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Case #23CV415661
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CRISTAL LOMBERA, individually, and on
behalf of aggrieved employees pursuant to
the Private Attorneys General Act
("PAGA");

Plaintiff,

v.

CREEKSIDE AUTO GROUP, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 23CV415661
[Consolidated with Case Nos. 23CV418331
and 24CV428865]

**FIRST AMENDED AND CONSOLIDATED
CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201, 202, and 204 (Wages Not Timely Paid During Employment and at Termination);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code § 2698, *et seq.* (Private Attorneys General Act of 2004);
- (9) Violation of California Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 JOHN G. YSLAS (SBN 187324)
2 DIEGO AVILES (SBN 315533)
3 HARRY ERGANYAN (SBN 333091)
4 MARIAM NAZARETYAN (SBN 334154)

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9 *Attorneys for Plaintiff Jesus Cabrera*

COMES NOW, Plaintiffs CRISTAL LOMBERA and JESUS CABRERA (“Plaintiffs,” “Plaintiff Lombera,” and “Plaintiff Cabrera”), individually, and on behalf of other members of the general public similarly situated, and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Santa Clara. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California, County of Santa Clara. Defendant employed Plaintiffs within the State of California, County of Santa Clara.

PARTIES

5. Plaintiff Lombera is an individual residing in the State of California, County of Santa Clara. Plaintiff Cabrera is an individual residing in the State of California, County of Santa Clara.

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1 6. Defendant CREEKSIDE AUTO GROUP DBA CAPITOL TOYOTA, at all times
2 herein mentioned, is and was, upon information and belief, a California corporation, and at all
3 times herein mentioned, was and is, an employer whose employees are engaged throughout the
4 State of California, including the County of Santa Clara.

5 7. At all relevant times, Defendant CREEKSIDE AUTO GROUP DBA CAPITOL
6 TOYOTA was the “employer” of Plaintiffs within the meaning of all applicable laws and
7 statutes.

8 8. At all times herein relevant, Defendants CREEKSIDE AUTO GROUP DBA
9 CAPITOL TOYOTA and DOES 1 through 100, and each of them, were the agents, partners,
10 joint venturers, joint employers, representatives, servants, employees, successors-in-interest,
11 co-conspirators and assigns, each of the other, and at all times relevant hereto were acting
12 within the course and scope of their authority as such agents, partners, joint venturers, joint
13 employers, representatives, servants, employees, successors, co-conspirators and assigns, and
14 all acts or omissions alleged herein were duly committed with the ratification, knowledge,
15 permission, encouragement, authorization, and consent of each defendant designated herein.

16 9. The true names and capacities, whether corporate, associate, individual or
17 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sue
18 said defendants by such fictitious names. Plaintiffs are informed and believe, and based on that
19 information and belief allege, that each of the Defendants designated as a DOE is legally
20 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
21 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
22 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
23 capacities when the same have been ascertained.

24 10. Defendants CREEKSIDE AUTO GROUP DBA CAPITOL TOYOTA and DOES
25 1 through 100 will hereinafter collectively be referred to as “Defendants.”

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1 11. Plaintiffs allege that Defendants directly or indirectly controlled or affected the
2 working conditions, wages, working hours, and conditions of employment of Plaintiffs and the
3 other class members so as to make each of said Defendants employers and employers liable
4 under the statutory provisions set forth herein.

5 **CLASS ACTION ALLEGATIONS**

6 12. Plaintiffs bring this action on their own behalf and on behalf of all other
7 members of the general public similarly situated and seek class certification under Code of
8 Civil Procedure section 382.

9 13. The proposed class is defined as follows:

10 All employees employed by Defendants as hourly-paid or non-exempt
11 employees in the State of California during the period from May 10, 2019
12 through June 12, 2024.

13 14. Plaintiffs reserve the right to establish subclasses as appropriate.

14 15. The class is ascertainable and there is a well-defined community of interest in
15 the litigation:

16 a. Numerosity: The class members are so numerous that joinder of all class
17 members is impracticable. The membership of the entire class is
18 unknown to Plaintiffs at this time. However, the class is estimated to be
19 greater than three hundred (300) individuals and the identity of such
20 membership is readily ascertainable by inspection of Defendants'
21 employment records.

