

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

GOLD STAR MOTORS, INC., a California Corporation, and DOES 1 through 10, inclusive.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

MIGUEL RUIZ, on behalf of himself and all others similarly situated, and on behalf of the general public,

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 4/19/2023 1:39 PM
By: Jackie Meraz, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Monterey Courthouse

1200 Aguajito Road
Monterey, CA 93940

CASE NUMBER:
(Número del Caso)

23CV001196

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Roman Otkupman & Nidah Farishta: 5743 Corsa Ave, Suite 123, Westlake Village, CA 91362; (818)293-5623

DATE: 4/19/2023
(Fecha)

Clerk, by /s/ Jackie Meraz
(Secretario)

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

Roman Otkupman, CSBN 249423

Roman@OLFLA.com

Nidah Farishta, CSBN 312360

Nidah@OLFLA.com

OTKUPMAN LAW FIRM, A LAW CORPORATION

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Facsimile: (888) 850-1310

Attorney for Plaintiff,

Miguel Ruiz, on behalf of himself and all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

MIGUEL RUIZ, on behalf of himself and all others similarly situated, and on behalf of the general public,

Plaintiff,

vs.

GOLD STAR MOTORS, INC., a California Corporation, and DOES 1 through 10, inclusive.

Defendants.

CASE NO.23CV001196

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. PENALTIES PURSUANT TO
LABOR CODE SECTION 2699(f)
FOR VIOLATIONS OF LABOR
CODE §§ 226.7, 512, 558, 510, 1194,
1194.2, 226(a),(e) 1174(d), 201-203,
204(a)(b), 2802, 210, 218, 222, 6400,
6401, 6403, 6404, 6407, 8 CCR 3202,
17200**

DEMAND FOR JURY TRIAL

Plaintiff Miguel Ruiz ("Plaintiff"), on behalf of himself and other "aggrieved employees" complains of Defendants as follows:

I. INTRODUCTION

1. This is a Representation Action, pursuant to Labor Code § 2698, 2699 et seq., on behalf of Plaintiff and certain individuals who are employed by, or were formerly employed by Wing Life, Inc. and any subsidiaries or affiliated companies (hereinafter collectively referred to as "Defendants") within California.

2. For at least one (1) year prior to the filing of this action and continuing to the present (the "liability period"), Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California

1 employees were forced to continue working through their meal and rest breaks in order to assist
2 Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to
3 take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one
4 hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees
5 who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558,
and IWC Order No. 5-2001, Section 12.

6 3. Plaintiff, on behalf of himself and all other California employees of Defendant claims
7 that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays
8 their employees bonuses and commissions which are not included in the employees' regular rate of
9 pay for the purposes of computing the proper overtime rate. As a result, employees are not properly
10 compensated for work performed in excess of eight (8) hours in a workday and work performed in
11 excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
12 rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510,
1194, and 1194.2.

13 4. Defendants have required Plaintiff and Defendant's California employees to work
14 hours in excess of eight hours in a day and forty in a week but had not paid these employees
15 overtime compensation as required by their collective bargaining agreement in violation of Labor
Code § 222.

16 5. Defendants failed to issue Plaintiff and Defendant's California employees accurately
17 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California
18 employees with all wages due, as detailed above, their wage statements failed to accurately state all
19 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
20 Labor Code § 226(a)(2), and net wages earned, in violation of Labor Code § 226(a)(5). Moreover,
21 Plaintiff and the California employees wage statements' failed to accurately state the name and
22 address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all
23 applicable hourly rates during the pay period and the corresponding number of hours worked, in
24 violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due.
25 These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and
Defendants' California employees.

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1 6. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
2 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
3 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
4 Defendant's California employees, and the records maintained by Defendants, have not accurately
5 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
6 premiums, and total hour worked.

7 7. Our client further alleges that Defendants paid him and Defendant's California
8 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they
9 were not paid all wages due and owing throughout the course of their employment as a result of
10 Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they
11 were not paid all final wages due and owing for the entirety of their employment. This violates
12 Labor Code §§ 201-203.

13 8. Defendant pays Plaintiff and it's California employees on a bi-monthly basis and has
14 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-monthly basis
15 must be paid no later than ten calendar days following the close of the payroll period. Due to the
16 violations described above, Plaintiff and Defendant's California employees did not receive all of
17 their wages earned in a timely manner as required by Labor Code § 204(a)(b).

18 9. Defendant failed to reimburse Plaintiff and Defendant's California employees for the
19 equipment they purchased to perform work for Defendant such as face masks. Labor Code section
20 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary
21 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
22 duties." As such, Plaintiff and Defendant's California employees have incurred reasonable and
23 necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in
24 violation of Labor Code § 2802.

