

Robert Drexler (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
Molly DeSario (SBN 230763)
Molly.DeSario@CapstoneLawyers.com
Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff David Barrientos

FILED
Superior Court of California
County of Los Angeles

11/18/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: K. Martinez Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DAVID BARRIENTOS, individually, and
as an aggrieved employee pursuant to the
Private Attorneys General Act ("PAGA"),
on behalf of the State of California and
other non-party Aggrieved Employees,

Plaintiff,

vs.

LONG BEACH LINCOLN MERCURY,
INC., a Delaware corporation; PACIFIC
FORD, INC., a Delaware corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 22STCV27434

**FIRST AMENDED COMPLAINT &
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code § 201 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business &

Professions Code §§ 17200, *et seq.*
(Unlawful Business Practices); and
(11) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiff David Barrientos, individually, and as an aggrieved employee and on behalf
2 of the State of California and all non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This action is brought individually and pursuant to California Labor Code
5 sections 2698, *et seq.* (“PAGA”) to recover civil penalties and any other available relief on
6 behalf of Plaintiff, the State of California, and other current and former employees who
7 worked for Defendants in California as non-exempt, hourly paid employees and received at
8 least one wage statement and against whom one or more violations of any provision in
9 Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of
10 work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed,
11 as set forth in this complaint (“non-party Aggrieved Employees”). The monetary damages,
12 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
13 Superior Court and will be established according to proof at trial. This Court has jurisdiction
14 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
15 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
16 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

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

22 3. Venue is proper in this Court, because Defendants employ persons in this
23 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
24 and occurrences related to this action occurred in this county.

25 4. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
26 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
27 attorneys general their current or former employers for various civil penalties for violations of
28 various provisions in the California Labor Code.

1 **THE PARTIES**

2 5. Plaintiff David Barrientos is a resident of Temecula, in Riverside County,
3 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
4 approximately November 2021 to April 2022. Plaintiff worked as a Service Technician at
5 Defendants' auto dealership in Long Beach, California. During his employment, Plaintiff
6 typically worked nine (9) to ten (10) hours per day and five (5) days per week. Plaintiff's
7 primary job duties included, without limitation, performing warranty and customer repairs,
8 recalls, routine maintenance, and diagnostics.

9 6. LONG BEACH LINCOLN MERCURY, INC. was and is, upon information
10 and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose
11 employees are engaged throughout this county and the State of California.

12 7. PACIFIC FORD, INC. was and is, upon information and belief, a Delaware
13 corporation, and at all times hereinafter mentioned, an employer whose employees are
14 engaged throughout this county and the State of California.

15 8. Plaintiff is unaware of the true names or capacities of the Defendants sued
16 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
17 amend the complaint and serve such fictitiously named Defendants once their names and
18 capacities become known.

19 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
20 were the partners, agents, owners, or managers of LONG BEACH LINCOLN MERCURY,
21 INC. and PACIFIC FORD, INC. at all relevant times.

22 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
23 acts and omissions alleged herein was performed by, or is attributable to, LONG BEACH
24 LINCOLN MERCURY, INC.; PACIFIC FORD, INC.; and/or DOES 1 through 10
25 (collectively, "Defendants" or "CARUSO FORD LINCOLN"), each acting as the agent,
26 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
27 Defendants and was acting within the course and scope of such agency, employment, joint
28 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any

1 and all Defendants were in accordance with, and represent, the official policy of Defendants.

2 11. At all relevant times, Defendants, and each of them, ratified each and every act
3 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
4 and abetted the acts and omissions of each and all the other Defendants in proximately causing
5 the damages herein alleged.

6 12. Plaintiff is informed and believes, and thereon alleges, that each of said
7 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
8 omissions, occurrences, and transactions alleged herein.

9 13. Under California law, Defendants are jointly and severally liable as employers
10 for the violations alleged herein because they have each exercised sufficient control over the
11 wages, hours, working conditions, and employment status of Plaintiff and other non-party
12 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
13 party Aggrieved Employees, supervised and controlled their work schedules and/or conditions
14 of employment, determined their rates of pay, and maintained their employment records.
15 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
16 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
17 common-law employment relationship. As joint employers of Plaintiff and other non-party
18 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties and
19 all other relief available to Plaintiff and other non-party Aggrieved Employees under the law.

20 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
21 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
22 non-party Aggrieved Employees because Defendants have:

- 23 (a) jointly exercised meaningful control over the work performed by
24 Plaintiff and other non-party Aggrieved Employees;
25 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
26 Aggrieved Employees’ wages, hours, and working conditions, including
27 the quantity, quality standards, speed, scheduling, and operative details
28 of the tasks performed by Plaintiff and other non-party Aggrieved

1 Employees;

- 2 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
3 perform work which is an integral part of Defendants' businesses; and
4 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
5 Employees as a matter of economic reality in that Plaintiff and other
6 non-party Aggrieved Employees were dependent on Defendants, who
7 shared the power to set the wages of Plaintiff and other non-party
8 Aggrieved Employees and determined their working conditions, and
9 who jointly reaped the benefits from the underpayment of their wages
10 and noncompliance with other statutory provisions governing their
11 employment.

12 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
13 there has existed a unity of interest and ownership between Defendants such that any
14 individuality and separateness between the entities has ceased.

15 16. LONG BEACH LINCOLN MERCURY, INC.; PACIFIC FORD, INC.; and
16 DOES 1 through 10 are therefore alter egos of each other.

17 17. Adherence to the fiction of the separate existence of Defendants would permit
18 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
19 from liability for the wrongful acts committed by them under the name CARUSO FORD
20 LINCOLN.

21 18. Plaintiff further alleges, upon information and belief, that Defendants LONG
22 BEACH LINCOLN MERCURY, INC. and PACIFIC FORD, INC. are alter egos of each other
23 for the following reasons:

- 24 (a) According to CARUSO FORD LINCOLN's website¹, the Caruso family
25 acquired PACIFIC FORD, INC.'s dealership "Pacific Ford" in 1985 and
26 founded LONG BEACH LINCOLN MERCURY, INC.'s dealership
27

28 ¹ See "About Out Ford Dealership," available at
<https://www.carusoford.com/aboutus.aspx> (last visited August 18, 2022).

1 “Long Beach Lincoln” in 1992. In 2102, “Pacific Ford” and “Long
2 Beach Lincoln” adopted their current names “Caruso Ford” and “Caruso
3 Lincoln,” respectively;

4 (b) According to the most recent “Statement of Information” forms filed
5 with the California Secretary of State, LONG BEACH LINCOLN
6 MERCURY, INC. and PACIFIC FORD, INC. officers share the same
7 mailing address, which is “101 The Grove Drive, Los Angeles, CA
8 90036”;

9 (c) According to the most recent “Statement of Information” forms filed
10 with the California Secretary of State, LONG BEACH LINCOLN
11 MERCURY, INC. and PACIFIC FORD, INC. share the same business
12 type, “Automobile Dealership”; and

13 (d) On information and belief, LONG BEACH LINCOLN MERCURY,
14 INC. and PACIFIC FORD, INC. utilize the same standardized
15 employment forms and issue the same employment policies.

16 **GENERAL ALLEGATIONS**

17 19. Defendants operate automobile dealerships under the names “Caruso Ford” and
18 “Caruso Lincoln,” serving the Long Beach, California area. Upon information and belief,
19 Defendants maintain a single, centralized Human Resources (“HR”) department at their
20 company headquarters in Long Beach, California, which is responsible for the recruiting and
21 hiring of new employees, and communicating and implementing Defendants’ company-wide
22 policies, including timekeeping policies and meal and rest period policies, to employees
23 throughout California.

24 20. In particular, Plaintiff and other non-party Aggrieved Employees, on
25 information and belief, received the same standardized documents and/or written policies.
26 Upon information and belief, the usage of standardized documents and/or written policies,
27 including new-hire documents, indicate that Defendants dictated policies at the corporate level
28 and implemented them company-wide, regardless of their employees’ assigned locations or

positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire.

21. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Long Beach, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

22. Defendants continue to employ non-exempt or hourly paid employees in California.

23. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other non-party Aggrieved Employees were not paid for all hours worked because all hours worked were not recorded.

25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest period premiums, that included as eligible income all remuneration required by

1 law, including but not limited to, all income derived from incentive pay, nondiscretionary
2 bonuses, and/or other forms of compensation, but failed to include all forms of remuneration
3 in calculating the regular rate of pay for Plaintiff and other non-party Aggrieved Employees.

4 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 receive at least minimum wages for compensation and that they were not receiving at least
7 minimum wages for work that was required to be done off-the-clock. In violation of the
8 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
9 least minimum wages for work done off-the-clock.

10 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
13 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
14 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
15 other non-party Aggrieved Employees were not provided with all meal periods or payment of
16 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
17 uninterrupted, thirty (30) minute meal period.

18 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
21 payment of one (1) additional hour of pay at their regular rates of pay when they were not
22 authorized and permitted to take a compliant rest period. In violation of the California Labor
23 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted
24 to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party
25 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
26 pay when they were not authorized and permitted to take a compliant rest period.

27 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 receive complete and accurate wage statements in accordance with California law. In
2 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
3 were not provided complete and accurate wage statements.

4 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that they had a duty to maintain accurate and complete payroll records in
6 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
7 knowingly, and intentionally failed to do so.

8 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 timely payment of all wages earned upon termination of employment. In violation of the
11 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
12 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
13 and/or meal and rest period premiums, within permissible time periods.

14 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 timely payment of wages during their employment. In violation of the California Labor Code,
17 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
18 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
19 premiums, within permissible time periods.

20 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 receive full reimbursement for all business-related expenses and costs they incurred during the
23 course and scope of their employment and that they did not receive full reimbursement of
24 applicable business-related expenses and costs incurred.

25 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants knew or should have known that Defendants had a duty to provide
27 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms of
28

1 their employment with Defendants as required by the California Wage Theft Prevention Act,
2 but failed to do so.

3 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, that Defendants knew or should have known that they had a duty to provide
5 Plaintiff and other non-party Aggrieved Employees with safety devices and safeguards to
6 protect their life, health, and safety in the workplace, but failed to do so.

7 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants knew or should have known that they had a duty to compensate
9 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
10 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
11 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
12 that they were properly denied wages, all in order to increase Defendants' profits.