22 b. Typicality: Plaintiffs' claims are typical of all other class members'
23 claims as demonstrated herein. Plaintiffs will fairly and adequately
24 protect the interests of the other class members with whom they have a
25 well-defined community of interest.

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1 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
2 each class member, with whom he has a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiffs have
4 no interest that is antagonistic to the other class members. Plaintiffs'
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiffs have
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.

14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 16. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the Labor Code, was willful;

26 b. Whether Defendants failed to pay their hourly-paid or non-exempt
27 employees within the State of California for all hours worked, missed
28 meal periods and rest breaks in violation of the law;

- 1 c. Whether Defendants required Plaintiffs and the other class members to
2 work over eight (8) hours per day and/or over forty (40) hours per week
3 and failed to pay the legally required overtime compensation to Plaintiffs
4 and the other class members;
- 5 d. Whether Defendants properly calculated the regular rate for Plaintiffs
6 and the other class members to worked overtime and earned incentive
7 pay and sick leave pay;
- 8 e. Whether Defendants deprived Plaintiffs and the other class members of
9 meal and/or rest periods or required Plaintiffs and the other class
10 members to work during meal and/or rest periods without compensation;
- 11 f. Whether Defendants failed to pay minimum wages to Plaintiffs and the
12 other class members for all hours worked;
- 13 g. Whether Defendants failed to pay all wages due to Plaintiffs and the
14 other class members within the required time upon their discharge or
15 resignation;
- 16 h. Whether Defendants failed to timely pay all wages due to Plaintiffs and
17 the other class members during their employment;
- 18 i. Whether Defendants complied with wage reporting as required by the
19 Labor Code, including, *inter alia*, section 226;
- 20 j. Whether Defendants failed to reimburse Plaintiffs and the other class
21 members for necessary business-related expenses and costs;
- 22 k. Whether Defendants' conduct was willful or reckless;
- 23 l. Whether Defendants engaged in unfair business practices in violation of
24 Business & Professions Code section 17200, *et seq.*;
- 25 m. The appropriate amount of damages, restitution, and/or monetary
26 penalties resulting from Defendants' violation of the law; and
- 27 n. Whether Plaintiffs and the other class members are entitled to
28 compensatory damages pursuant to the Labor Code.

GENERAL ALLEGATIONS

17. During the relevant time period set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid or non-exempt employees within the State of California.

18. Defendants, jointly and severally, employed Plaintiffs as hourly-paid non-exempt employees during the relevant time period in the State of California, County of Santa Clara.

19. Defendants had the authority to hire and terminate Plaintiffs and the other class members; to set work rules and conditions governing Plaintiffs' and other class members' employment; and to supervise their daily employment activities.

20. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs and other class members' employment for them to be joint employers of Plaintiffs and the other class members.

21. Defendants directly hired and paid wages and benefits to Plaintiffs and the other class members.

22. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

23. Plaintiffs and the other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

24. Plaintiffs are informed and believe, and based thereon allege, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, inter alia, failing to pay them for all hours worked, sick leave, missed meal periods, and missed rest breaks in violation of the law.

25. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive certain wages for overtime compensation and that Plaintiffs and the other class members were not receiving wages for overtime compensation.

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1 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 failed to provide Plaintiffs and the other class members the required rest and meal periods
3 during the relevant time period as required under the Industrial Welfare Commission Wage
4 Orders and thus they are entitled to any and all applicable penalties.

5 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 knew or should have known that Plaintiffs and the other class members were entitled to receive
7 all timely and complete meal periods or payment of one additional hour of pay at Plaintiffs'
8 and the other class members' regular rate of pay when a meal period was missed, late or
9 interrupted, and that Plaintiffs and the other class members did not receive all timely and
10 proper meal periods or payment of one additional hour of pay at their regular rate of pay when
11 a meal period was missed.