25 10. Defendants failed to continue to take precautions to ensure employee safety after the
26 onset of COVID. Under LC §6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome
27 coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant's California employees, directly after the
28 onset of COVID, were required to partake in mandatory temperature and health checks, but these
activities were not enforced or practiced quickly after the onset of COVID and when COVID was
still a health risk to the employees. Plaintiff and Defendant's California employees were also
required to provide their own masks at the workplace. As a result of these practices, Defendants have

1 violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe
2 and healthful environment for their Employees, as outlines above. Defendants are liable for civil
3 penalties pursuant to Cal. Labor Code § 2699 et seq.

4 11. Defendants failed to pay all wages earned to Plaintiff and Defendant's California
5 employees as a result of the unlawful employment policies and practices herein. As a result of these
6 practices, Plaintiff and Defendant's California employees were underpaid for hours worked,
7 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
8 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure
9 to pay wages as required by law.

10 12. Plaintiff and all other aggrieved employees bring this claim pursuant to Business &
11 Professions Code § 17200, et seq. The conduct of all Defendants as alleged above has been and
12 continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees.

13 13. Plaintiff, on behalf of himself and all other aggrieved employees, brings this action
14 pursuant to Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a)(e), 1174(d), 201-203,
15 204(a)(b), 2802, 210, 218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, and 17200.

16 14. Venue as to each Defendant is proper in this judicial district, pursuant to Code
17 of Civil Procedure § 395. Defendants operate within the State of California. The unlawful acts
18 alleged herein took place in Salinas, California.

19 **II. PARTIES**

20 **A. PLAINTIFF**

21 15. Plaintiff MIGUEL RUIZ is a resident of Salinas, California. At all times relevant
22 herein, he was employed by Defendants in Monterey County, California. Plaintiff was employed by
23 Defendants as a non-exempt, hourly employee in California, including in and around the city of
24 Salinas, County of Monterey. During Plaintiff's employment:

- 25 A. Plaintiff did not receive final wages at the time of his termination.
- 26 B. Plaintiff was required to work without meal and rest periods, nor compensation in lieu
27 thereof, as required by the Labor Code and relevant Wage Orders.
- 28 C. Plaintiff was required to work either in excess of eight hours per workday or in excess of
forty hours per workweek without receiving compensation at a rate of one and one half
the regular rate of pay.
- D. Plaintiff was forced to receive inaccurately itemized and deficient wage statements, in

violation of Labor Code § 226(a).

E. Plaintiff did not receive his compensation in accordance with Labor Code § 204 in that Defendants failed to issues wages to its employees within ten (10) calendar days after the pay period ended.

F. Plaintiff was not paid in a timely manner pertaining to the waiting time penalties in accordance with Labor Code §§ 201-203.

G. Defendant also failed to reimburse Plaintiff and Defendant's California employees for reasonable and necessary expenses in the course of their job duties, in violation of Labor Code § 2802.

B. DEFENDANTS

16. Defendant Gold Star Motors, Inc., is a California Corporation doing business in Salinas, California. It operates within the State of California. Defendant employed Plaintiff and similarly situated employees within California. The violations alleged herein arose in Salinas, California.

17. As used herein, the term "AGGRIEVED EMPLOYEES," and "DEFENDANTS' CALIFORNIA EMPLOYEES," shall mean Defendant Gold Star Motors, Inc.'s non-exempt employees.

18. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

19. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and all other aggrieved employees.

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FACTUAL ALLEGATIONS

20. Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their meal and rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

21. Plaintiff, on behalf of himself and all other California employees of Defendant claims that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays their employees bonuses and commissions which are not included in the employees' regular rate of pay for the purposes of computing the proper overtime rate. As a result, employees are not properly compensated for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, and 1194.2.

22. Defendants have required Plaintiff and Defendant's California employees to work hours in excess of eight hours in a day and forty in a week but had not paid these employees overtime compensation as required by their collective bargaining agreement in violation of Labor Code § 222.

23. Defendants failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), and net wages earned, in violation of Labor Code § 226(a)(5). Moreover, Plaintiff and the California employees wage statements' failed to accurately state the name and address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due.

1 These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and
2 Defendants' California employees.

3 24. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
4 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
5 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
6 Defendant's California employees, and the records maintained by Defendants, have not accurately
7 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
premiums, and total hour worked.

8 25. Our client further alleges that Defendants paid him and Defendant's California
9 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they
10 were not paid all wages due and owing throughout the course of their employment as a result of
11 Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they
12 were not paid all final wages due and owing for the entirety of their employment. This violates
Labor Code §§ 201-203.

13 26. Defendant pays Plaintiff and it's California employees on a bi-monthly basis and has
14 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-monthly basis
15 must be paid no later than ten calendar days following the close of the payroll period. Due to the
16 violations described above, Plaintiff and Defendant's California employees did not receive all of
their wages earned in a timely manner as required by Labor Code § 204(a)(b).

17 27. Defendant failed to reimburse Plaintiff and Defendant's California employees for the
18 equipment they purchased to perform work for Defendant such as face masks. Labor Code section
19 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary
20 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
21 duties." As such, Plaintiff and Defendant's California employees have incurred reasonable and
22 necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in
violation of Labor Code § 2802.

