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SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**

Jessy Vargas, an individual, on behalf of himself
 and on behalf of all persons similarly situated,

Plaintiff,

v.

Auto Square Autos Inc., a California
 corporation; and DOES 1-50, Inclusive,

Defendants.

Case No.

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT AT LABOR CODE SECTIONS 2698 *ET SEQ.*

1 Plaintiff JESSY VARGAS (“PLAINTIFF”), an individual, in his representative capacity on
2 behalf of himself, the State of California, and fellow current and former AGGRIEVED EMPLOYEES,
3 defined *supra*, against Defendants AUTO SQUARE AUTO INC. (“Defendant Cerritos Acura”), and
4 DOES 1-50 (“Defendant Does”) (collectively “DEFENDANTS”), alleges on information and belief,
5 except for his own acts and knowledge which are based on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General
8 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
9 aggrieved employees of DEFENDANTS for engaging in a pattern and practice of wage and hour
10 violations under the California Labor Code.

11 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
12 decreased their employment-related costs by systematically violating California wage and hour laws.

13 3. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order violations
14 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 15 a. Failure to provide compliant meal and rest periods;
- 16 b. Failure to allow employees to take duty-free meal and rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages;
- 18 d. Failure to correctly calculate the regular rate of pay;
- 19 e. Failure to failed to pay for all hours worked;
- 20 f. Failure to maintain true and accurate records;
- 21 g. Failure to reimburse for required business expenses;
- 22 h. Failure to provide accurate itemized wage statements; and
- 23 i. Failure to timely pay wages due during, and upon termination of employment.

24 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of himself
25 and all other aggrieved employees of DEFENDANTS in California seeking all civil penalties and
26 unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

5. PLAINTIFF reserves the right to name additional representatives throughout the State of California

THE PARTIES

6. Defendant AUTO SQUARE AUTO INC. (“Defendant Cerritos Acura”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

7. Defendant Does 1-50 (“Defendant Does”) are California corporations that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

8. DEFENDANTS own, operate, and/or manage car dealerships in California, including in the county of Los Angeles, where PLAINTIFF worked.

9. DEFENDANTS employed PLAINTIFF in California from September of 2019 to March of 2022 and at all times was classified by DEFENDANTS as a non-exempt employee, paid on a purely commission basis, then paid on a salary basis, and then on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

10. PLAINTIFFF brings this action in his representative capacity on behalf of the State of California and on behalf of all individuals who are or previously were employed by Defendant Cerritos Acura and classified as non-exempt, exempt, piece-rate-based and/or commission-based employees in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANTS between October 11, 2021 and the present (“PAGA PERIOD”).

11. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code § 2699(c) because he was employed by DEFENDANTS and suffered one or more of the alleged Labor Code violations committed by DEFENDANTS.

12. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code and the applicable Industrial Welfare Commission Wage Order.

13. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts alleged in this Complaint.

14. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

15. DEFENDANTS were PLAINTIFF's employer or persons acting on behalf of PLAINTIFF's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

JOINT EMPLOYER

16. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

17. Section 558 of the California Labor Code provides that “any 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 Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).);

18. Section 1197.1 of the Labor Code provides that “[a]ny employer or *other person* acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

1 19. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
2 a corporate employer's owners, officers and directors, are subject to civil penalties for the employer's
3 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
4 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
5 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
6 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

7 20. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each
8 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
9 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
10 damages alleged herein.

11 21. At all relevant times, each Defendant, whether named or fictitious, was the agent,
12 employee or other person acting on behalf of each other Defendant, and, in participating in the acts
13 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts
14 of the other.

15 22. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's
16 wages, working hours, and/or working conditions.

17 23. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action
18 as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy, and the
19 acts of each Defendant are legally attributable to the other DEFENDANTS.

20 **JURISDICTION AND VENUE**

21 24. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court
23 has jurisdiction over PLAINTIFF's claims for civil penalties under the Private Attorney General
24 Act of 2004, California Labor Code §2698, *et seq.*

25 25. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
26 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
27 and DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in
28

1 this County and/or conducts substantial business in this County, and (ii) committed the wrongful
2 conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED EMPLOYEES.