12 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 knew or should have known that Plaintiffs and other class members were entitled to receive all
14 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs
15 and the other class members' regular rate of pay when a rest period was missed, late or
16 interrupted, and that Plaintiffs and the other class members did not receive all rest periods or
17 payment of one additional hour of pay at their regular rate of pay when a rest period was
18 missed.

19 29. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 knew or should have known that Plaintiffs and the other class members were entitled to receive
21 at least minimum wages for compensation and that Plaintiffs and the other class members were
22 not receiving at least minimum wages for all hours worked.

23 30. Plaintiffs are informed and believe, and based thereon allege, that Defendants
24 knew or should have known that Plaintiffs and the other class members were entitled to receive
25 the wages owed to them upon discharge or resignation, including overtime and minimum
26 wages and meal and rest period premiums, and that Plaintiffs and the other class members did
27 not, in fact, receive such wages owed to them at the time of their discharge or resignation.

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1 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Plaintiffs and the other class members were entitled to receive
3 complete and accurate wage statements in accordance with the law, but, in fact, Plaintiffs and
4 the other class members did not receive complete and accurate wage statements from
5 Defendants. The deficiencies included, inter alia, the failure to include the total number of
6 hours worked by Plaintiffs and the other class members.

7 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
8 knew or should have known that Plaintiffs and the other class members were entitled to
9 reimbursement for necessary business-related expenses.

10 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
11 knew or should have known that Defendants had to keep complete and accurate payroll records
12 for Plaintiffs and the other class members in accordance with the law, but, in fact, did not keep
13 complete and accurate payroll records for Plaintiffs and the other class members.

14 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
15 knew or should have known that they had a duty to compensate Plaintiffs and the other class
16 members pursuant to the law, and that Defendants had the financial ability to pay such
17 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
18 represented to Plaintiffs and the other class members that they were properly denied wages, all
19 in order to increase Defendants' profits.

20 35. During the relevant time period set forth herein, Defendants failed to pay
21 overtime wages to Plaintiffs and the other class members for all hours worked. Plaintiffs and
22 other class members were required to work more than eight (8) hours per day and/or forty (40)
23 hours per week without overtime compensation.

24 36. During the relevant time period set forth herein, Defendants failed to properly
25 calculate and pay sick leave to Plaintiffs and the other class members.

26 37. During the relevant time period set forth herein, Defendants failed to provide the
27 requisite uninterrupted and timely meal and rest periods to Plaintiffs and the other class
28 members.

1 38. During the relevant time period set forth herein, Defendants failed to pay
2 Plaintiffs and the other class members at least minimum wages for all hours worked.

3 39. During the relevant time period set forth herein, Defendants failed to pay
4 Plaintiffs and the other class members the wages owed to them upon discharge or resignation.

5 40. During the relevant time period set forth herein, Defendants failed to provide
6 complete or accurate wage statements to Plaintiffs and the other class members.

7 41. During the relevant time period set forth herein, Defendants failed to keep
8 complete or accurate payroll records for Plaintiffs and the other class members.

9 42. During the relevant time period set forth herein, Defendants failed to properly
10 compensate Plaintiffs and the other class members pursuant to the law in order to increase
11 Defendants' profits.

12 43. Labor Code section 218 states that nothing in Article 1 of the Labor Code shall
13 limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him
14 [or her] under this article."

15 **FIRST CAUSE OF ACTION**

16 **(Violation of California Labor Code §§ 510 and 1198)**

17 **(Against CREEKSIDE AUTO GROUP DBA CAPITOL TOYOTA and DOES 1 through**
18 **100)**

19 44. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1
20 through 43, and each and every part thereof with the same force and effect as though fully set
21 forth herein.

22 45. Labor Code section 1198 and the applicable Industrial Welfare Commission
23 ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them
24 at a rate of pay either time-and-one-half or two-times that person's regular rate of pay,
25 depending on the number of hours worked by the person on a daily or weekly basis.

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1 46. The applicable IWC Wage Order provides that Defendants are and were
2 required to pay Plaintiffs and the other class members employed by Defendants, who work(ed)
3 more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of
4 time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty
5 (40) hours in a workweek.