23 28. Defendants failed to continue to take precautions to ensure employee safety after the
24 onset of COVID. Under LC §6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome
25 coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant's California employees, directly after the
26 onset of COVID, were required to partake in mandatory temperature and health checks, but these
27 activities were not enforced or practiced quickly after the onset of COVID and when COVID was

1 still a health risk to the employees. Plaintiff and Defendant's California employees were also
2 required to provide their own masks at the workplace. As a result of these practices, Defendants have
3 violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe
4 and healthful environment for their Employees, as outlines above. Defendants are liable for civil
penalties pursuant to Cal. Labor Code § 2699 et seq.

5 29. Defendants failed to pay all wages earned to Plaintiff and Defendant's California
6 employees as a result of the unlawful employment policies and practices herein. As a result of these
7 practices, Plaintiff and Defendant's California employees were underpaid for hours worked,
8 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
9 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure
to pay wages as required by law.

10 30. Plaintiff and all other aggrieved employees bring this claim pursuant to Business &
11 Professions Code § 17200, et seq. The conduct of all Defendants as alleged above has been and
12 continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees.

13 CAUSES OF ACTION

14 FIRST CAUSE OF ACTION

15 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR** 16 **CODE §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 204(a)(b), 2802, 210,** 17 **218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, 17200**

18 31. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
forth herein.

19 32. As a result of the acts alleged herein, Plaintiff seeks penalties under Labor Code §
20 2698 *et seq.* because of Defendants' violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2,
21 226(a), (e), 201-203, 204(a)(b), 1174(d), 2802, 210, 218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR
3202, 17200.

22 33. For each such violation, Plaintiff and all aggrieved employees are entitled to penalties
23 in an amount to be shown at the time of trial subject to the following formula:

- 24 a. With respect to the violation of Labor Code § 2699(f) for violations of
25 Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d),
26 201-203, 204(a)(b), 2802, 210, 218, 222, 6400, 6401, 6403, 6404, 6407,
27 8 CCR 3202, 17200 \$100 for the initial violation per employee per pay

period and \$200 for each subsequent violation per employee per pay period.

34. These penalties will be allocated 75% to the Labor Workforce Development Agency, and 25% to the affected employees.

35. On December 6, 2022, Plaintiff sent a letter, by certified mail, return receipt requested, to the LWDA and Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* (**Exhibit “A”**). Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of December 6, 2022. Plaintiff may therefore commence this action to seek penalties pursuant to Labor Code § 2698 *et seq.*

36. Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief as described herein.

**ALLEGATIONS AS TO FAILURE TO PROVIDE MEAL AND REST PERIODS OR
COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7, 512, 558)**

37. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

38. Plaintiff and all other aggrieved employees are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal or rest periods as set forth in the IWC Wage Orders and Labor Code §§ 226.7, 512, and 558.

39. Defendants have failed to provide Plaintiff and all other aggrieved employees one or more meal or rest periods during their employment. Defendants have failed to compensate Plaintiff and all other aggrieved employees at the rate of one hour or pay at his or her regular rate of pay for each day on which one or more meal or rest periods were not provided.

40. Plaintiff and Defendant’s California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant’s California employees were forced to continue working through their meal and rest breaks in order to assist Defendant’s needs. Because of this, Plaintiff and Defendant’s California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour’s pay for each missed meal and rest break to Plaintiff and Defendant’s California employees

1 who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558,
2 and IWC Order No. 5-2001, Section 12.

3 41. Pursuant to Labor Code §§ 226.7 and 512, Plaintiff seeks the payment of all meal and
4 rest period compensations, which he was owed since he commenced working for Defendants,
5 according to proof.

6 42. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and
7 prejudgment interest.

8 **ALLEGATIONS AS TO FAILURE TO PAY ALL WAGES**
9 **IN VIOLATION OF (LABOR CODE §§ 510, 1194, 1194.2)**

10 43. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
11 forth herein.

12 44. Plaintiff, on behalf of himself and all other California employees of Defendant claims
13 that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays
14 their employees bonuses and commissions which are not included in the employees' regular rate of
15 pay for the purposes of computing the proper overtime rate. As a result, employees are not properly
16 compensated for work performed in excess of eight (8) hours in a workday and work performed in
17 excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
18 rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510,
19 1194, and 1194.2.

20 45. As a result of the unlawful acts of Defendants in willfully failing to pay all wages,
21 Plaintiff and Defendant's California employees have been deprived of wages in amounts to be
22 determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon,
23 attorneys' fees, and costs pursuant to Labor Code § 1194 and liquidated damages pursuant to Labor
24 Code § 1194.2.

25 **ALLEGATIONS AS TO KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH**
26 **ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS**
27 **(LABOR CODE § 226(a), (e)), 1174(d))**

28 46. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
forth herein.