3 **THE CONDUCT**

4 26. In violation of the applicable sections of the California Labor Code and the requirements
5 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
6 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
7 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other
8 AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the other
9 AGGRIEVED EMPLOYEES for all time worked, failed compensate PLAINTIFF for off-the-clock
10 work, failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES overtime at the correct
11 regular rate of pay, failed to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES meal
12 rest premiums at the regular rate, failed to reimburse PLAINTIFF and other AGGRIEVED
13 EMPLOYEES for business expenses, and failed to issue to PLAINTIFF and the AGGRIEVED
14 EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable
15 commissions rates in effect during the pay periods and the corresponding amount of commissions
16 earned during the period, and all hourly rates in effect during the pay periods and the corresponding
17 amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are
18 intended to purposefully avoid the accurate and full payment for all time worked as required by
19 California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
20 competitors who comply with the law. To the extent equitable tolling operates to toll claims by the
21 AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted
22 accordingly.

23 **A. Meal Period Violations**

24 27. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
25 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
26 time during which an employee is subject to the control of an employer, including all the time the
27 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
28 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them

1 for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's
2 demanding work requirements and DEFENDANTS' understaffing, DEFENDANTS required
3 PLAINTIFF to work during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
4 often fielded calls from clients during his meal breaks, and indeed there were many days where
5 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED
6 EMPLOYEES forfeited minimum wage and overtime wages by regularly working without their time
7 being accurately recorded and without compensation at the applicable minimum wage and overtime
8 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED
9 EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

10 28. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
11 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED
12 EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal breaks and were
13 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
14 were required from time to time to perform work as ordered by DEFENDANT for more than five (5)
15 hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time
16 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
17 for some workdays in which DEFENDANT required these employees to work ten (10) hours of work
18 from time to time. The nature of the work performed by PLAINTIFF and other AGGRIEVED
19 EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal period exception.
20 When they were provided with meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES
21 were, from time to time, required to remain on duty and on call. PLAINTIFF and other AGGRIEVED
22 EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance with
23 DEFENDANTS' strict corporate policy and practice.

24 **B. Rest Period Violations**

25 29. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
26 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
27 provided ten (10) minute rest periods as a result of their rigorous work requirements and
28 DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their

1 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
2 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
3 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
4 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were
5 provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to
6 time, required to remain on duty and/or on call. PLAINTIFF and other AGGRIEVED EMPLOYEES
7 were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules
8 and DEFENDANTS' inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were
9 from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

10 **C. Unreimbursed Business Expenses**

11 31. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally,
12 knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the
13 AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and other
14 AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
15 DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify
16 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802
17 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or
18 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
19 her obedience to the directions of the employer, even though unlawful, unless the employee, at the time
20 of obeying the directions, believed them to be unlawful."

21 32. In the course of their employment, DEFENDANTS required PLAINTIFF and other
22 AGGRIEVED EMPLOYEES to use personal cellular phones as a result of and in furtherance of their
23 job duties as employees for DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS
24 for the cost associated with the use of the personal cellular phones for DEFENDANTS' benefit, without
25 reimbursement from the DEFENDANTS in violation of California Labor Code Section 2802.
26 PLAINTIFF used numerous phone applications to support the DEFENDANTS' business operations.

27 33. As a result, in the course of their employment with DEFENDANTS, PLAINTIFFS and the
28 other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but were

1 not limited to costs related to the use of their personal cellular phones, all on behalf of and for the benefit
2 of DEFENDANTS.

3 **D. Wage Statement Violations**

4 34. California Labor Code Section 226 requires an employer to furnish its employees an
5 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
6 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
7 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
8 employee and only the last four digits of the employee's social security number or an employee
9 identification number other than a social security number, (8) the name and address of the legal entity
10 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee.

12 35. From time to time during the PAGA PERIOD, when PLAINTIFF and other
13 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and
14 rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
15 PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage statements
16 which failed to show, among other things, the total hours worked and all applicable hourly rates in
17 effect during the pay period and the corresponding amount of time worked at each hourly rate, correct
18 rates of pay for penalty payments or missed meal and rest periods. More specifically, from time to time,
19 DEFENDANT failed to include the applicable pay rate in effect during the pay period and the
20 corresponding amount of pay for categories of compensation, including but not limited to,
21 commissions.