6 47. The applicable IWC Wage Order further provides that Defendants are and were
7 required to pay Plaintiffs and the other class members overtime compensation at a rate of two
8 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

9 48. Labor Code section 510 codifies the right to overtime compensation at one-and-
10 one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
11 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work,
12 and overtime compensation at twice the regular hourly rate for hours worked in excess of
13 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

14 49. During the relevant time period set forth herein, Plaintiffs and the other class
15 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
16 week.

17 50. During the relevant time period set forth herein, Defendants intentionally and
18 willfully failed to pay overtime wages owed to Plaintiffs and the other class members.

19 51. Defendants' failure to pay Plaintiffs and the other class members the unpaid
20 balance of overtime compensation, as required by the laws, violates the provisions of Labor
21 Code sections 510 and 1198, and is therefore unlawful.

22 52. Pursuant to Labor Code section 1194, Plaintiffs and the other class members are
23 entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys'
24 fees.

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SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against CREEKSIDE AUTO GROUP DBA CAPITOL TOYOTA and DOES 1 through 100)

53. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 52, and each and every part thereof with the same force and effect as though fully set forth herein.

54. During the relevant time period set forth herein, the IWC Wage Order and Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and the other class members' employment by Defendants.

55. During the relevant time period set forth herein, Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable IWC Wage Order.

56. During the relevant time period set forth herein, the applicable IWC Wage Order and Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

57. During the relevant time period set forth herein, the applicable IWC Wage Order and Labor Code section 512(a) further provide that an employer may not require, cause, or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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1 58. During the relevant time period set forth herein, Plaintiffs and the other class
2 members who were scheduled to work for a period of time no longer than six (6) hours, and
3 who did not waive their legally-mandated meal periods by mutual consent, were required to
4 work for periods longer than five (5) hours without an uninterrupted meal period of not less
5 than thirty (30) minutes and/or without a rest period.

6 59. During the relevant time period set forth herein, Plaintiffs and the other class
7 members who were scheduled to work for a period of time no longer than twelve (12) hours,
8 and who did not waive their legally-mandated meal periods by mutual consent, were required
9 to work for periods longer than ten (10) hours without an uninterrupted meal period of not less
10 than thirty (30) minutes and/or without a rest period.

11 60. During the relevant time period set forth herein, Plaintiffs and the other class
12 members who were scheduled to work for a period of time in excess of six (6) hours were
13 required to work for periods longer than five (5) hours without an uninterrupted meal period of
14 not less than thirty (30) minutes and/or without a rest period.

15 61. During the relevant time period set forth herein, Plaintiffs and the other class
16 members who were scheduled to work for a period of time in excess of twelve (12) hours were
17 required to work for periods longer than ten (10) hours without an uninterrupted meal period of
18 not less than thirty (30) minutes and/or without a rest period.

19 62. During the relevant time period set forth herein, Defendants intentionally and
20 willfully required Plaintiffs and the other class members to work during meal periods and
21 failed to compensate Plaintiffs and the other class members the full meal period premium for
22 work performed during meal periods.

23 63. During the relevant time period set forth herein, Defendants failed to pay
24 Plaintiffs and the other class members the full meal period premium due pursuant to Labor
25 Code section 226.7.

26 64. Defendants' conduct violates applicable IWC Wage Order and Labor Code
27 sections 226.7 and 512(a).

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65. Pursuant to the applicable IWC Wage Order and Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against CREEKSIDE AUTO GROUP DBA CAPITOL TOYOTA and DOES 1 through 100)

66. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 65, and each and every part thereof with the same force and effect as though fully set forth herein.

67. During the relevant time period set forth herein, the applicable IWC Wage Order and Labor Code section 226.7 were applicable to Plaintiffs' and the other class members' employment by Defendants.

68. During the relevant time period set forth herein, Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable IWC Wage Order.

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

70. During the relevant time period set forth herein, Defendants required Plaintiffs and the other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

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1 71. During the relevant time period set forth herein, Defendants willfully required
2 Plaintiffs and the other class members to work during rest periods and failed to pay Plaintiffs
3 and the other class members the full rest period premium for work performed during rest
4 periods.

