salas and other Aggrieved Employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant's failure to pay all final wages due to Messrs. Guillen and Salas and other Aggrieved Employees was willful and, consequently, entitles Messrs. Guillen and Salas and other similarly Aggrieved Employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

Failure to Reimburse Business Expenses

Defendant required those individuals who were misclassified as independent contractors, including Messrs. Guillen and Salas, to pay for, among other things, expenses related to the purchase of supplies and tools, direct deposit fees, damages, lost keys, charges for incomplete vehicles, personal cellular phone usage, and use of a personal vehicle. Despite these requirements, Defendant did not reimburse Messrs. Guillen and Salas and other Aggrieved Employees for incurring these necessary business expenses in violation of California law. Further, Defendant illegally deducted such expenses from their wages owed, in further violation of California law. Defendant's policy of not providing reimbursement for necessary work-related expenses is in violation of Wage Order 4, § 9, and Labor Code § 2802 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.") Messrs. Guillen and Salas and other Aggrieved Employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Messrs. Guillen and Salas and other Aggrieved Employees with accurate and complete, itemized wage statements in violation of Labor Code § 226 *et seq*. Defendant's failure to furnish Messrs. Guillen and Salas and other Aggrieved Employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

As a result of Defendant's failure to pay all minimum and overtime wages, and meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Messrs. Guillen and Salas and other Aggrieved Employee. Nevertheless, because Defendant misclassified Messrs. Guillen and Salas and other Aggrieved Employees, they failed to provide Messrs. Guillen and Salas and other Aggrieved Employees with any accurate wage statements as required by Labor Code section 226.

Additionally, the pay statements issued by Defendant to Messrs. Guillen and Salas and other Aggrieved Employees during the time they were providing services as independent contractors, independently violated Labor Code sections 226 and 226.2 in that they fail to show: (i) total hours worked during the pay period; (ii) the number of piece-rate units earned and any applicable piece rate; (iii) the total hours of compensable rest periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and (iv) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

As "Aggrieved Employees," Messrs. Guillen and Salas will initiate a civil action on behalf of themselves and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Messrs. Guillen and Salas' own investigation, and on information and belief, Defendant committed the following Labor Code violations:

a) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Messrs. Guillen and Salas and other Aggrieved Employees the statutory minimum wage for all hours worked;

b) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Messrs. Guillen and Salas and other Aggrieved Employees all overtime compensation earned;

c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Messrs. Guillen and Salas and other Aggrieved Employees;

d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Messrs. Guillen and Salas and other Aggrieved Employees;

e) Defendant violated Labor Code § 221 by unlawfully deducting from wages owed to Messrs. Guillen and Salas and other Aggrieved Employees for all certain work-related expenses;

f) Defendant violated Labor Code § 2802 by failing to reimburse Messrs. Guillen and Salas and other Aggrieved Employees for necessary work expenditures;

g) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Messrs. Guillen and Salas and other Aggrieved Employees;

h) Defendant violated Labor Code § 226 by failing to furnish Messrs. Guillen and Salas and other Aggrieved Employees with accurate and compliant itemized wage statements;

i) Defendant violated Labor Code § 226.8 by willfully misclassifying Messrs. Guillen and Salas and other Aggrieved Employees as independent contractors and by illegally charging and deducting from their wages;

j) Defendant violated Labor Code § 204 by failing to pay Messrs. Guillen and Salas and other Aggrieved Employees all earned wages at least twice during each calendar month; and

k) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Messrs. Guillen and Salas and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC

Scott M. Lidman

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, California 90245.

On November 21, 2023, I served the foregoing document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested party(ies) in this action as follows:

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Attorneys for Defendant Mobile Clear Shield, LLC

[X] (BY ELECTRONIC SERVICE) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by electronic transmission via Case Anywhere.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 21, 2023, at El Segundo, California.

____
Dana Joudi