13 **PAGA REPRESENTATIVE ALLEGATIONS**

14 38. At all times herein set forth, PAGA provides that any provision of law under
15 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
16 assessed and collected by the LWDA for violations of the California Labor Code and
17 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
18 civil action brought on behalf of themselves and other current or former employees pursuant
19 to procedures outlined in California Labor Code section 2699.3.

20 39. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
21 person who was employed by the alleged violator and against whom one or more of the
22 alleged violations was committed."

23 40. Plaintiff and other current and former employees of Defendants are "aggrieved
24 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
25 or former employees and one or more of the alleged violations were committed against them.

26 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
27 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
28 following requirements have been met:

- 1 (a) The aggrieved employee or representative shall give written notice by
2 online filing with the LWDA and by certified mail to the employer of
3 the specific provisions of the California Labor Code alleged to have
4 been violated, including the facts and theories to support the alleged
5 violation.
- 6 (b) An aggrieved employee's notice filed with the LWDA pursuant to
7 2699.3(a) and any employer response to that notice shall be
8 accompanied by a filing fee of seventy-five dollars (\$75).
- 9 (c) The LWDA shall notify the employer and the aggrieved employee or
10 representative by certified mail that it does not intend to investigate the
11 alleged violation ("LWDA Notice") within sixty (60) calendar days of
12 the postmark date of the aggrieved employee's notice. Upon receipt of
13 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
14 (65) calendar days of the postmark date of the aggrieved employee's
15 notice, the aggrieved employee may commence a civil action pursuant
16 to California Labor Code section 2699 to recover civil penalties.

17 42. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
18 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
19 provision other than those listed in Section 2699.5 after the following requirements have been
20 met:

- 21 (a) The aggrieved employee or representative shall give written notice by
22 online filing with the LWDA and by certified mail to the employer of
23 the specific provisions of the California Labor Code alleged to have
24 been violated (other than those listed in Section 2699.5), including the
25 facts and theories to support the alleged violation.
- 26 (b) An aggrieved employee's notice filed with the LWDA pursuant to
27 2699.3(c) and any employer response to that notice shall be
28 accompanied by a filing fee of seventy-five dollars (\$75).

1 (c) The employer may cure the alleged violation within thirty-three (33)
2 calendar days of the postmark date of the notice sent by the aggrieved
3 employee or representative. The employer shall give written notice
4 within that period of time by certified mail to the aggrieved employee or
5 representative and by online filing with the LWDA if the alleged
6 violation is cured, including a description of actions taken, and no civil
7 action pursuant to Section 2699 may commence. If the alleged violation
8 is not cured within the 33-day period, the aggrieved employee may
9 commence a civil action pursuant to Section 2699.

10 43. On September 12, 2022, Plaintiff provided written notice by online filing to the
11 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
12 Code alleged to have been violated, including facts and theories to support the alleged
13 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
14 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
15 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
16 Plaintiff PAGA Case Number LWDA-CM-907381-22. A true and correct copy of Plaintiff's
17 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

18 44. On September 13, 2022, Plaintiff filed an amended written notice by online
19 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
20 California Labor Code alleged to have been violated, supplementing and/or clarifying the facts
21 and theories to support the alleged violations set forth in his original LWDA notice, in
22 accordance with California Labor Code section 2699.3. A true and correct copy of Plaintiff's
23 amended written notice to the LWDA and Defendants is attached hereto as "Exhibit 2."

24 45. As of the filing date of this complaint, over 65 days have passed since Plaintiff
25 sent the initial notice described above to the LWDA, and the LWDA has not responded that it
26 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

27 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
28 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for

violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

47. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

48. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved Employees’ rights by violating various sections of the California Labor Code as set forth above.

49. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)

51. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 52. Labor Code section 1198 makes it illegal to employ an employee under
3 conditions of labor that are prohibited by the applicable wage order. California Labor Code
4 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
5 be the . . . standard conditions of labor for employees. The employment of any employee . . .
6 under conditions of labor prohibited by the order is unlawful.”

7 53. California Labor Code section 1198 and the applicable IWC Wage Order
8 provide that it is unlawful to employ persons without compensating them at a rate of pay
9 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
10 number of hours worked by the person on a daily or weekly basis.

11 54. Specifically, the applicable IWC Wage Order provides that Defendants are and
12 were required to pay employees working more than eight (8) hours in a day or more than forty
13 (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess
14 of eight (8) hours in a day or more than forty (40) hours in a workweek.

15 55. The applicable IWC Wage Order further provides that Defendants are and were
16 required to pay employees working more than twelve (12) hours in a day, overtime
17 compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate
18 of pay includes all remuneration for employment paid to, or on behalf of, the employee,
19 including nondiscretionary bonuses and incentive pay.

20 56. California Labor Code section 510 codifies the right to overtime compensation
21 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
22 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
23 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
24 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
25 in a day on the seventh (7th) day of work.

26 57. During the relevant time period, Defendants willfully failed to pay all overtime
27 wages owed to Plaintiff. During the relevant time period, Plaintiff was not paid overtime
28 premiums for all of the hours he worked in excess of eight (8) hours in a day, in excess of

1 twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours
2 worked were not recorded.

3 58. First, Defendants had, and continue to have, a company-wide policy and/or
4 practice of discouraging and impeding Plaintiff from recording hours worked that were
5 outside of his scheduled shifts in order to limit the amount of overtime employees could
6 accrue. On information and belief, this policy of limiting overtime, coupled with Defendants'
7 practice of assigning heavy workloads and productivity expectations (*see infra*), led Plaintiff
8 to work off-the-clock outside of his scheduled shift times in order to complete his assigned
9 tasks. Because Defendants discouraged overtime accrual by, among other things, requiring
10 employees to obtain approval of overtime hours from Defendants' supervisors, Plaintiff was
11 required to complete assigned tasks outside of his scheduled shifts without being compensated
12 for the time he worked.

13 59. For example, Plaintiff was required to complete online classes, but he was not
14 permitted to complete them during his shifts. As a result, he was forced to review materials
15 and complete classes before or after his scheduled shifts and/or on days off. Plaintiff spent
16 approximately 120 hours completing online classes over the course of his employment, time
17 for which he was not paid. As another example, about once a week, when Plaintiff clocked
18 out at the end of his scheduled shift, Defendants' management would ask him to stay and
19 assist a customer with a diagnostic test, such as checking their tire pressure or battery, which
20 would take him about 20 minutes each occurrence. As a further example, for about a two-
21 week period, Defendants implemented, on a company-wide basis, an employer-imposed
22 requirement that Plaintiff undergo mandatory COVID-19 temperature checks and/or health
23 screenings before clocking in for his scheduled shifts. Prior to his shift, Plaintiff was required
24 to spend up to ten (10) minutes per instance waiting and then undergoing a mandatory
25 temperature check and signing a health screening form, before being permitted to clock in for
26 his shift. Even though Defendants required these health screenings, Defendants did not
27 provide Plaintiff a mechanism to record this time worked so he could be compensated for the
28 time spent undergoing mandatory temperature checks and/or health screenings.

1 60. Further, Plaintiff was required to change into his uniform, which consisted of a
2 logoed polo shirt and cargo pants, at Defendants' facility; however, Defendants did not allow
3 Plaintiff to report the time spent donning his uniform at the beginning of his shifts as hours
4 worked, despite being on Defendants' premises and under Defendants' control, due to
5 company policy requiring that employees be in their uniforms when clocking in for their
6 shifts. As a result, Plaintiff was required to spend time donning his uniform before clocking
7 in prior to a shift. This off-the-clock work could have been recorded by Defendants, but they
8 refused to do so to avoid the payment of additional wages to Plaintiff.

9 61. Second, Defendants' company-wide timekeeping system prevented Plaintiff
10 from recording all hours worked when Plaintiff was required to stay after his scheduled shift
11 to assist a customer, because, on information and belief, the system locked out Plaintiff once
12 he clocked out at the end of his shift, and would not permit him to clock back in until the next
13 day. Thus, Plaintiff was prevented from recording time worked after clocking out for his
14 scheduled shifts and was forced to work off-the-clock.

15 62. Third, as stated, Defendants had, and continue to have, a company-wide policy
16 and/or practice of assigning heavy workloads, including pressuring employees to meet
17 deadlines and productivity requirements. Further, Defendants had a company-wide practice of
18 failing to adhere to a schedule for meal periods, which exacerbated the lack of meal period
19 coverage and prevented Plaintiff from taking all timely, uninterrupted meal periods to which
20 he was entitled. Thus, Defendants' policies and/or practices resulted in a failure to provide
21 Plaintiff with adequate meal period coverage, and thus, Plaintiff was not always afforded
22 uninterrupted 30-minute meal periods during shifts when he was entitled to receive a meal
23 period. For example, Plaintiff's meal periods were interrupted by his supervisors inquiring
24 about ongoing repairs and status of vehicles either in person or over the phone. On other
25 occasions, Plaintiff missed his meal periods entirely due to the heavy workload. Thus,
26 Plaintiff missed meal periods and/or had meal periods cut short or interrupted in order to
27 complete his assigned workloads and meet productivity expectations. Defendants did not
28 compensate Plaintiff for the time he spent working off the clock during meal periods.

1 63. Furthermore, on information and belief, because Defendants frowned upon
2 employees accruing meal period penalties, Defendants' management pressured Plaintiff to
3 clock out for meal periods regardless of whether he had received a compliant meal period or
4 not, in order to strictly limit the meal penalties that would need to be paid by Defendants.
5 Thus, Defendants did not record all hours worked during meal periods, and Plaintiff
6 performed work during meal periods for which he was not paid.

7 64. Defendants knew or should have known that as a result of these company-wide
8 practices and/or policies, Plaintiff was performing his assigned duties off-the-clock and during
9 meal periods, and was suffered or permitted to perform work for which he was not paid.
10 Because Plaintiff worked shifts of eight (8) hours or more a day, or forty (40) hours a week or
11 more, some of this off-the-clock work qualified for overtime premium pay. Therefore,
12 Plaintiff was not paid overtime wages for all of the overtime hours he actually worked.

13 65. Furthermore, Defendants did not pay Plaintiff the correct overtime rate for the
14 recorded overtime hours that he generated. For example, for the pay period ending January
15 15, 2022, Defendants paid Plaintiff overtime wages at the rate of \$42 per hour, which was less
16 than 1.5 times Plaintiff's regular hourly rate of pay of \$30 per hour.