47. Section 226(a) of the California Labor Code requires Defendants to provide wage
statements to employees. In those wage statements, Defendants must accurately set forth, among

1 other things, the total gross and net wages earned, the total hours worked, and the hourly rates in
2 effect, for its employees. Defendants have knowingly and intentionally failed to comply with Labor
3 Code § 226(a).

4 48. Defendants failed to issue Plaintiff and Defendant's California employees accurately
5 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California
6 employees with all wages due, as detailed above, their wage statements failed to accurately state all
7 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
8 Labor Code § 226(a)(2), and net wages earned, in violation of Labor Code § 226(a)(5). Moreover,
9 Plaintiff and the California employees wage statements' failed to accurately state the name and
10 address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all
11 applicable hourly rates during the pay period and the corresponding number of hours worked, in
12 violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due.
13 These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and
14 Defendants' California employees.

15 49. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
16 wage statements to Plaintiff and Defendant's California employees in accordance with Labor Code §
17 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and
18 Defendant's California employees and the records maintained by Defendants, have not accurately
19 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
20 premiums, and total hour worked.

21 50. The wage statements provided to Plaintiff and all other aggrieved employees fail to
22 accurately itemize in wage statements total gross and net wages earned, and the total hours worked,
23 and all hourly rates in effect, for its employees. Defendants' violations of Labor Code § 226(a) are
24 knowing and intentional, and Plaintiff has suffered injury as a result of the receipt of defective wage
25 statements, thereby entitling him to penalties pursuant to Labor Code § 226(e).

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1 **ALLEGATIONS AS TO FAILURE TO PAY WAGES DUE AT THE TIME OF**
2 **DISCHARGE IN VIOLATION OF LABOR CODE §§ 201-202, RESULTING IN**
3 **SECTION 203 WAGES AND PENALTIES (WAITING TIME PENALTIES)**

4 51. Plaintiff hereby incorporates all preceding paragraphs of this Complaint as
5 though fully set forth herein.

6 52. At all times material herein, the California Labor Code Sections 201, 202, and
7 203 were in effect and binding on Defendants.

8 53. California Labor Code § 202 requires employers to pay employees all wages due
9 within seventy-two (72) hours of resignation. California Labor Code § 201 states in pertinent
10 part that “if an employer discharges an employee, the wages earned and unpaid at the time of
11 discharge are due and payable immediately.” California Labor Code § 203 provides that if an
12 employer willfully fails to timely pay such wages the employer must, as penalty, continue to
13 pay the subject employee’s wages until the back wages are paid in full or an action is
14 commenced. The penalty cannot exceed 30 days of wages.

15 54. Plaintiff was entitled to compensation for unpaid wages, but to date has not
16 received such compensation. Specifically, Defendants failed to pay Plaintiff all wages due to
17 Plaintiff at the time of his termination. Thus, since Defendants failed to promptly pay Plaintiff
18 all wages due to Plaintiff at the time of his termination, Defendants violated Section 201 of the
19 Labor Code and Plaintiff is therefore entitled to wages and penalties pursuant to Labor Code
20 Section 203.

21 55. More than 30 days have passed since Plaintiff’s employment ended with
22 Defendants.

23 56. As a consequence of Defendants’ willful conduct in not paying wages owed to
24 Plaintiff, Plaintiff is entitled to 30 days of wages as a penalty pursuant to Labor Code § 203 for
25 Defendants’ failure to timely pay legal wages.

26 **ALLEGATIONS AS TO FAILURE TO TIMELY PAY EMPLOYEES**
27 **IN VIOLATION OF LABOR CODE § 204(a)(b)**

28 57. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
29 forth herein.

30 58. At all times relevant herein, Labor Code § 204 was in full force and effect and
31 binding on Defendants.

1 59. Wages must be paid according to a regularly set schedule. (Labor Code § 204). All
2 earned wages must be paid at least twice a month, on days designated in advance by the employer.
3 Work performed between the 1st and the 15th days, inclusive, of any calendar month must be paid
4 between the 16th and 26th day of the same month. Work performed between the 16th and the last
5 day of the month must be paid between the 1st and 10th day of the following month. (Labor Code §
6 204). Weekly or bi-weekly (every two weeks) payroll must be paid within seven (7) days of the end
7 of the pay period in which the wages were earned (Labor Code §§ 204(a), 204(b)).

8 60. Defendants pay Plaintiff and its California employees on a bi-monthly basis and have
9 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-monthly basis
10 must be paid no later than ten calendar days following the close of the payroll period. Due to the
11 violations described above, Plaintiff and Defendants' California employees did not receive all of
12 their wages earned in a timely manner as required by Labor Code § 204(a)(b).