5 72. During the relevant time period set forth herein, Defendants failed to pay
6 Plaintiffs and the other class members the full rest period premium due pursuant to Labor Code
7 section 226.7.

8 73. Defendants' conduct violates applicable IWC Wage Orders and Labor Code
9 section 226.7.

10 74. Pursuant to the applicable IWC Wage Orders and Labor Code section 226.7(b),
11 Plaintiffs and the other class members are entitled to recover from Defendants one additional
12 hour of pay at the employees' regular hourly rate of compensation for each workday that the
13 rest period was not provided.

14 **FOURTH CAUSE OF ACTION**

15 **(Violation of California Labor Code §§ 1194 and 1197)**

16 **(Against CREEKSIDE AUTO GROUP DBA CAPITOL TOYOTA and DOES 1 through**
17 **100)**

18 75. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
19 through 74 and each and every part thereof with the same force and effect as though fully set
20 forth herein.

21 76. During the relevant time period set forth herein, Labor Code sections 1194 and
22 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser
23 wage than the minimum so fixed, is unlawful.

24 77. During the relevant time period set forth herein, Defendants failed to pay
25 minimum wages to Plaintiffs and the other class members as required, pursuant to Labor Code
26 sections 1194 and 1197.

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78. Defendants' failure to pay Plaintiffs and the other class members the minimum wage as required violates Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiffs and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

79. Pursuant to Labor Code section 1194.2, Plaintiffs and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201, 202, and 204)

(Against CREEKSIDE AUTO GROUP DBA CAPITOL TOYOTA and DOES 1 through 100)

80. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 79, and each and every part thereof with the same force and effect as though fully set forth herein.

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

82. During the relevant time period set forth herein, Labor Code section 204 provides that all wages earned by employees “are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays”.

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83. During the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiffs and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

84. During the relevant time period set forth herein, Defendants intentionally and willfully failed to timely pay Plaintiffs and the other class members all wages earned during their employment as set forth in Labor Code section 204.

85. Defendants' failure to pay Plaintiffs and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of Labor Code sections 201 and 202.

86. Defendants' failure to timely pay Plaintiffs and the other class members wages earned during their employment is in violation of Labor Code section 204.

87. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

88. Plaintiffs and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against CREEKSIDE AUTO GROUP DBA CAPITOL TOYOTA and DOES 1 through 100)

89. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 88, and each and every part thereof with the same force and effect as though fully set forth herein.

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1 90. During the relevant time period set forth herein, Labor Code section 226(a)
2 provides that every employer shall furnish each of his or her employees an accurate itemized
3 statement in writing showing: (a) gross wages earned; (b) total hours worked by the employee;
4 (c) the number of piece-rate units earned and any applicable piece rate if the employee is paid
5 on a piece-rate basis; (d) all deductions, provided that all deductions made on written orders of
6 the employee may be aggregated and shown as one item; (e) net wages earned; (f) the inclusive
7 dates of the period for which the employee is paid; (g) the name of the employee and his or her
8 social security number; (h) the name and address of the legal entity that is the employer; and (i)
9 all applicable hourly rates in effect during the pay period and the corresponding number of
10 hours worked at each hourly rate by the employee. The deductions made from payments of
11 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day,
12 and year, and a copy of the statement or a record of the deductions shall be kept on file by the
13 employer for at least three years at the place of employment or at a central location within the
14 State of California.

15 91. Defendants have intentionally and willfully failed to provide Plaintiffs and the
16 other class members with complete and accurate wage statements. The deficiencies include,
17 but are not limited to, the failure to include the total number of hours worked by Plaintiffs and
18 other class members.

19 92. As a result of Defendants' violation of Labor Code section 226(a), Plaintiffs and
20 the other class members have suffered injury and damage to their statutorily protected rights.

21 93. Plaintiffs and the other class members have been injured by Defendants'
22 intentional and willful violation of Labor Code section 226(a) because they were denied both
23 their legal right to receive, and their protected interest in receiving, accurate and itemized wage
24 statements pursuant to Labor Code section 226(a).