17 66. Moreover, in addition to an hourly wage, Defendants paid Plaintiff incentive
18 pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of
19 the California Labor Code, Defendants failed to incorporate all compensation, including
20 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the
21 calculation of the regular rate of pay for purposes of calculating the overtime wage rate.
22 Therefore, during times when Plaintiff worked overtime and received these other forms of
23 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
24 required.

25 67. For example, Defendants paid Plaintiff incentive pay and/or nondiscretionary
26 bonuses which were listed on Plaintiff's wage statements as "Tech Production Bonus."
27 During pay periods that Plaintiff was paid overtime wages, Defendants did not incorporate the
28 incentive pay and/or nondiscretionary bonuses into Plaintiff's regular rate of pay and, as a

1 result, paid him at incorrect and lower rates of pay for overtime hours worked. Specifically,
2 Defendants paid Plaintiff 1.5 times his hourly rate of pay instead of 1.5 times his regular rate
3 of pay. Defendants' failure to properly calculate the overtime rates of pay based on all
4 remuneration paid has resulted in an underpayment of overtime wages to Plaintiff.

5 68. Defendants' failure to pay Plaintiff the balance of overtime compensation as
6 required by California law, violates the provisions of California Labor Code sections 510 and
7 1198. Pursuant to California Labor Code section 1194, Plaintiff is entitled to recover his
8 unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

9 **SECOND CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 11 **Minimum Wages** 12 **(Against all Defendants)**

13 69. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 70. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
16 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
17 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
18 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the
19 time during which an employee is subject to the control of an employer, and includes all the
20 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
21 Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

22 71. As set forth above, due to Defendants' restrictions on overtime accrual,
23 Defendants systematically failed to pay Plaintiff for actual hours worked before and after his
24 scheduled shifts, because these hours were not accurately recorded. Because Defendants
25 discouraged and impeded Plaintiff from recording hours worked that were outside of his
26 scheduled shifts, Plaintiff was required to perform work off-the-clock prior to the start of his
27 shifts, after his shifts, and/or on his days off, including donning his uniform, completing
28 online classes and COVID-19 health screenings, and assisting customers.

72. Further, as also stated above, due to Defendants' policies and/or practices of assigning heavy workloads/deadlines and failing to adhere to a schedule for meal periods, Plaintiff was impeded from taking all uninterrupted meal periods to which he was entitled and was required to work off-the-clock during meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, Defendants' management pressured employees to clock out for meal periods even when meal periods were missed, short, and/or interrupted. Thus, Defendants systematically failed to pay Plaintiff for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

73. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

74. Defendants' failure to pay Plaintiff minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period

Violations

(Against all Defendants)

75. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

76. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the

1 employer and the employee. Under California law, first meal periods must start after no more
2 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

3 77. At all relevant times herein set forth, California Labor Code sections 226.7,
4 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
5 meal period mandated by an applicable order of the IWC.

6 78. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
7 and the applicable IWC Wage Order also require employers to provide a second meal period
8 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
9 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
10 total hours worked is no more than twelve (12) hours, the second meal period may be waived
11 by mutual consent of the employer and the employee only if the first meal period was not
12 waived.

13 79. First, during the relevant time period, as stated, Defendants had, and continue
14 to have, a company-wide policy and/or practice of assigning heavy workloads, including
15 pressure to meet deadlines and productivity requirements, which has resulted in a lack of meal
16 period coverage. Further, Defendants' company-wide practice of failing to adhere to a
17 schedule for meal periods exacerbated the lack of meal period coverage and prevented
18 Plaintiff from taking all timely, uninterrupted meal periods to which he was entitled.

19 80. As a result, Plaintiff would be forced to work in excess of five (5) hours before
20 taking a meal period and, at times, had his meal periods interrupted and/or had to forgo his
21 meal periods altogether. For example, because of Defendants' policy and/or practice of
22 assigning heavy workloads and productivity requirements, Plaintiff had to forgo his meal
23 periods at least two (2) times per week, or he took his meal periods late, after the end of his
24 fifth hour of work. Moreover, Plaintiff's meal periods were occasionally interrupted by his
25 supervisors asking him to complete a task or requesting information on vehicle repair status
26 after he had already clocked out for his meal period.

27 81. Second, as set forth above, because Defendants frowned upon employees
28 accruing meal period penalties, Defendants' management pressured employees, including

1 Plaintiff, to clock out for meal periods to reflect compliant meal periods, regardless of whether
2 they had received a compliant meal period or not, in order to strictly limit the meal penalties
3 that would need to be paid by Defendants.

4 82. Third, Defendants did not provide Plaintiff with second 30-minute meal periods
5 on days that they worked in excess of ten (10) hours in one day. During his employment,
6 Plaintiff worked shifts in excess of ten (10) or more hours per day but was never provided a
7 second 30-minute meal period. Plaintiff did not sign a valid meal period waiver on days that
8 he was entitled to meal periods and was not relieved of all duties.

9 83. At all times herein mentioned, Defendants knew or should have known that, as
10 a result of these policies, Plaintiff was prevented from being relieved of all duties and required
11 to perform some of his assigned duties during meal periods. Defendants further knew or
12 should have known that Defendants did not pay Plaintiff meal period premiums when meal
13 periods were late, interrupted, shortened, and/or missed.

14 84. Moreover, Defendants engaged in a company-wide practice and/or policy of
15 not paying all meal period premiums owed when compliant meal periods are not provided.
16 Because of this practice and/or policy, Plaintiff has not received premium pay for all missed,
17 late, and interrupted meal periods. Alternatively, to the extent that Defendants did pay
18 Plaintiff premium pay for missed, late, and interrupted meal periods, Defendants did not pay
19 Plaintiff at the correct rate of pay for premiums because Defendants systematically failed to
20 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
21 other forms of remuneration, in the regular rate of pay. As a result, Defendants failed to
22 provide Plaintiff compliant meal periods in violation of California Labor Code sections 226.7,
23 512(a), and 516 and failed to pay the full meal period premiums due.

24 85. Defendants' conduct violates the applicable IWC Wage Order, and California
25 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff is therefore entitled to recover
26 from Defendants one (1) additional hour of pay at his regular rate of compensation for each
27 work day that the meal period was not provided.

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH CAUSE OF ACTION
Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations
(Against all Defendants)

86. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

87. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff’s employment by Defendants.

88. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

89. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at his regular rate of pay for each work day that a required rest period was not authorized and permitted.

90. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ company-wide practices, including

1 assigning heavy workloads and pressure to meet deadlines and productivity requirements,
2 prevented Plaintiff from being relieved of all duty to take rest periods. Additionally,
3 Defendants wholly failed to schedule rest periods, which further led to Plaintiff not being
4 authorized and permitted to take rest periods.

5 91. Furthermore, Defendants maintained and implemented a company-wide on-
6 premises rest period policy, which mandated that Plaintiff remain on the premises during his
7 rest periods. Because Plaintiff was restricted from leaving Defendants' premises during rest
8 periods, he was denied the ability to use his rest periods freely for his own purposes, such as
9 completing personal errands. Thus, Defendants effectively maintained control over Plaintiff
10 during rest periods.

11 92. As a result of Defendants' practices and policies, Plaintiff worked shifts in
12 excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all
13 uninterrupted 10-minute rest periods to which he was entitled. For example, Plaintiff had to
14 forego his rest periods altogether because of the heavy workload and Defendants' failure to
15 schedule rest periods for employees.

16 93. Defendants have also engaged in a company-wide practice and/or policy of not
17 paying all rest period premiums owed when compliant rest periods are not authorized and
18 permitted. Because of this practice and/or policy, Plaintiff has not received premium pay for
19 all missed rest periods. Alternatively, to the extent that Defendants did pay Plaintiff one (1)
20 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff at the
21 correct rate of pay for premiums because Defendants failed to include all forms of
22 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
23 remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiff rest periods
24 and failed to pay him rest period premiums due, in violation of Labor Code sections 226.7 and
25 516, and the applicable IWC Wage Order.

26 94. Defendants' conduct violates the applicable IWC Wage Order and California
27 Labor Code sections 226.7, 516, and 1198. Plaintiff is therefore entitled to recover from
28 Defendants one (1) additional hour of pay at his regular rate of compensation for each work

1 day that a compliant rest period was not authorized and permitted.

2 **FIFTH CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
4 **Statements and Failure to Maintain Accurate Payroll Records**
5 **(Against all Defendants)**

6 95. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
7 and every allegation set forth above.

8 96. At all relevant times herein set forth, California Labor Code section 226(a)
9 provides that every employer shall furnish each of his or her employees an accurate and
10 complete itemized wage statement in writing, including, but not limited to, the name and
11 address of the legal entity that is the employer, the inclusive dates of the pay period, total
12 hours worked, and all applicable rates of pay.

13 97. At all relevant times, Defendants have knowingly and intentionally provided
14 Plaintiff with uniform, incomplete, and inaccurate wage statements. For example, Defendants
15 issued uniform wage statements to Plaintiff that fail to correctly list: gross wages earned; total
16 hours worked; net wages earned; and all applicable hourly rates in effect during the pay
17 period, including rates of pay for overtime wages and/or meal and rest period premiums, and
18 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
19 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

20 98. Because Defendants did not record the time Plaintiff spent working off the
21 clock and deducted time from his records for meal periods that were interrupted and/or missed
22 (and therefore time for which he should have been paid), Defendants did not list the correct
23 amount of gross wages and net wages earned by Plaintiff in compliance with sections
24 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
25 number of hours worked by Plaintiff, in violation of section 226(a)(2), and failed to list the
26 applicable hourly rates of pay in effect during the pay period and the corresponding accurate
27 number of hours worked at each hourly rate, in violation of section 226(a)(9).

28 99. Additionally, because Defendants did not calculate Plaintiff's regular rate of

1 pay correctly for purposes of paying overtime wages and/or meal and rest period premiums,
2 Defendants did not list the correct amount of gross wages in compliance with section
3 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages in
4 violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly
5 rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or
6 meal and rest premiums, in violation of section 226(a)(9).

7 100. The wage statement deficiencies also include, among other things, failing to list
8 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
9 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
10 for which employees were paid; failing to list the name of the employee and only the last four
11 digits of his or her social security number or an employee identification number other than a
12 social security number; failing to list the name and address of the legal entity that is the
13 employer; and/or failing to state all hours worked as a result of not recording or stating the
14 hours employees worked off-the-clock.