13 61. Additionally, Defendant failed to pay Plaintiff and Defendant's California Employees
14 earned wages when they became due, failed to pay wages on a bi-monthly basis, and have failed to
15 comply with Labor Code § 204(a) which provides that wages earned on a bi-monthly basis must be
16 paid no later than ten calendar days following the close of the payroll period. Due to the violations
17 described above, Plaintiff and Defendant's California Employees did not receive all of their wages
18 earned when due and in a timely manner as required by Labor Code § 204.

19 62. Defendants have failed to comply with the above-section because they waited longer
20 than ten days from the close of the pay period to pay its bi-monthly paid employees.

21 **ALLEGATIONS AS TO FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN**
22 **VIOLATION OF CALIFORNIA LABOR CODE § 2802**

23 63. Plaintiff hereby incorporates preceding paragraphs of this Complaint as though
24 fully set forth herein.

25 64. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties."

28 65. Defendant failed to reimburse Plaintiff and Defendant's California employees for the
equipment they purchased to perform work for Defendant such as face masks. Labor Code section
2802 provides that "[a]n employer shall indemnify his or her employee for all necessary
expenditures or losses incurred by the employee in direct consequence of the discharge of his or her

1 duties.” As such, Plaintiff and Defendant’s California employees have incurred reasonable and
2 necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in
3 violation of Labor Code § 2802.

4 66. As such, Plaintiff and Defendant’s California employees have incurred
5 reasonable and necessary expenses in the course of their job duties, which were not reimbursed
6 by Defendant, in violation of Labor Code § 2802.

7 67. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
8 interest and attorneys’ fees and cost, under Labor Code § 2802.

9 68. Plaintiff also requests relief as described below.

10 **ALLEGATIONS AS TO FAILURE TO PAY FOR ALL HOURS WORKED,
11 INCLUDING OVERTIME HOURS WORKED IN VIOLATION OF
12 (LABOR CODES §§ 210, 218, 222)**

13 69. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
14 forth herein.

15 70. Section 2(K) or Wage Order 5 defines “hours worked” as “the time during which an
16 employee is subject to the control of an employer, and including all the time the employee is
17 suffered or permitted to work, whether or not required to do so.” Labor Code §§ 1194 and 1197
18 required employers to compensate Plaintiff for all hours worked at least at a minimum wage ad
19 established by the Wage Order. Defendants did not pay for all hours worked and frequently required
20 Plaintiff to work off the clock. Defendants have been engaged in many unlawful employment
21 practices which resulted in underpayment for hours worked each pay period as more set forth below:

22 71. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
23 Plaintiff all wages earned twice during each calendar month pursuant to Labor Code § 204(a).
24 Defendants failed to pay all wages earned to Plaintiff as a result of the unlawful employment policies
25 and practices herein. As a result of these practices, Plaintiff was underpaid for hours worked,
26 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
27 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure
28 to pay wages as required by law.

72. Failure to Pay Overtime Wages. Defendants have required to work hours in excess of
eight hours in a day and forty in a week but had not paid Plaintiff overtime compensation as required
by their collective bargaining agreement in violation of Labor Code § 222. As a result, Plaintiff has

1 been denied payment for all hours worked as required by Cal. Labor Code § 222, § 1194, § 1198.
2 Defendants are liable for civil penalties pursuant to Labor Code §§ 558.

3 **ALLEGATIONS AS TO FAILURE TO PROVIDE PLACE OF EMPLOYMENT**
4 **THAT IS SAFE AND HEALTHFUL IN VIOLATION OF**
5 **(LABOR CODE §§ 6400, 6401, 6402, 6403, 6404, 6407, 8 CCR 3202)**

6 73. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
7 forth herein.

8 74. Cal. Labor Code § 6400(a) provides that every employer shall furnish employment
9 and a place of employment that is safe and healthful for Plaintiff therein. Cal. Labor Code § 6401
10 provides that “every employer shall furnish and use safety devices and safeguard, and shall adopt
11 and use practices, means, methods, operations, and processes which are reasonably adequate to
12 render such employment and place of employment safe and healthful. Every employer.

13 75. Pursuant to Cal. Labor Code § 6402, no employer shall require, or permit any
14 employee to go or be in any employment or place of employment which is not safe and healthful.
15 Cal. Labor Code § 6403 states that no employer shall fail or neglect to provide and use safety
16 devices and safeguard reasonably adequate to render the employment and place of employment safe,
17 or adopt and use methods and processes reasonably necessary to protect the life, safety, and health of
18 Plaintiff and Defendant’s California employees.

19 76. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any
20 place pf employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every
21 employer and every employee shall comply with occupational safety and health standards, with
22 Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to
23 this division which are applicable to his own actions and conduct. Defendants failed to continue to
24 take precautions to ensure employee safety after the onset of COVID. Under LC §6409.6(a)(1).
25 “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Plaintiff,
26 directly after the onset of COVID, were required to partake in mandatory temperature and health
27 checks, but these activities were not enforced or practiced quickly after the onset of COVID and
28 when COVID was still a health risk to Plaintiff and Defendant’s California employees. Plaintiff and
Defendant’s California employees was also required to provide their own masks at the workplace.