25 94. Plaintiffs and the other class members are entitled to recover from Defendants
26 the greater of their actual damages caused by Defendants' failure to comply with Labor Code
27 section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

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1 95. Plaintiffs and the other class members are also entitled to injunctive relief to
2 ensure compliance with this section, pursuant to Labor Code section 226(g).

3 **SEVENTH CAUSE OF ACTION**

4 **(Violation of California Labor Code §§ 2800 and 2802)**

5 **(Against CREEKSIDE AUTO GROUP DBA CAPITOL TOYOTA and DOES 1 through**
6 **100)**

7 96. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
8 through 95, and each and every part thereof with the same force and effect as though fully set
9 forth herein.

10 97. Pursuant to Labor Code sections 2800 and 2802, an employer must reimburse its
11 employee for all necessary expenditures incurred by the employee in direct consequence of the
12 discharge of his or her job duties or in direct consequence of his or her obedience to the
13 directions of the employer.

14 98. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the
15 other class members for all necessary business-related expenses and costs. Plaintiffs and the
16 other class members are entitled to recover from Defendants their business-related expenses and
17 costs incurred during the course and scope of their employment, plus interest accrued from the
18 date on which the employee incurred the necessary expenditures at the same rate as judgments in
19 civil actions in the State of California.

20 **EIGHTH CAUSE OF ACTION**

21 **(Violation of California Labor Code § 2698, *et seq.*)**

22 **(Against CREEKSIDE AUTO GROUP DBA CAPITOL TOYOTA and DOES 1 through**
23 **100)**

24 99. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
25 through 98, and each and every part thereof with the same force and effect as though fully set
26 forth herein.

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1 100. The Private Attorneys General Act of 2004 (“PAGA”) expressly establishes that
2 any provision of the Labor Code which provides for a civil penalty to be assessed and collected
3 by the California Labor and Workforce Development Agency (“LWDA”), or any of its
4 departments, divisions, commissions, boards, agencies or employees for a violation of the
5 Labor Code, may be recovered through a civil action brought by an aggrieved employee on
6 behalf of himself or herself, and other current or former employees.

7 101. On February 16, 2023, Plaintiff Lombera provided written notice to the LWDA
8 and Defendants of the specific provisions of the Labor Code she contends were violated, and
9 the theories supporting her contentions. Plaintiff Lombera believes that on or about April 24,
10 2023, the sixty-five (65) days’ notice period expired, and the LWDA did not take any action to
11 investigate or prosecute this matter. Attached hereto as **Exhibit 1** and incorporated by
12 reference is a copy of the written notice to the LWDA. Thus, Plaintiff Lombera exhausted the
13 statutory time period to bring this action.

14 102. On May 24, 2023, Plaintiff Cabrera provided written notice to the LWDA and
15 Defendants of the specific provisions of the Labor Code he contends were violated, and the
16 theories supporting his contentions. Plaintiff Cabrera believes that on or about July 28, 2023,
17 the sixty-five (65) days’ notice period expired, and the LWDA did not take any action to
18 investigate or prosecute this matter. Attached hereto as **Exhibit 2** and incorporated by
19 reference is a copy of the written notice to the LWDA. Thus, Plaintiff Cabrera exhausted the
20 statutory time period to bring this action.

21 103. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved
22 employees” as defined by Labor Code section 2699(c) in that they are all employees employed
23 by Defendants as hourly-paid or non-exempt employees in the State of California during the
24 period from February 16, 2022 through June 12, 2024, and one or more of the alleged
25 violations was committed against them.

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1 **Failure to Pay Minimum and Overtime Wages**

2 104. At all times relevant herein, Defendants were required to compensate their non-
3 exempt employees minimum wages for all hours worked and overtime wages for all hours
4 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
5 mandate of Labor Code sections 510, 1194, 1197, and 1198.

6 105. As a policy and practice, Defendants failed to compensate Plaintiffs and the
7 other aggrieved current and former employees for all hours worked, resulting in a failure to
8 pay all minimum wages and overtime wages, where applicable.