15 101. California Labor Code section 1174(d) provides that “[e]very person employing
16 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
17 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
18 plants or establishments at which employees are employed, payroll records showing the hours
19 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
20 applicable piece rate paid to, employees employed at the respective plants or
21 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
22 Defendants willfully failed to maintain accurate payroll records for Plaintiff showing the daily
23 hours he worked and the wages paid thereto as a result of failing to record the off-the-clock
24 hours that he worked.

25 102. California Labor Code section 1198 provides that the maximum hours of work
26 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
27 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
28 employment of any employees for longer hours than those fixed by the order or under

1 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
2 Wage Order, employers are required to keep accurate time records showing when the
3 employee begins and ends each work period and meal period. During the relevant time
4 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
5 and meal period start and stop times for Plaintiff, in violation of section 1198. As stated,
6 Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff’s time
7 records by recording that compliant meal periods were taken regardless of if or when meal
8 periods were actually taken, and thereby failed to keep accurate records of meal start and end
9 times for Plaintiff. Also, in light of Defendants’ failure to provide Plaintiff with second 30-
10 minute meal periods to which he was entitled, Defendants kept no records of meal start and
11 end times for second meal periods.

12 103. Plaintiff is entitled to recover from Defendants the greater of his actual
13 damages caused by Defendants’ failure to comply with California Labor Code section 226(a),
14 or an aggregate penalty not exceeding four thousand dollars (\$4,000).

15 **SIXTH CAUSE OF ACTION**

16 **Violation of California Labor Code § 201—Wages Not Timely Paid Upon Termination** 17 **(Against all Defendants)**

18 104. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 105. At all times relevant herein set forth, Labor Code section 201 provides that if
21 an employer discharges an employee, the wages earned and unpaid at the time of discharge are
22 due and payable immediately.

23 106. On information and belief, Defendants have a company-wide practice or policy
24 of paying departing employees their final wages on the next regular pay cycle, instead of
25 adhering to the time requirements set forth in Labor Code section 201. For example, Plaintiff
26 was terminated on April 6, 2022; however, he did not receive his final pay until on or about
27 April 20, 2022. Thus, Defendants failed to pay Plaintiff his final wages immediately, in
28 violation of California Labor Code section 201.

107. In addition, Defendants willfully failed to pay Plaintiff the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums at the time of discharge.

108. Defendants' failure to pay Plaintiff his wages earned and unpaid at the time of discharge, violates Labor Code section 201. Plaintiff is therefore entitled to recover from Defendants the statutory penalty wages for each day he was not paid, at his regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During

Employment

(Against all Defendants)

109. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

110. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiff during his employment.

111. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

112. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

113. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for

1 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
2 204 provides that the requirements of this section are deemed satisfied by the payment of
3 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
4 seven (7) calendar days following the close of the payroll period.

5 114. During the relevant time period, Defendants willfully failed to pay Plaintiff all
6 wages due including, but not limited to, overtime wages, minimum wages, and/or meal and
7 rest period premiums within the time periods specified by California Labor Code section 204.

8 115. Defendants' failure to pay Plaintiff all wages due violates Labor Code section
9 204. Plaintiff is therefore entitled to recover from Defendants the statutory penalty wages
10 pursuant to California Labor Code section 210.

11 **EIGHTH CAUSE OF ACTION**

12 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 13 **(Against all Defendants)**

14 116. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
15 and every allegation set forth above.

16 117. At all times herein set forth, California Labor Code section 2802 provides that
17 an employer must reimburse employees for all necessary expenditures and losses incurred by
18 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
19 to prevent employers from passing off their cost of doing business and operating expenses on
20 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
21 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen
22 tools or equipment are required by the employer or are necessary to the performance of a job,
23 such tools and equipment shall be provided and maintained by the employer, except that an
24 employee whose wages are at least two (2) times the minimum wage provided herein may be
25 required to provide and maintain hand tools and equipment customarily required by the trade
26 or craft." IWC Wage Order No. 7-2001 further provides that: "[w]hen uniforms are required
27 by the employer to be worn by the employee as a condition of employment, such uniforms
28 shall be provided and maintained by the employer."

118. First, during the relevant time period, Defendants, on a company-wide basis, required Plaintiff to use his personal mobile device, including, but not limited to, his cellular phone, and/or mobile data to carry out his job duties but failed to reimburse him for the costs of his work-related mobile device and/or mobile data expenses. For example, Plaintiff was required to download various mobile applications on his personal mobile device; Plaintiff downloaded the “Paycom” mobile application to clock in and out for his shifts and to record his meal periods; Plaintiff also downloaded the “ELEAD Service Mobile” mobile application to perform multi-point inspections on vehicles; finally, Plaintiff downloaded “Microsoft Outlook” to communicate with his supervisor via electronic mail. Plaintiff regularly used his mobile data to utilize the aforementioned mobile applications. Plaintiff was not compensated for the cost of the mobile data used to download and access the applications. Further, Defendants contacted Plaintiff on his personal mobile device to discuss work-related issues and ask questions pertaining to progress on ongoing repairs, updates on vehicle repair status, and estimated time of completion. Although Defendants required Plaintiff to use his personal mobile device and mobile data to carry out his work-related duties, Defendants failed to reimburse him for his costs incurred.

119. Second, during the relevant time period, Defendants required Plaintiff to purchase supplies and equipment necessary for the performance of his duties, but failed to reimburse him for his out-of-pocket costs. For example, Plaintiff spent about \$180 on an air hose, \$1,300 on a Vehicle Communication Module, \$1,000 per year on an Integrated Diagnostic Software license key, and \$1,500 on a personal laptop computer because Defendants failed to provide service technicians with sufficient equipment for the dealership’s service department to operate properly and/or meet management’s expectations. As a result, Plaintiff was required to purchase his own equipment in order to complete his daily tasks. Although Defendants required Plaintiff to purchase supplies and equipment to carry out his work-related responsibilities, Defendants failed to reimburse him for his out-of-pocket costs to purchase necessary supplies and equipment.

120. Third, during the relevant time period, Defendants required Plaintiff to wear

1 uniforms bearing the “Ford” company logo, including a polo shirt and pants. Due to the
2 nature of vehicle repair and maintenance work, Plaintiff’s uniform items would become
3 stained with grease, oil, soiled, and/or acquire an unpleasant odor such that he was unable to
4 mix these clothes in with other laundry. As a result, he had to wash his uniform items
5 separately from his regular clothing, thus incurring additional utility and laundry expenses for
6 the upkeep of his uniforms. Thus, Defendants failed to maintain uniforms they required
7 Plaintiff to wear during his shifts and forced him to incur the cost of maintaining employee
8 uniforms.

9 121. Fourth, during the relevant time period, Defendants, on a company-wide basis,
10 required Plaintiff to wear special safety shoes such as steel-toed boots and safety goggles,
11 which he was required to wear while at work and necessary for the completion of his work-
12 related duties. Plaintiff spent around \$220 on a pair of steel-toed boots and \$15 on safety
13 goggles during his employment, but was not reimbursed for his costs.

14 122. Defendants could have provided Plaintiff with the actual equipment for use on
15 the job, such as a company mobile device, steel-toed boots, safety goggles, and supplies and
16 equipment, as well as access to laundering services; or Defendants could have reimbursed
17 Plaintiff for the costs of his mobile device usage, boot and goggle expenses, supply expenses,
18 and laundering expenses or provided a uniform maintenance allowance. Instead, Defendants
19 passed these operating costs off onto Plaintiff.

20 123. Defendants’ company-wide policy and/or practice of passing on their operating
21 costs to Plaintiff violates California Labor Code section 2802. Defendants have intentionally
22 and willfully failed to reimburse Plaintiff for necessary business-related expenses and costs.

23 124. Plaintiff is entitled to recover from Defendants his business-related expenses
24 incurred during the course and scope of his employment, plus interest.

25 **NINTH CAUSE OF ACTION**

26 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

27 **(Against all Defendants)**

28 125. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 126. California Labor Code §§ 2698, et seq. (“PAGA”) permits Plaintiff to recover
3 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
4 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
5 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
6 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
7 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12,
8 2810.5, 6401, and 6403.

9 127. Defendants’ conduct, as alleged herein, violates numerous sections of the
10 California Labor Code, including, but not limited to, the following:

- 11 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
12 Wage Order for Defendants’ failure to compensate Plaintiff and other
13 non-party Aggrieved Employees with all required overtime pay, as
14 alleged herein;
- 15 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
16 applicable IWC Wage Order for Defendants’ failure to include all forms
17 of remuneration in the “regular rate” of pay as required by law for
18 purposes of paying overtime wages and/or meal and rest period
19 premiums to Plaintiff and other non-party Aggrieved Employees, as
20 alleged herein;
- 21 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
22 1198, and the applicable IWC Wage Order for Defendants’ failure to
23 compensate Plaintiff and other non-party Aggrieved Employees with at
24 least minimum wages for all hours worked, as alleged herein;
- 25 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
26 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
27 and other non-party Aggrieved Employees with meal periods, as alleged
28 herein;

- 1 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
2 applicable IWC Wage Order for Defendants' failure to authorize and
3 permit Plaintiff and other non-party Aggrieved Employees to take rest
4 periods, as alleged herein;
- 5 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
6 IWC Wage Order for failure to provide accurate and complete wage
7 statements to Plaintiff and other non-party Aggrieved Employees, as
8 alleged herein;
- 9 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
10 IWC Wage Order for failure to maintain payroll records, as alleged
11 herein;
- 12 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
13 earned wages upon termination, as alleged herein and set forth below;
- 14 (i) Violation of Labor Code section 204 for failure to pay all earned wages
15 during employment, as alleged herein;
- 16 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
17 and other non-party Aggrieved Employees for all business expenses
18 necessarily incurred, as alleged herein;
- 19 (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
20 provide written notice of information material to Plaintiff's and other
21 non-party Aggrieved Employees' employment with Defendants, as set
22 forth below; and
- 23 (l) Violation of Labor Code sections 6401 and 6403 for failure to provide
24 Plaintiff and other non-party Aggrieved Employees with safety devices
25 and safeguards for the workplace, as set forth below.