77. As a result of these practices, Defendants have violated Cal. Labor Code §§ 6400,
6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for

1 Plaintiff, as outlines above.

2 **ALLEGATIONS AS TO UNFAIR COMPETITION PURSUANT TO**
3 **BUSINESS & PROFESSIONS CODE § 17200**

4 78. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

5 79. This is an Action for Unfair Business Practices. Plaintiff Miguel Ruiz brings this
6 claim pursuant to *Business & Professions Code* § 17200, et seq. The conduct of all Defendants as
7 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff and
8 Defendant's California employees as a result of Defendant's failure to comply with the labor code
9 sections as set out above including but not limited to Labor Code Sections 6400, 6401, 6402, 6403,
10 6404, 6407. Plaintiff and Defendant's California employees seek to enforce important rights
11 affecting the public interest within the meaning of *Code of Civil Procedure* § 1021.5.

12 80. Plaintiff is a "person" within the meaning of *Business & Professions Code* § 17204,
13 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
14 appropriate equitable relief.

15 81. *Business & Profession Code* § 17200 et. seq. prohibits unlawful and unfair business
16 practices.

17 82. Defendants have violated statutes and public policies. Through the conduct alleged in
18 this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
19 violated specific provisions of the *Labor Code*, and have engaged in other unlawful and unfair
20 business practices in violation of *Business & Professions Code* § 17200, et seq., depriving Plaintiff,
21 of rights, benefits, and privileges guaranteed to Plaintiff under law.

22 83. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
23 § 17200 et. seq. of the *Business & Professions Code*.

24 84. As a proximate result of the above mentioned acts of Defendants, Plaintiff has been
25 damaged in a sum as may be proven.

26 85. Unless restrained by this Court, Defendants will continue to engage in the unlawful
27 conduct as alleged above. Pursuant to *Business & Professions Code*, this Court should make such
28 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use
or employment, by Defendants, their agents, or Plaintiff, of any unlawful or deceptive practice
prohibited by the *Business & Professions Code*, and/or, including but not limited to, disgorgement of

1 profits which may be necessary to restore Plaintiff to the money Defendants have unlawfully failed
2 to pay.

3 **RELIEF REQUESTED**

4 WHEREFORE, Plaintiff prays for the following relief:

5 1. For penalties pursuant to Labor Code § 203 for Plaintiff and all other aggrieved
6 employees who are no longer employed by Defendants, equal to their daily wage multiplied by thirty
(30) days;

7 2. For penalties pursuant to Labor Code § 226(e) for Plaintiff and all other aggrieved
8 employees;

9 3. For penalties pursuant to Labor Code § 226.7 for Plaintiff and all other aggrieved
10 employees;

11 4. For penalties pursuant to Labor Code § 1194.2 for Plaintiff and all other aggrieved
12 employees;

13 5. For penalties pursuant to Labor Code § 204(b) for Plaintiff and all other aggrieved
14 employees;

15 6. For penalties pursuant to Labor Code § 2802 for Plaintiff and all other aggrieved
16 employees;

17 7. For penalties pursuant to Labor Code § 1174(d) for Plaintiff and all other aggrieved
18 employees;

19 8. For penalties pursuant to Labor Code § 210 for Plaintiff and all other aggrieved
20 employees;

21 9. For penalties pursuant to Labor Code § 222 for Plaintiff and all other aggrieved
22 employees;

23 10. For penalties pursuant to Labor Code § 6400 for Plaintiff and all other aggrieved
24 employees;

25 11. For restitution for unfair competition pursuant to Business and Professions Code §
26 17200 et seq., including disgorgement of profits, in an amount as may be proven;

27 12. For penalties and other relief pursuant to Labor Code § 2698 et seq. for Plaintiff and
28 all other aggrieved employees;

13. An award providing for payment of costs of suit pursuant to Labor Code §
2699(g)(1);

14. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1);
15. An award of prejudgment and post-judgment interest;
16. An award providing for payment of costs of suit; and
17. Such other and further relief as this Court may deem just and proper.

Dated: April 19, 2023

OTKUPMAN LAW FIRM,
A Law Corporation

By:



ROMAN OTKUPMAN
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: April 19, 2023

OTKUPMAN LAW FIRM,
A Law Corporation

By:



ROMAN OTKUPMAN
Attorneys for Plaintiff

EXHIBIT A

OTKUPMAN LAW FIRM, A LAW CORPORATION

**5743 Corsa Ave, Suite 123
Westlake Village, CA 91362
Tel.: 818-293-5623
Fax: 888-850-1310**

December 6, 2022

VIA ELECTRONIC FILING

Labor & Workforce Development Agency

VIA CERTIFIED MAIL

Gold Star Motors, Inc.
1980 N. Davis Rd
Salinas, CA 93907
Defendant certified mail # 7022 2410 0001 4138 0380