9 **Failure to Provide Meal Periods and Rest Breaks**

10 106. At all times relevant herein, Defendants were required to authorize and permit
11 their non-exempt employees to take a 10-minute rest break for every four (4) hours worked or
12 major fraction thereof and were further required to provide their non-exempt employees with a
13 30-minute meal period for every five (5) hours worked, pursuant to the mandates of Labor
14 Code sections 226.7 and 512.

15 107. As a policy and practice, Defendants failed to provide Plaintiffs and the other
16 aggrieved current and former employees with legally mandated meal periods and rest breaks
17 and failed to pay proper compensation for this failure.

18 **Failure to Timely Pay Wages During Employment**

19 108. At all times relevant herein, Defendants were required to pay their employees
20 within a specified time period pursuant to the mandate of Labor Code section 204.

21 109. As a policy and practice, Defendants failed to pay Plaintiffs and the other
22 aggrieved current and former employees all wages due and owing within the required time
23 period.

24 **Failure to Timely Pay Wages Upon Termination**

25 110. At all times relevant herein, Defendants were required to pay their employees all
26 wages owed in a timely fashion at the end of employment pursuant to the mandates of Labor
27 Code sections 201 to 204.

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111. As a policy and practice, as a result of Defendants' Labor Code violations alleged above, Defendants failed to pay Plaintiffs and the other aggrieved former employees their final wages, pursuant to the mandates of Labor Code sections 201 through 204. Accordingly, Defendants owe waiting time penalties pursuant to section 203.

Failure to Provide Complete and Accurate Wage Statements

112. At all times relevant herein, Defendants were required to keep accurate records regarding their California employees, pursuant to the mandates of Labor Code sections 226 and 1174.

113. As a result of Defendants' various Labor Code violations, Defendants failed to keep accurate records regarding Plaintiffs and the other aggrieved current and former employees. For example, Defendants failed in their affirmative obligation to keep accurate records regarding Plaintiffs and the other aggrieved current and former employees' gross wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates and the number of hours worked at each hourly rate.

Failure to Reimburse Business Expenses

114. At all times relevant herein, Defendants were required to reimburse their employees for any and all necessary expenditures or losses incurred by the employees in direct consequences of the discharge of their duties, pursuant to the mandates of Labor Code sections 2800 and 2802.

115. As a policy and practice, Defendants regularly failed to reimburse Plaintiffs and the other aggrieved current and former employees for all business expenses incurred and owed to them within the required time period.

Failure to Provide and Properly Pay Paid Sick Days

116. At all times relevant herein, Defendants were required to provide their employees with paid sick days at their regular rate of pay pursuant to Labor Code section 246 *et seq.*

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1 117. As a policy and practice, Defendants failed to provide Plaintiffs and other
2 aggrieved current and former employees with paid sick days at the proper rate of pay pursuant
3 to Labor Code section 246 *et seq.*

4 **Failure to Produce Requested Employment Records**

5 118. Pursuant to Labor Code section 226, current and former employees have the
6 right to inspect or receive a copy of their records pertaining to their employment, upon
7 reasonable request to their employer. Under this statute, an employer that receives a request to
8 inspect or receive a copy of records pertaining to a current or former employee must comply
9 with the request as soon as practicable, but no later than twenty-one (21) calendar days from
10 the date of the request.

11 119. Pursuant to Labor Code section 1198.5(a), every current and former employee,
12 or his or her representative, has the right to inspect and receive a copy of the personnel records
13 that the employer maintains relating to the employee's performance or to any grievance
14 concerning the employee. Under this statute, upon written request from a current or former
15 employee or his or her representative, an employer must make the contents of those personnel
16 records available for inspection or provide a copy of the personnel records to the current or
17 former employee, or his or her representative, not later than thirty (30) calendar days from the
18 date the employer receives the written request, subject to some limited exceptions. Failure to
19 comply with these requests allows for a civil penalty seven hundred fifty dollars (\$750),
20 pursuant to sections 1198.5(k) and 226(f).