26 128. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
27 that if an employer discharges an employee, the wages earned and unpaid at the time of
28 discharge are due and payable immediately, and that if an employee voluntarily leaves his or

1 her employment, his or her wages shall become due and payable not later than seventy-two
2 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
3 his or her intention to quit, in which case the employee is entitled to his or her wages at the
4 time of quitting.

5 129. Defendants willfully failed to pay Plaintiff and/or other non-party Aggrieved
6 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
7 above, including but not limited to, overtime wages, minimum wages, and/or meal and rest
8 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
9 leaving Defendants' employ.

10 130. Defendants' failure to pay Plaintiff and/or those non-party Aggrieved
11 Employees who are no longer employed by Defendants their wages earned and unpaid at the
12 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ,
13 violates Labor Code sections 201 and 202.

14 131. At all relevant times herein, California's Wage Theft Prevention Act was
15 enacted to ensure that employers provide employees with basic information material to their
16 employment relationship at the time of hiring, and to ensure that employees are given written
17 and timely notice of any changes to basic information material to their employment. Codified
18 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
19 time of hiring, an employer must provide written notice to employees containing basic and
20 material payroll information, including, among other things, the rate(s) of pay and basis
21 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
22 including any rates for overtime, the regular payday designated by the employer, and any
23 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
24 Code § 2810.5(a)(1)(A)-(C).

25 132. At all relevant times, on information and belief, Defendants failed, on a
26 company-wide basis, to provide written notice to Plaintiff and other non-party Aggrieved
27 Employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-
28 (C). Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with

1 written notice of basic information regarding their employment with Defendants is in violation
2 of Labor Code section 2810.5.

3 133. At all relevant times herein, California Labor Code section 6401 provides that
4 employers must furnish and use safety devices and safeguards, and adopt and use practices,
5 means, methods, operations, and processes which are reasonably adequate to render the
6 employment and place of employment safe and healthy. California Labor Code Section 6401
7 further provides that an employer must do everything reasonably necessary to protect the life,
8 safety and health of their employees.

9 134. During the relevant period, Defendants failed to provide Plaintiff and other
10 non-party Aggrieved Employees with personal protective equipment, such as steel-toed boots
11 and safety goggles, to keep them safe in the workplace. Despite the fact that Defendants
12 required Plaintiff and other non-party Aggrieved Employees to wear certain personal
13 protective equipment, including steel-toed boots and safety goggles, while engaged in their
14 work-related duties, Defendants failed to provide such reasonably necessary equipment to
15 Plaintiff and other non-party Aggrieved Employees to keep them safe.

16 135. Defendants' failure to provide Plaintiff and other non-party Aggrieved
17 Employees with safety devices and safeguards for the workplace violates Labor Code sections
18 6401 and 6403.

19 136. Therefore, Plaintiff and/or other non-party Aggrieved Employees are therefore
20 entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

21 **TENTH CAUSE OF ACTION**

22 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

23 **Unlawful Business Practices**

24 **(Against all Defendants)**

25 137. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 138. Defendants are "persons" as defined by California Business & Professions
28 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,

1 and/or associations.

2 139. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
3 unlawful and harmful to Plaintiff, and to the general public. Plaintiff has suffered injury in
4 fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks
5 to enforce important rights affecting the public interest within the meaning of Code of Civil
6 Procedure section 1021.5.

7 140. Defendants' activities, as alleged herein, are violations of California law, and
8 constitute unlawful business acts and practices in violation of California Business &
9 Professions Code sections 17200, *et seq.*

10 141. A violation of California Business & Professions Code sections 17200, *et seq.*
11 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
12 policies and practices have violated state law in at least the following respects:

- 13 (a) Requiring non-exempt, hourly paid employees, including Plaintiff, to
14 work overtime without paying him proper compensation in violation of
15 California Labor Code sections 510 and 1198 and the applicable IWC
16 Wage Order, as alleged herein;
- 17 (b) Failing to include all forms of remuneration in the "regular rate" of pay
18 as required by law for purposes of paying overtime wages and/or meal
19 and rest period premiums to Plaintiff, in violation of California Labor
20 Code sections 226.7, 510, and 1198, and the applicable IWC Wage
21 Order, as alleged herein;
- 22 (c) Failing to pay at least minimum wage to Plaintiff in violation of
23 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
24 and the applicable IWC Wage Order, as alleged herein;
- 25 (d) Failing to provide uninterrupted meal periods to Plaintiff in violation of
26 California Labor Code sections 226.7, 512(a), 516, and 1198, and the
27 applicable IWC Wage Order, as alleged herein;
- 28 (e) Failing to authorize and permit Plaintiff to take uninterrupted rest

1 periods in violation of California Labor Code sections 226.7, 516, and
2 1198, and the applicable IWC Wage Order, as alleged herein;

3 (f) Failing to provide Plaintiff with accurate wage statements and failing to
4 maintain accurate payroll records in violation of California Labor Code
5 sections 226(a), 1174(d), and 1198, and the applicable IWC Wage
6 Order, as alleged herein;

7 (g) Failing timely to pay all earned wages to Plaintiff in violation of
8 California Labor Code section 204, as alleged herein;

9 (h) Failing to reimburse Plaintiff for all business expenses necessarily
10 incurred in violation of California Labor Code section 2802, as alleged
11 herein;

12 (i) Failing to provide written notice of information material to Plaintiff's
13 employment with Defendants in violation of California Labor Code
14 section 2810.5(a)(1)(A)-(C), as set forth below; and

15 (j) Failing to provide Plaintiff with safety devices and safeguards, such as
16 personal protective equipment, in violation of California Labor Code
17 sections 6401 and 6403 as set forth below.

18 142. At all relevant times herein, California's Wage Theft Prevention Act was
19 enacted to ensure that employers provide employees with basic information material to their
20 employment relationship at the time of hiring, and to ensure that employees are given written
21 and timely notice of any changes to basic information material to their employment. Codified
22 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
23 time of hiring, an employer must provide written notice to employees containing basic and
24 material payroll information, including, among other things, the rate(s) of pay and basis
25 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
26 including any rates for overtime, the regular payday designated by the employer, and any
27 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
28 Code § 2810.5(a)(1)(A)-(C).

1 143. During the relevant time period, Defendants failed to provide written notice to
2 Plaintiff that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-
3 (C). Defendants' failure to provide Plaintiff with written notice of basic information
4 regarding his employment with Defendants is in violation of California Labor Code section
5 2810.5.

6 144. At all relevant times herein, California Labor Code section 6401 provides that
7 employers must furnish and use safety devices and safeguards, and adopt and use practices,
8 means, methods, operations, and processes which are reasonably adequate to render the
9 employment and place of employment safe and healthy. California Labor Code Section 6401
10 further provides that an employer must do everything reasonably necessary to protect the life,
11 safety, and health of their employees. California Labor Code section 6403(a) requires that
12 employers provide and use safety devices and safeguards reasonably adequate to render the
13 employment and place of employment safe.

14 145. During the relevant period, as stated above, Defendants failed to provide
15 Plaintiff with personal protective equipment, such as steel-toed boots and safety goggles, to
16 keep him safe in the workplace. Despite the fact that Defendants required Plaintiff to wear
17 certain personal protective equipment, including steel-toed boots and safety goggles, while
18 engaged in his work-related duties, Defendants failed to provide such reasonably necessary
19 equipment to Plaintiff to keep him safe. Thus, Defendants' failure to provide Plaintiff with
20 safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403.

21 146. As a result of the violations of California law herein described, Defendants
22 unlawfully gained an unfair advantage over other businesses. Plaintiff has suffered pecuniary
23 loss by Defendants' unlawful business acts and practices alleged herein.

24 147. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
25 Plaintiff is entitled to restitution of the wages withheld and retained by Defendants during a
26 period that commences four years prior to the filing of this complaint; a permanent injunction
27 requiring Defendants to pay all outstanding wages due to Plaintiff; and an award of attorneys'
28 fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws;

1 and an award of costs.

2 **ELEVENTH CAUSE OF ACTION**

3 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

4 **Unfair Business Practices**

5 **(Against all Defendants)**

6 148. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
7 and every allegation set forth above.

8 149. Defendants are “persons” as defined by California Business & Professions
9 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
10 and/or associations.

11 150. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
12 and harmful to Plaintiff, and to the general public. Plaintiff has suffered injury in fact and has
13 lost money as a result of Defendants’ unfair business practices. Plaintiff seeks to enforce
14 important rights affecting the public interest within the meaning of Code of Civil Procedure
15 section 1021.5.

16 151. Defendants’ activities, namely Defendants’ company-wide practice and/or
17 policy of not paying Plaintiff meal and rest period premiums due to him under Labor Code
18 section 226.7, deprived Plaintiff of the compensation guarantee and enhanced enforcement
19 implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-
20 purpose’ remedy intended primarily to compensate employees, and secondarily to shape
21 employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015).
22 The statutory benefits of section 226.7 were guaranteed to Plaintiff as part of his employment
23 with Defendants, and thus Defendants’ practice and/or policy of denying these statutory
24 benefits constitutes an unfair business practice in violation of California Business &
25 Professions Code sections 17200, *et seq.* (*Id.*)

26 152. A violation of California Business & Professions Code sections 17200, *et seq.*
27 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
28 and practices have violated the spirit of California’s meal and rest period laws and constitute

1 acts against the public policy behind these laws.

2 153. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
3 Plaintiff is entitled to restitution of the statutory benefits implemented by section 226.7
4 withheld and retained by Defendants during a period that commences four years prior to the
5 filing of this complaint; a permanent injunction requiring Defendants to pay all statutory
6 benefits implemented by section 226.7 due to Plaintiff; an award of attorneys' fees pursuant to
7 California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of
8 costs.

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

12 Plaintiff prays for relief and judgment against Defendants, jointly and severally, as
13 follows:

14 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
15 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
16 reserves the right to amend his prayer for relief to seek a different amount.