22 36. In addition, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the
23 AGGRIEVED EMPLOYEES with wage statements that comply with Cal. Lab. Code § 226.

24 37. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED
25 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
26 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due
27 to clerical or inadvertent mistake.
28

1 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

2 38. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continue to fail
3 to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.

4 39. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and
5 other AGGRIEVED EMPLOYEES to perform pre-shift and post-shift work all while off-the-clock,
6 including but not limited to, attending required job trainings off-the-clock and prework covid check-
7 ins. This resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES working while off-the-clock.

8 40. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
9 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

10 41. DEFENDANTS controlled the work schedules, duties, protocols, applications,
11 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

12 42. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
13 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or
14 pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for
15 all the work they performed.

16 43. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees,
17 subject to the requirements of the California Labor Code.

18 44. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
19 AGGRIEVED EMPLOYEES of all minimum, regular, overtime, and double time wages owed for the
20 off-the-clock work activities. Because PLAINTIFF and the other AGGRIEVED EMPLOYEES
21 typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS'
22 policies and practices also deprived them of overtime pay.

23 45. DEFENDANTS knew or should have known that PLAINTIFF and the other
24 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

25 46. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
26 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent working
27 while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the
28

1 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
2 evidenced by DEFENDANTS' business records.

3 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick**

4 **Pay**

5 47. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
6 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
7 overtime and double time hours worked, meal and rest period premiums, and sick pay. As a result,
8 PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working
9 overtime without compensation at the correct overtime and double time rates, meal and rest period
10 premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to not pay the
11 AGGRIEVED EMPLOYEES the correct rate for all overtime and double time worked, meal and rest
12 period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS'
13 business records.

14 48. State law provides that employees must be paid overtime at one-and-one-half times their
15 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
16 hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

17 49. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
18 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
19 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.
20 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus
21 compensation when the employees met the various performance goals set by DEFENDANTS.

22 50. However, from time-to-time, when calculating the regular rate of pay, in those pay periods
23 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid meal
24 and rest period premium payments, and/or sick pay, and earned this non-discretionary bonus or
25 incentive, DEFENDANTS failed to accurately include the non-discretionary bonus compensation
26 and/or incentive and/or shift differential paid as part of the employees' "regular rate of pay" and/or
27 calculated all hours worked rather than just all non-overtime hours worked. As a matter of law, the
28 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be

1 included in the “regular rate of pay.” The failure to do so has resulted in a systematic underpayment
2 of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay to
3 PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically, California
4 Labor Code Section 246 mandates that paid sick time for non-exempt employees shall be calculated in
5 the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses
6 paid sick time, whether or not the employee actually works overtime in that workweek.
7 DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive compensation as
8 part of the “regular rate of pay” for purposes of sick pay compensation was in violation of Cal. Lab.
9 Code § 246 the underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203,
10 and/or 204.

11 51. In violation of the applicable sections of the California Labor Code and the requirements
12 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
13 policy, practice, and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
14 other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime and double time worked,
15 meal and rest period premiums, and sick pay. This uniform policy and practice of DEFENDANTS is
16 intended to purposefully avoid the payment of the correct overtime and double time compensation,
17 meal and rest period premiums, and sick pay as required by California law which allowed
18 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with
19 the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES
20 against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

21 **G. Commission and Piece-Rate Violations**

22 52. From time-to-time during the PAGA PERIOD, PLAINTIFF and AGGRIEVED
23 EMPLOYEES were paid in part on a commission and/or piece-rate basis. In those instances where
24 PLAINTIFF and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-
25 rate basis, PLAINTIFF and the AGGRIEVED EMPLOYEES were entitled to be separately
26 compensated for all non-productive time at an hourly rate that is no less than the applicable minimum
27 wage. Notwithstanding, in those instances where PLAINTIFF and the AGGRIEVED EMPLOYEES
28 were paid in part on a commission and/or piece-rate basis, DEFENDANTS failed to separately

1 compensate PLAINTIFF and the AGGRIEVED EMPLOYEES for all non-productive time, including
2 but not limited to, paid rest periods, at an hourly rate that is no less than the applicable minimum wage.
3 As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited minimum wages and overtime
4 wages by DEFENDANTS' failure to separately compensate their non-productive time at an hourly
5 rate that is no less than the applicable minimum wage.