VIA CERTIFIED MAIL

Agent for Service of Process
Jim Jeffries
25951 Red Pony Lane
Salinas, CA 93908
Agent certified mail # 7022 2410 0001 4138 0397

VIA CERTIFIED MAIL

Gold Star Buick GMC
1980 N. Davis Rd
Salinas, CA 93907
Defendant certified mail # 7022 2410 0001 4138 0205

Re: ***Miguel Ruiz v. Gold Star Motors, Inc., Gold Star Buick GMC – Labor Code Violations of Gold Star Motors, Inc., Gold Star Buick GMC – Compliance Letter of California Labor Code § 2698 – Private Attorneys General Act***

Dear Sir or Madam:

This office represents Miguel Ruiz (“Plaintiff”), a former California employee of Gold Star Motors, Inc., Gold Star Buick GMC (“Defendants”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client works for Defendant in Northern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its California non-exempt employees.

Plaintiff began working for Defendants on or about September 16, 2016. While working for Defendant as a Parts Sales Consultant, Plaintiff was earning approximately \$2,000/month plus commission.

Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their meal and rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

Plaintiff, on behalf of himself and all other California employees of Defendant claims that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays their employees bonuses and commissions which are not included in the employees regular rate of pay for the purposes of computing the proper overtime rate. As a result, employees are not properly compensated for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, and 1194.2.

Defendants have required Plaintiff and Defendant's California employees to work hours in excess of eight hours in a day and forty in a week but had not paid these employees overtime compensation as required by their collective bargaining agreement in violation of Labor Code § 222.

Defendants failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), and net wages earned, in violation of Labor Code § 226(a)(5). Moreover, Plaintiff and the California employees wage statements' failed to accurately state the name and address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's California employees timely, accurate, itemized wage statements in accordance with Labor Code § 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and Defendant's California employees, and the records maintained by Defendants, have not accurately

reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hour worked.

Our client further alleges that Defendants paid him and Defendant's California employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they were not paid all wages due and owing throughout the course of their employment as a result of Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-203.

Defendant pays Plaintiff and it's California employees on a bi-monthly basis and has failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-monthly basis must be paid no later than ten calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant's California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

Defendant failed to reimburse Plaintiff and Defendant's California employees for the equipment they purchased to perform work for Defendant such as face masks. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendant's California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

Defendants failed to continue to take precautions to ensure employee safety after the onset of COVID. Under LC §6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant's California employees, directly after the onset of COVID, were required to partake in mandatory temperature and health checks, but these activities were not enforced or practiced quickly after the onset of COVID and when COVID was still a health risk to the employees. Plaintiff and Defendant's California employees were also required to provide their own masks at the workplace. As a result of these practices, Defendants have violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlines above. Defendants are liable for civil penalties pursuant to Cal. Labor Code § 2699 *et seq.*

Defendants failed to pay all wages earned to Plaintiff and Defendant's California employees as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff and Defendant's California employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

Labor & Workforce Development Agency
Gold Star Motors, Inc.
Gold Star Buick GMC
December 6, 2022
Page 4

Plaintiff and all other aggrieved employees bring this claim pursuant to *Business & Professions Code* § 17200, et seq. The conduct of all Defendants as alleged above has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees.

We invite Defendants or its attorney(s) to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

OTKUPMAN LAW FIRM


ROMAN OTKUPMAN

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Roman Otkupman, Esq. Bar No. 249423; Nidah Farishta, Esq. Bar No. 312360 Otkupman Law Firm, ALC 5743 Corsa Ave, Suite 123 Westlake Village, CA 91362 TELEPHONE NO.: (818) 293-5623 FAX NO.: (888) 850-1310 ATTORNEY FOR (Name): Plaintiff Miguel Ruiz		FOR COURT USE ONLY ELECTRONICALLY FILED BY Superior Court of California, County of Monterey On 4/19/2023 1:39 PM By: Jackie Meraz, Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Monterey STREET ADDRESS: 1200 Aguajito Road MAILING ADDRESS: CITY AND ZIP CODE: Monterey, CA 93940 BRANCH NAME: Monterey Courthouse		CASE NUMBER: 23CV001196	
CASE NAME: Miguel Ruiz v. Gold Star Motors, Inc.			
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)		Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		JUDGE: DEPT:	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (<i>not specified above</i>) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (<i>not specified above</i>) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (*check all that apply*): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (*specify*): One (1)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)

Date: April 19, 2023
 Roman Otkupman

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF MONTEREY COUNTY Monterey Branch, 1200 Aguajito Road, Monterey, CA 93940	
Miguel Ruiz vs. Gold Star Motors, Inc.	CASE NUMBER 23CV001196
	Case Management Conference

NOTICE OF ASSIGNMENT AND CASE MANAGEMENT CONFERENCE

Your case is assigned for all purposes to the Honorable Thomas W Wills.