17 **As to the First Cause of Action**

18 2. That the Court declare, adjudge, and decree that Defendants violated California
19 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
20 pay all overtime wages due to Plaintiff;

21 3. For general unpaid wages at overtime wage rates and such general and special
22 damages as may be appropriate;

23 4. For pre-judgment interest on any unpaid overtime compensation commencing
24 from the date such amounts were due, or as otherwise provided by law;

25 5. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
26 California Labor Code section 1194(a); and

27 6. For such other and further relief as the Court may deem equitable and
28 appropriate.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4

5
67
89
10

11

12

13

14

15
16
17

18
1920
21

22

23
2425
2627
28

As to the Fourth Cause of Action

20. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff to take all rest periods;

21. That the Court make an award to the Plaintiff of one (1) hour of pay at Plaintiff's regular rate of pay for each workday that a rest period was not authorized and permitted;

22. For all actual, consequential, and incidental losses and damages, according to proof;

23. For premiums pursuant to California Labor Code section 226.7(c);

24. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

25. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

26. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

27. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff, and willfully failed to provide accurate itemized wage statements thereto;

28. For all actual, consequential, and incidental losses and damages, according to proof;

29. For injunctive relief pursuant to California Labor Code section 226(h);

30. For statutory penalties pursuant to California Labor Code section 226(e);

31. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

32. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Sixth Cause of Action

33. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiff;

34. For all actual, consequential and incidental losses and damages, according to proof;

35. For waiting time penalties according to proof pursuant to California Labor Code section 203;

36. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

37. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

38. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff overtime wages, minimum wages, and/or meal and rest period premiums during his employment;

40. For all actual, consequential and incidental losses and damages, according to proof;

41. For statutory penalties according to proof pursuant to California Labor Code section 210;

42. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

43. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

44. For such other and further relief as the Court may deem equitable and

1 appropriate.

2 **As to the Eighth Cause of Action**

3 45. That the Court declare, adjudge and decree that Defendants violated California
4 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
5 related expenses and costs incurred by Plaintiff;

6 46. For unpaid business-related expenses and such general and special damages as
7 may be appropriate;

8 47. For pre-judgment interest on any unpaid business-related expenses from the
9 date such amounts were due, or as otherwise provided by law;

10 48. For all actual, consequential, and incidental losses and damages, according to
11 proof;

12 49. For attorneys' fees and costs pursuant to California Labor Code section
13 2802(c), or as otherwise provided by law; and

14 50. For such other and further relief as the Court may deem equitable and
15 appropriate.

16 **As to the Ninth Cause of Action**

17 51. That the Court declare, adjudge and decree that Defendants violated the
18 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
19 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
20 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of
21 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1,
22 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
23 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
24 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
25 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
26 earned wages upon termination); 204 (by failing to timely pay all earned wages during
27 employment); 2802 (by failing to reimburse business expenses); 2810.5 (by failing to provide
28 notice of material terms of employment); and 6401 and 6403 (by failing to provide safety

1 devices and safeguards);

2 52. For civil penalties pursuant to the California Labor Code, including sections
3 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code
4 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
5 1198, 2802, 2810.5, 6401, and 6403;

6 53. For attorneys' fees and costs pursuant to California Labor Code section
7 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
8 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
9 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403; and

10 54. For pre-judgment and post-judgment interest as provided by law; and for such
11 other and further relief as the Court may deem equitable and appropriate.

12 **As to the Tenth Cause of Action**

13 55. That the Court declare, adjudge and decree that Defendants' conduct of failing
14 to provide Plaintiff all overtime wages due to them, failing to include all forms of
15 remuneration in the "regular rate" of pay for purposes of paying overtime wages and/or meal
16 and rest period premiums to Plaintiff, failing to provide Plaintiff all minimum wages due to
17 him, failing to provide all meal periods, failing to authorize and permit Plaintiff to take all rest
18 periods, failing to provide Plaintiff accurate and complete wage statements, failing to maintain
19 accurate payroll records for Plaintiff, failing to timely pay Plaintiff all earned wages during
20 employment, failing to reimburse Plaintiff for business-related expenses, failing to provide
21 notice of material terms of employment, and failing to provide safety devices and safeguards,
22 constitutes an unlawful business practice in violation of California Business and Professions
23 Code sections 17200, *et seq.*;

24 56. For restitution of unpaid wages to Plaintiff and prejudgment interest from the
25 day such amounts were due and payable;

26 57. For the appointment of a receiver to receive, manage, and distribute any and all
27 funds disgorged from Defendants and determined to have been wrongfully acquired by
28 Defendants as a result of violations of California Business & Professions Code sections

17200, *et seq.*;

58. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

59. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

60. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

61. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiff and prejudgment interest from the day such amounts were due and payable;

62. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

63. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

64. For pre-judgment and post-judgment interest as provided by law; and For such other and further relief as the Court may deem equitable and appropriate.

Dated: November 18, 2022

Respectfully submitted,

Capstone Law APC



By: _____

Robert Drexler
Molly DeSario
Jonathan Lee

Attorneys for Plaintiff David Barrientos

Exhibit 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

September 12, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *David Barrientos v. Long Beach Lincoln Mercury, Inc., et al.*

Dear PAGA Administrator:

This office represents David Barrientos in connection with his claims under the California Labor Code. Mr. Barrientos was an employee of LONG BEACH LINCOLN MERCURY, INC. and/or PACIFIC FORD, INC. For the purpose of this letter, Mr. Barrientos collectively refers to these entities as "CARUSO FORD LINCOLN."

The employers may be contacted directly at the addresses below:

LONG BEACH LINCOLN MERCURY, INC.	PACIFIC FORD, INC.
3500 CHERRY AVENUE	3600 CHERRY AVE
LONG BEACH, CA 90807	LONG BEACH, CA 90807

Mr. Barrientos intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Barrientos seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CARUSO FORD LINCOLN as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CARUSO FORD LINCOLN employed Mr. Barrientos as an hourly paid, non-exempt employee from approximately November 2021 to April 2022. Mr. Barrientos worked for CARUSO FORD LINCOLN as a Service Technician at its auto dealership in Long Beach, California. During his employment, Mr. Barrientos typically worked nine (9) to ten (10) hours per day and five (5) days per week. At the time his employment ended, Mr. Barrientos was compensated approximately \$30.00 per hour. Mr. Barrientos's primary job duties included, without limitation, performing warranty and customer repairs, recalls, routine maintenance, and diagnostics.

CARUSO FORD LINCOLN committed one or more of the following Labor Code violations against Mr. Barrientos, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

CARUSO FORD LINCOLN’s Company-Wide and Uniform Payroll and HR Practices

LONG BEACH LINCOLN MERCURY, INC. and PACIFIC FORD, INC. are Delaware corporations and operate automobile dealerships under the names “Caruso Ford” and “Caruso Lincoln” serving the Long Beach, California area. Upon information and belief, CARUSO FORD LINCOLN maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Long Beach, California, for all non-exempt, hourly paid employees working for CARUSO FORD LINCOLN in California, including Mr. Barrientos and other aggrieved employees. At all relevant times, CARUSO FORD LINCOLN issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Barrientos and other aggrieved employees, regardless of their location or position.

Upon information and belief, CARUSO FORD LINCOLN maintains a centralized Payroll department at its corporate headquarters in Long Beach, California, which processes payroll for all non-exempt, hourly paid employees working for CARUSO FORD LINCOLN in California, including Mr. Barrientos and other aggrieved employees. Further, CARUSO FORD LINCOLN issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Barrientos and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, CARUSO FORD LINCOLN utilized the same methods and formulas when calculating wages due to Mr. Barrientos and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

CARUSO FORD LINCOLN willfully failed to pay all overtime wages owed to Mr. Barrientos and other aggrieved employees. During the relevant time period, Mr. Barrientos and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8)

¹ These facts, theories, and claims are based on Mr. Barrientos’s experience and counsel’s review of those records currently available relating to Mr. Barrientos’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Barrientos reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, CARUSO FORD LINCOLN had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Barrientos and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with CARUSO FORD LINCOLN's practice of assigning heavy workloads and productivity expectations (*see infra*), led Mr. Barrientos and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. Because CARUSO FORD LINCOLN discouraged overtime accrual by, among other things, requiring employees to obtain approval of overtime hours from CARUSO FORD LINCOLN's supervisors, Mr. Barrientos and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for the time they worked.

For example, Mr. Barrientos was required to complete online classes, but he was not permitted to complete them during his shifts. As a result, he was forced to review materials and complete classes before or after his scheduled shifts and/or on days off. Mr. Barrientos spent approximately 120 hours completing online classes over the course of his employment, time for which he was not paid. As another example, about once a week, when Mr. Barrientos clocked out at the end of his scheduled shift, CARUSO FORD LINCOLN's management would ask him stay and assist a customer with a diagnostic test, such as checking their tire pressure or battery, which would take him about 20 minutes each occurrence. As a further example, for about a two-week period, CARUSO FORD LINCOLN implemented, on a company-wide basis, an employer-imposed requirement that Mr. Barrientos and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to his shift, Mr. Barrientos was required to spend up to ten (10) minutes per instance waiting and then undergoing a mandatory temperature check and signing a health screening form, before being permitted to clock in for his shift. Even though CARUSO FORD LINCOLN required these health screenings, CARUSO FORD LINCOLN did not provide Mr. Barrientos and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Further, Mr. Barrientos and other aggrieved employees were required to change into their uniforms, which consisted of a logoed polo shirt and cargo pants, at CARUSO FORD LINCOLN's facility; however, CARUSO FORD LINCOLN did not allow Mr. Barrientos and other aggrieved employees to report the time spent donning their uniform at the beginning of their shifts as hours worked, despite being on CARUSO FORD LINCOLN's premises and under CARUSO FORD LINCOLN's control, due to company policy requiring that employees be in their uniforms when clocking in for their shifts. As a result, Mr. Barrientos and other aggrieved employees were required to spend time donning their uniforms before clocking in prior to a shift. This off-the-clock work could have been recorded by CARUSO FORD LINCOLN, but it refused to do so to avoid the payment of additional wages to Mr. Barrientos and other aggrieved employees.

Second, CARUSO FORD LINCOLN's company-wide timekeeping system prevented Mr. Barrientos and other aggrieved employees from recording all hours worked when Mr. Barrientos was required to stay after his scheduled shift to assist a customer, because, on information and belief, the system locked out Mr. Barrientos and other aggrieved employees once they clocked out at the end of their shift, and would not permit them to clock back in until the next day. Thus, Mr. Barrientos and other

aggrieved employees were prevented from recording time worked after clocking out for their scheduled shifts and were forced to work off-the-clock.