6 **H. Violation for Untimely Payment of Wages**

7 53. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED
8 EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFF and
9 the AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages, including,
10 but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period
11 premium wages within a permissible time period.

12 54. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty
13 meal and rest breaks and was not fully relieved of duty for his rest and meal periods. PLAINTIFF was
14 required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift
15 without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with
16 a first, second, and third rest period of at least ten (10) minutes for some shifts worked of at least,
17 respectively, two (2) to four (4) hours from time to time, six (6) and eight (8) hours from time to time,
18 and ten (10) hours or more from time to time when DEFENDANTS provided PLAINTIFF with a rest
19 break, they required PLAINTIFF to remain on-duty and on-call, for the rest break. DEFENDANTS'
20 policy caused PLAINTIFF to remain on-call and on-duty during what was supposed to be his off-duty
21 meal periods. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation
22 and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover,
23 DEFENDANTS also provided PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code
24 § 226. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double
25 time compensation still owed to him, or any penalty wages owed to him under Cal. Lab. Code § 203.
26 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

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1 **FIRST CAUSE OF ACTION**

2 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

3 **[Cal. Lab. Code §§ 2698, et seq.]**

4 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

5 55. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
6 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 56. PAGA is a mechanism by which the State of California itself can enforce state labor laws
8 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
9 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
10 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
11 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
12 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified
13 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general
14 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
15 claims cannot be subject to arbitration.

16 57. PLAINTIFF brings this Representative Action on behalf of the State of California with
17 respect to himself and all non-exempt, exempt, commission-based, and piece-rate employees who
18 worked for Defendant Cerritos Acura and/or Defendant Does in California during the PAGA PERIOD.

19 58. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
20 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of
21 Labor Code Section 2699(c).

22 59. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
23 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to
24 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

25 60. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
26 Section 2699.3. By certified letter, return receipt requested, dated October 11, 2022, PLAINTIFF gave
27 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANTS of
28 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories

1 to support the alleged violations.

2 61. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA
3 with notice and amended notice of DEFENDANTS' violations, the LWDA has not provided any notice
4 by certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by Labor
5 Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,
6 PLAINTIFF may commence and is authorized to pursue this cause of action.

7 62. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the
8 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute
9 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of
10 limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for
11 statutes of limitation and repose for civil causes of action that exceed 180 days.

12 63. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
13 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
14 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d),
15 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804 in the following amounts:

16 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
17 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period
18 for the initial violation and two hundred dollars (\$200) for AGGRIEVED
19 EMPLOYEE per pay period for each subsequent violation [penalty per
20 Labor Code Section 2699(f)(2)];

21 b. For violations of Labor Code Section 226(a), a civil penalty in the
22 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
23 EMPLOYEE for any initial violation and one thousand dollars for each
24 subsequent violation [penalty per Labor Code Section 226.3];

25 c. For violations of Labor Code Sections 204, a civil penalty in the
26 amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE
27 for any initial violation and two hundred dollars (\$200) for AGGRIEVED
28 EMPLOYEE for each subsequent violation [penalty per Labor Code

Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

64. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

65. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519;

1 See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows
2 an “aggrieved employee”—a person affected by at least one Labor Code violation committed by an
3 employer—to pursue penalties for all the Labor Code violations committed by that employer.”],
4 Emphasis added, reh'g denied (June 13, 2018).).

5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

7 (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law, including
8 pursuant to Labor Code § 2699, *et seq.*;

9 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
10 Private Attorneys General Act; and

11 For such other relief as the Court deems just and proper.

12
13 Dated: December 21, 2022

Respectfully Submitted,
SELIGSON LAW

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17 By: 
18 Kenneth Seligson
19 Attorneys for PLAINTIFF
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