Your civil case, excluding unlawful detainer and collections are a rotational assignment among three judicial officers:
Judge Thomas W. Wills; Judge Carrie M. Panetta, Judge Vanessa W. Vallarta

Your provisionally complex case or "is complex" designation at case initiation are assigned ODD/EVEN by ending number among two judicial officers: Judge Thomas W. Wills and Judge Carrie M. Panetta

This notice, which includes the Alternative Dispute Resolution (ADR) information packet (CI-127), must be served together with the Summons and Complaint or Petition pursuant to California Rule of Court 3.221. *Parties are required to follow the complex case instructions, case management rules as outlined in California Rule of Court 3.722 and Chapter 6 of the Local Rules of Court, all can be found on the court website at www.monterey.courts.ca.gov.* A case management statement from each party or joint statement shall be filed prior to the conference as outlined in California Rule of Court 3.725.

Date: August 22, 2023

Time: 9:00 AM_ Department 15 *

Location: Monterey Courthouse, 1200 AGUAJITO ROAD, MONTEREY, CA 93940

*If appearing remotely be sure and access the correct link:

Judge Thomas W. Wills – Dept. 15

Judge Carrie M. Panetta – Dept. 14

Judge Vanessa W. Vallarta - Dept. 13a

Information regarding remote appearance can be found at: <https://www.monterey.courts.ca.gov/remote>

COURT REPORTER INFORMATION

Effective January 1, 2022, Monterey County Superior Court will only be providing court reporter services in the following, statutorily-mandated case types:

1. Death penalty proceedings under Penal Code §190.9;
2. Juvenile proceedings not before a referee or commissioner under Welfare & Institutions Code §347 and §677;
3. Felony cases under Code of Civil Procedure §269; and
4. "Withdrawal of consent to adopt" proceedings under Family Code §9005.

For all other, non-statutorily-mandated cases, litigants who need court reporter services, and who are not entitled to a court-provided reporter due to indigency, will need to arrange for such services.

Pursuant to statutes of the State of California, it is the responsibility of the court to establish procedures for the timely and effective disposition of civil cases.

The court is charged with the responsibility of ensuring all parties a fair and timely resolution of their disputes, and the court is in the best position to establish neutral rules and policies without adversely affecting all parties' right to a fair trial. Effective management of the judicial system will build continuing respect by the community of government, minimize the costs to the parties and the public, and maximize the probability that cases will be timely resolved.

The goals of the Monterey County civil case and trial management system are:

1. To provide an effective and fair procedure for the timely disposition of civil cases;
2. To provide a mechanism to gather needed case information in order to make appropriate judicial management decisions; and
3. To establish reasonable rules and policies to require that cases reporting "ready" for trial may be tried without unnecessary delays or interruptions.

*Court proceedings are in English. If you or a witness in your case needs an interpreter, please complete Judicial Council form INT—300. **You must file INT-300 at the first floor clerks counter (or by e-file) 15* business days prior to your hearing.***

*Los procedimientos judiciales son en inglés. Si usted o un testigo en su caso necesita un intérprete, complete el formulario INT-300 del Consejo Judicial. **Debe presentar el INT-300 con los empleados legales de la oficina del primer piso (o mediante archivo electrónico) 15* días hábiles antes de su audiencia.***

Alternative Dispute Resolution (CI-127) - (INFORMATION PACKET)

OPTIONS FOR RESOLVING YOUR DISPUTE

There Are Alternatives to Going to Trial

Did you know that 95 percent of all civil cases filed in court are resolved without going to trial? Many people use processes other than trial to resolve their disputes. These alternative processes, known as Alternative Dispute Resolution or ADR, are typically less formal and adversarial than trial, and many use a problem-solving approach to help the parties reach an agreement.

Advantages of ADR

Here are some potential advantages of using ADR:

- **Save Time:** A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.
- **Save Money:** When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, and expert's fees.
- **Increase Control over the Process and the Outcome:** In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.

- **Preserve Relationships:** ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.
- **Increase Satisfaction:** In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.
- **Improve Attorney-Client Relationships:** Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

Because of these potential advantages, it is worth considering using ADR early in a lawsuit or even before you file a lawsuit.

What Are the ADR Options?

The most commonly used ADR processes are mediation, arbitration, neutral evaluation, and settlement conferences.

Mediation

In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties. The Monterey County Superior Court offers a Court-Directed Mediation Program.

Cases for Which Mediation May Be Appropriate: Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use.

Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate: Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Arbitration

In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed.

Arbitration may be either "binding" or "nonbinding." Binding arbitration means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision in binding arbitration. Nonbinding arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision. The Monterey County Superior Court offers a nonbinding judicial arbitration program.

Cases for Which Arbitration May Be Appropriate: Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate: If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation

In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is nonbinding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate: Neutral evaluation may be most appropriate in cases in which there are technical issues that require expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate: Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conference

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or neutral person called a “settlement officer” to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set