Third, as stated, CARUSO FORD LINCOLN had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads, including pressuring employees to meet deadlines and productivity requirements. Further, CARUSO FORD LINCOLN had a company-wide practice of failing to adhere to a schedule for meal periods, which exacerbated the lack of meal period coverage and prevented Mr. Barrientos and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Thus, CARUSO FORD LINCOLN's policies and/or practices resulted in a failure to provide Mr. Barrientos and other aggrieved employees with adequate meal period coverage, and thus, Mr. Barrientos and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Barrientos's meal periods were interrupted by his supervisors inquiring about ongoing repairs and status of vehicles either in person or over the phone. On other occasions, Mr. Barrientos missed his meal periods entirely due to the heavy workload. Thus, Mr. Barrientos and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to complete their assigned workloads and meet productivity expectations. CARUSO FORD LINCOLN did not compensate Mr. Barrientos and other aggrieved employees for the time they spent working off the clock during meal periods.

Furthermore, on information and belief, because CARUSO FORD LINCOLN frowned upon employees accruing meal period penalties, CARUSO FORD LINCOLN's management pressured Mr. Barrientos and other aggrieved employees to clock out for meal periods regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by CARUSO FORD LINCOLN. Thus, CARUSO FORD LINCOLN did not record all hours worked during meal periods, and Mr. Barrientos and other aggrieved employees performed work during meal periods for which they were not paid.

CARUSO FORD LINCOLN knew or should have known that as a result of these company-wide practices and/or policies, Mr. Barrientos and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Barrientos and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Barrientos and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, CARUSO FORD LINCOLN did not pay Mr. Barrientos and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. For example, for the pay period ending January 15, 2022, CARUSO FORD LINCOLN paid Mr. Barrientos overtime wages at the rate of \$42 per hour, which was less than 1.5 times Mr. Barrientos's regular hourly rate of pay of \$30 per hour.

Moreover, in addition to an hourly wage, CARUSO FORD LINCOLN paid Mr. Barrientos and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CARUSO FORD LINCOLN failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Barrientos and other aggrieved employees

worked overtime and received these other forms of pay, CARUSO FORD LINCOLN failed to pay all overtime wages by paying a lower overtime rate than required.

For example, CARUSO FORD LINCOLN paid Mr. Barrientos and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Barrientos's and other aggrieved employees' wage statements as "Tech Production Bonus." During pay periods that Mr. Barrientos and other aggrieved employees were paid overtime wages, CARUSO FORD LINCOLN did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Barrientos's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, CARUSO FORD LINCOLN paid Mr. Barrientos and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. CARUSO FORD LINCOLN's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Barrientos and other aggrieved employees on a company-wide basis.

CARUSO FORD LINCOLN's failure to pay Mr. Barrientos and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

As set forth above, due to its restrictions on overtime accrual, CARUSO FORD LINCOLN systematically failed to pay Mr. Barrientos and other aggrieved employees for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. Because CARUSO FORD LINCOLN discouraged and impeded Mr. Barrientos and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Barrientos and other aggrieved employees were required to perform work off-the-clock prior to the start of their shifts, after their shifts, and/or on their days off, including donning their uniforms, completing online classes and COVID-19 health screenings, and assisting customers.

Further, as also stated above, due to CARUSO FORD LINCOLN's policies and/or practices of assigning heavy workloads/deadlines and failing to adhere to a schedule for meal periods, Mr. Barrientos and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, CARUSO FORD LINCOLN's management pressured employees to clock out for meal periods even when meal periods were missed, short, and/or interrupted. Thus, CARUSO FORD LINCOLN systematically failed to pay Mr. Barrientos and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, CARUSO FORD LINCOLN did not pay at least minimum wages for all hours worked by Mr. Barrientos and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CARUSO FORD LINCOLN did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, CARUSO FORD LINCOLN regularly failed to pay at least minimum wages to Mr. Barrientos and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated, CARUSO FORD LINCOLN had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads, including pressure to meet deadlines and productivity requirements, which has resulted in a lack of meal period coverage. Further, CARUSO FORD LINCOLN's company-wide practice of failing to adhere to a schedule for meal periods exacerbated the lack of meal period coverage and prevented Mr. Barrientos and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled.

As a result, Mr. Barrientos and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, because of CARUSO FORD LINCOLN's policy and/or practice of assigning heavy workloads and productivity requirements, Mr. Barrientos had to forgo his meal periods at least two (2) times per week, or he took his meal periods late, after the end of his fifth hour of work. Moreover, Mr. Barrientos's meal periods were occasionally interrupted by his supervisors asking him to complete a task or requesting information on vehicle repair status after he had already clocked out for his meal period.

Second, as set forth above, because CARUSO FORD LINCOLN frowned upon employees accruing meal period penalties, CARUSO FORD LINCOLN's management pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by CARUSO FORD LINCOLN.

Third, CARUSO FORD LINCOLN did not provide Mr. Barrientos and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Barrientos worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Barrientos and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, CARUSO FORD LINCOLN knew or should have known that, as a result of these policies, Mr. Barrientos and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. CARUSO FORD LINCOLN further knew or should have known that it did not pay Mr. Barrientos and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, CARUSO FORD LINCOLN engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Barrientos and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that CARUSO FORD LINCOLN did pay Mr. Barrientos and other aggrieved employees premium pay for missed, late, and interrupted meal periods, CARUSO FORD LINCOLN did not pay Mr. Barrientos and other aggrieved employees at the correct rate of pay for premiums because CARUSO FORD LINCOLN systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CARUSO FORD LINCOLN failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Barrientos and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, CARUSO FORD LINCOLN regularly failed to authorize and permit Mr. Barrientos and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, CARUSO FORD LINCOLN’s company-wide practices, including assigning heavy workloads and pressure to meet deadlines and productivity requirements, prevented Mr. Barrientos and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, CARUSO FORD LINCOLN wholly failed to schedule rest periods, which further led to Mr. Barrientos and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, CARUSO FORD LINCOLN maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Barrientos and other aggrieved employees remain on the premises during their rest periods. Because Mr. Barrientos and other aggrieved employees were restricted from leaving CARUSO FORD LINCOLN’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, CARUSO FORD LINCOLN effectively maintained control over Mr. Barrientos and other aggrieved employees during rest periods.

As a result of CARUSO FORD LINCOLN’s practices and policies, Mr. Barrientos and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Barrientos had to forego his rest periods altogether because of the heavy workload and CARUSO FORD LINCOLN’s failure to schedule rest periods for employees.

CARUSO FORD LINCOLN has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Barrientos and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CARUSO FORD LINCOLN did pay Mr. Barrientos and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CARUSO FORD LINCOLN did not pay Mr. Barrientos and other aggrieved employees at the correct rate of pay for premiums because CARUSO FORD LINCOLN failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CARUSO FORD LINCOLN failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Barrientos and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. CARUSO FORD LINCOLN has not provided Mr. Barrientos

and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, CARUSO FORD LINCOLN has knowingly and intentionally provided Mr. Barrientos and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CARUSO FORD LINCOLN issued uniform wage statements to Mr. Barrientos and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, CARUSO FORD LINCOLN violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because CARUSO FORD LINCOLN did not record the time Mr. Barrientos and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), CARUSO FORD LINCOLN did not list the correct amount of gross wages and net wages earned by Mr. Barrientos and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CARUSO FORD LINCOLN failed to accurately list the total number of hours worked by Mr. Barrientos and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because CARUSO FORD LINCOLN did not calculate Mr. Barrientos's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, CARUSO FORD LINCOLN did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). CARUSO FORD LINCOLN also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which

employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), CARUSO FORD LINCOLN willfully failed to maintain accurate payroll records for Mr. Barrientos and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, CARUSO FORD LINCOLN failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Barrientos and other aggrieved employees, in violation of section 1198. As stated, CARUSO FORD LINCOLN engaged in a company-wide practice and/or policy of falsifying Mr. Barrientos’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Barrientos and other aggrieved employees. Also, in light of CARUSO FORD LINCOLN’s failure to provide Mr. Barrientos and other aggrieved employees with second 30-minute meal periods to which they were entitled, CARUSO FORD LINCOLN kept no records of meal start and end times for second meal periods.

Because CARUSO FORD LINCOLN failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Barrientos and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Barrientos and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are

deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, CARUSO FORD LINCOLN failed to pay Mr. Barrientos and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, CARUSO FORD LINCOLN has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Barrientos was terminated on April 6, 2022; however, he did not receive his final pay until on or about April 20, 2022. Thus, CARUSO FORD LINCOLN failed to pay Mr. Barrientos and other aggrieved employees their final wages immediately, in violation of California Labor Code section 201.

In addition, CARUSO FORD LINCOLN willfully failed to pay Mr. Barrientos and other aggrieved employees who are no longer employed by CARUSO FORD LINCOLN all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving CARUSO FORD LINCOLN's employ.

Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No.73-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 7-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the

employee as a condition of employment, such uniforms shall be provided and maintained by the employer.”

First, during the relevant time period, CARUSO FORD LINCOLN, on a company-wide basis, required Mr. Barrientos and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Barrientos was required to download various mobile applications on his personal mobile device; Mr. Barrientos downloaded the “Paycom” mobile application to clock in and out for his shifts and to record his meal periods; Mr. Barrientos also downloaded the “ELEAD Service Mobile” mobile application to perform multi-point inspections on vehicles; finally, Mr. Barrientos downloaded “Microsoft Outlook” to communicate with his supervisor via electronic mail. Mr. Barrientos regularly used his mobile data to utilize the aforementioned mobile applications. Mr. Barrientos and other aggrieved employees were not compensated for the cost of the mobile data used to download and access the applications. Further, CARUSO FORD LINCOLN contacted Mr. Barrientos on his personal mobile device to discuss work-related issues and ask questions pertaining to progress on ongoing repairs, updates on vehicle status, and estimated time of completion. Although CARUSO FORD LINCOLN required Mr. Barrientos and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, CARUSO FORD LINCOLN failed to reimburse them for their costs incurred.

Second, during the relevant time period, CARUSO FORD LINCOLN required Mr. Barrientos and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Barrientos spent about \$180 on an air hose, \$1,300 on a Vehicle Communication Module, \$1,000 per year on an Integrated Diagnostic Software license key, and \$1500 on a personal laptop computer because CARUSO FORD LINCOLN failed to provide service technicians with sufficient equipment for the dealership’s service department to operate properly and/or meet management’s expectations. As a result, Mr. Barrientos was required to purchase his own equipment in order to complete his daily tasks. Although CARUSO FORD LINCOLN required Mr. Barrientos and other aggrieved employees to purchase supplies and equipment to carry out their work-related responsibilities, CARUSO FORD LINCOLN failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

Third, during the relevant time period, CARUSO FORD LINCOLN required Mr. Barrientos and other aggrieved employees to wear uniforms bearing the “Ford” company logo, including a polo shirt and pants. Due to the nature of vehicle repair and maintenance work, Mr. Barrientos’s uniform items would become stained with grease, oil, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a result, he had to wash his uniform items separately from his regular clothing, thus incurring additional utility and laundry expenses for the upkeep of his uniforms. Thus, CARUSO FORD LINCOLN failed to maintain uniforms they required Mr. Barrientos and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Fourth, during the relevant time period, CARUSO FORD LINCOLN, on a company-wide basis, required Mr. Barrientos and other aggrieved employees to wear special safety shoes such as steel-toed boots and safety goggles, which they were required to wear while at work and necessary for the completion of their work-related duties. Mr. Barrientos spent around \$220 on a pair of steel-toed boots and \$15 on safety goggles during his employment, but was not reimbursed for his costs.

CARUSO FORD LINCOLN could have provided Mr. Barrientos and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, steel-toed boots, safety goggles, and supplies and equipment, as well as access to laundering services; or CARUSO FORD LINCOLN could have reimbursed employees for the costs of their mobile device usage, boot and goggle expenses, supply expenses, and laundering expenses or provided a uniform maintenance allowance. Instead, CARUSO FORD LINCOLN passed these operating costs off onto Mr. Barrientos and other aggrieved employees.

Thus, CARUSO FORD LINCOLN had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, CARUSO FORD LINCOLN failed, on a company-wide basis, to provide written notice to Mr. Barrientos and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). CARUSO FORD LINCOLN's failure to provide Mr. Barrientos and other aggrieved employees with written notice of basic information regarding their employment with CARUSO FORD LINCOLN is in violation of California Labor Code section 2810.5.

Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the

employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” CARUSO FORD LINCOLN, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Barrientos’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Barrientos seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and 558, Mr. Barrientos, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CARUSO FORD LINCOLN for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Barrientos seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: LONG BEACH LINCOLN MERCURY, INC. (via U.S. Certified Mail); PACIFIC FORD, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7021 1970 0001 8870 3761

CERTIFIED MAIL

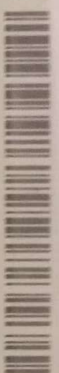
LONG BEACH LINCOLN MERCURY, INC.
3500 CHERRY AVENUE
LONG BEACH, CA 90807

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

LONG BEACH LINCOLN MERCURY, INC.
3500 CHERRY AVENUE
LONG BEACH, CA 90807

9590 9402 7420 2055 3561 22



COMPLETE THIS SECTION ON DELIVERY

- A. Signature
☒ X
- B. Received by (Printed Name)
- C. Date of Delivery

3. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

- 4. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Registered Mail®
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

7021 1970 0001 8870 3761

7021 1970 0001 8870 3761

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

OFFICIAL USE

For delivery information, visit our website at www.usps.com®

- 5. Certified Mail Fee
☐ Regular Service & Fees (check box, add fee as appropriate)
☐ Insured (check box)
☐ Return Receipt (hardcopy)
☐ Return Receipt (electronic)
☐ Certified Mail Restricted Delivery
☐ Adult Signature Required

Signature
LA
Lincoln
Postmark
Date

LONG BEACH LINCOLN MERCURY, INC.
3500 CHERRY AVENUE
LONG BEACH, CA 90807

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL®



7021 1970 0001 8870 3778

PACIFIC FORD, INC.
3600 CHERRY AVE
LONG BEACH, CA 90807

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Address Addressed to:

PACIFIC FORD, INC.
3600 CHERRY AVE
LONG BEACH, CA 90807

COMPLETE THIS SECTION ON DELIVERY

A. Signature

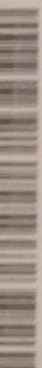
X

B. Received by (Printed Name)

☐ Agent
☐ Addressee

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No



9590 9402 7420 2065 3561 60

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

7021 1970 0001 8870 3778

PS Form 3811, July 2020 PSN 7530-02-000-9033

Domestic Return Receipt

7021 1970 0001 8870 3778

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee

(\$1.30/ounce)

Extra Services & Fees (check box, and fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$

U.S. POSTAL SERVICE
Postmark
Date

PACIFIC FORD, INC.
3600 CHERRY AVE
LONG BEACH, CA 90807

PS Form 3800, April 2015 PSN 7530-02-000-9017

See Reverse for Instructions

Exhibit 2



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

September 13, 2022

VIA ONLINE SUBMISSION

Division of Occupational Safety and Health
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/310>)

Subject: *David Barrientos v. Long Beach Lincoln Mercury, Inc., et al.*
LWDA Case No. LWDA-CM-907381-22 - AMENDED NOTICE

Dear PAGA Administrator:

This office represents David Barrientos in connection with his claims under the California Labor Code. Mr. Barrientos was an employee of LONG BEACH LINCOLN MERCURY, INC. and/or PACIFIC FORD, INC. For the purpose of this letter, Mr. Barrientos collectively refers to these entities as "CARUSO FORD LINCOLN." We previously provided notice of Mr. Barrientos's claims to the California Labor and Workforce Development Agency ("LWDA") on September 12, 2022, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Mr. Barrientos's prior LWDA notice and adds an additional claim.

The employers may be contacted directly at the addresses below:

LONG BEACH LINCOLN MERCURY, INC.	PACIFIC FORD, INC.
3500 CHERRY AVENUE	3600 CHERRY AVE
LONG BEACH, CA 90807	LONG BEACH, CA 90807

Mr. Barrientos intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Barrientos seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CARUSO FORD LINCOLN in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CARUSO FORD LINCOLN employed Mr. Barrientos as an hourly paid, non-exempt employee from approximately November 2021 to April 2022. Mr. Barrientos worked for CARUSO FORD LINCOLN as a Service Technician at its auto dealership in Long Beach, California. During his employment, Mr. Barrientos typically worked nine (9) to ten (10) hours per day and five (5) days per week. At the time his employment ended, Mr. Barrientos was compensated approximately \$30.00

per hour. Mr. Barrientos's primary job duties included, without limitation, performing warranty and customer repairs, recalls, routine maintenance, and diagnostics.

CARUSO FORD LINCOLN has committed one or more of the following Labor Code violations against Mr. Barrientos, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant period, CARUSO FORD LINCOLN failed to provide Mr. Barrientos and other aggrieved employees with personal protective equipment, such as steel-toed boots and safety goggles, to keep them safe in the workplace. Despite the fact that CARUSO FORD LINCOLN required Mr. Barrientos and other aggrieved employees to wear certain personal protective equipment, including steel-toed boots and safety goggles, while engaged in their work-related duties, CARUSO FORD LINCOLN failed to provide such reasonably necessary equipment to Mr. Barrientos and other aggrieved employees to keep them safe.

CARUSO FORD LINCOLN's failure to provide Mr. Barrientos and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Barrientos and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Accordingly, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a)-(c), and 2699.5, Mr. Barrientos, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CARUSO FORD LINCOLN for violations of California Labor Code sections 6401 and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Barrientos seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

¹ These facts, theories, and claims are based on Mr. Barrientos's experience and counsel's review of those records currently available relating to Mr. Barrientos's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Barrientos reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: LONG BEACH LINCOLN MERCURY, INC. (via U.S. Certified Mail); PACIFIC FORD, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2406 3195

CERTIFIED MAIL

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, and fee as appropriate)

☒ Return Receipt (hardcopy)

☐ Return Receipt (electronic)

☐ Restricted Delivery

Signature
L.B. Lincoln
Postmark
Date

LONG BEACH LINCOLN MERCURY, INC.
3500 CHERRY AVENUE
LONG BEACH, CA 90807

7022 2410 0000 2406 3195

PS Form 3811, July 2020 PSN 7530-02-000-9053

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

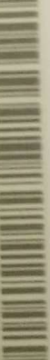
LONG BEACH LINCOLN MERCURY, INC.
3500 CHERRY AVENUE
LONG BEACH, CA 90807

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☐ Agent
- B. Received by (Printed Name) ☒ Addressee
- C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type
Adult Signature ☐ Priority Mail Express
Adult Signature Restricted Delivery ☐ Registered Mail™
Certified Mail ☐ Registered Mail Restricted Delivery
Certified Mail Restricted Delivery ☐ Signature Confirmation™
Collect on Delivery Restricted Delivery ☐ Signature Confirmation
Insured Mail ☐ Restricted Delivery
Insured Mail Restricted Delivery ☐ Restricted Delivery

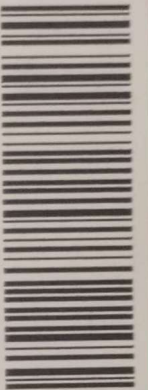


7022 2410 0000 2406 3195

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2406 3201

CERTIFIED MAIL

PACIFIC FORD, INC.
3600 CHERRY AVE
LONG BEACH, CA 90807

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

PACIFIC FORD, INC.
3600 CHERRY AVE
LONG BEACH, CA 90807

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

☐ Agent
☐ Addressee

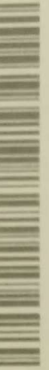
B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Mail
- ☐ Mail Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery



7022 2410 0000 2406 3201

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

7022 2410 0000 2406 3201

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
(Platinum Receipt (handcopy))

Handwritten: 1370-114 MRS
US 114 MRS

PACIFIC FORD, INC.
3600 CHERRY AVE
LONG BEACH, CA 90807

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **November 18, 2022**, I served the document described as: **FIRST AMENDED COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Matthew Sgnilek
msgnilek@ohaganmeyer.com
John Wu
jwu@ohaganmeyer.com
Virginia Tomlinson
vtomlinson@ohaganmeyer.com
O'Hagan Meyer
3200 Park Center Drive, Suite 700
Costa Mesa, CA 92626

Attorneys for Defendants
Long Beach Lincoln Mercury, Inc. and Pacific
Ford, Inc.

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **November 18, 2022**, at Los Angeles, California.

Trevor Beach

Type/Print Name

/s/ Trevor Beach

Signature