21 120. Pursuant to California Labor Code section 432, if an employee or applicant
22 signs any instrument relating to the obtaining or holding of employment, he or she shall be
23 given a copy of the instrument upon request.

24 121. Plaintiffs sent written requests through Plaintiffs' counsel to Defendants for
25 Plaintiffs' personnel file, pay records, wage statements, timekeeping records, and other
26 employment-related documents pursuant to Labor Code section 226, 1198.5, and 432.
27 However, Defendants failed to timely produce the requested employment records. Defendants
28 violated sections 226, 1198.5, and 432 by failing to timely produce the required records

requested by Plaintiffs.

122. On information and belief, Defendants' failure to provide Plaintiffs with Plaintiffs' requested employment records is not an isolated incident but was consistent with Defendants' policy and practice that applied to Plaintiffs and other aggrieved current and former employees.

123. Pursuant to Labor Code section 1198.5, Plaintiffs and other aggrieved current and former employees are entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants, injunctive relief in the form of compliance with section 1198.5, and attorneys' fees and costs.

124. Pursuant to Labor Code section 226, Plaintiffs are entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants, injunctive relief in the form of compliance with section 226, and attorneys' fees and cost.

Penalties

125. Pursuant to Labor Code section 2699, Plaintiffs, individually, and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, including but not limited to:

- a. Penalties under Labor Code section 2699 in the amount of a 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;
- b. Penalties under Code of Regulations Title 8 section 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

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- 1 c. Penalties under Labor Code section 210 in addition to, and entirely
2 independent and apart from, any other penalty provided in the Labor
3 Code in the amount of a hundred dollars (\$100) for each aggrieved
4 employee per pay period for the initial violation, and two hundred dollars
5 (\$200) for each aggrieved employee per pay period for each subsequent
6 violation;
- 7 d. Penalties under Labor Code section 1197.1 in the amount of a hundred
8 dollars (\$100) for each aggrieved employee per pay period for the initial
9 violation, and two hundred fifty dollars (\$250) for each aggrieved
10 employee per pay period for each subsequent violation;
- 11 e. Any and all additional penalties as provided by the Labor Code and/or
12 other statutes; and
- 13 f. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194,
14 and 2699, and any other applicable statute.

15 **NINTH CAUSE OF ACTION**

16 **(Violation of California Business & Professions Code § 17200, *et seq.*)**
17 **(Against CREEKSIDE AUTO GROUP DBA CAPITOL TOYOTA and DOES 1 through**
18 **100)**

19 126. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
20 through 125, and each and every part thereof with the same force and effect as though fully set
21 forth herein.

22 127. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
23 unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'
24 competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public
25 interest within the meaning of Code of Civil Procedure section 1021.5.

26 128. Defendants' activities as alleged herein are violations of the law, and constitute
27 unlawful business acts and practices in violation of Business & Professions Code section
28 17200, *et seq.*

1 129. A violation of Business & Professions Code section 17200, *et seq.* may be
2 predicated on the violation of any state or federal law. In this instant case, Defendants' policy
3 and practice of requiring Plaintiffs and the other class members work overtime hours without
4 paying them proper compensation violate Labor Code sections 510 and 1198. Additionally,
5 Defendants' policy and practice of requiring Plaintiffs and the other class members, to work
6 through their meal and rest periods without paying them proper compensation violate Labor
7 Code sections 226.7 and 512(a). Moreover, Defendants' policy and practice of failing to timely
8 pay wages to Plaintiffs and the other class members violate Labor Code sections 201 and 202.
9 Defendants also violated Labor Code sections 226(a), 1194, 1197, 2800, and 2802.

10 130. As a result of the herein described violations of the law, Defendants unlawfully
11 gained an unfair advantage over other businesses.

12 131. Plaintiffs and the other class members have been personally injured by
13 Defendants' unlawful business acts and practices as alleged herein, including but not
14 necessarily limited to the loss of money and/or property.

15 132. Pursuant to Business & Professions Code section 17200, *et seq.*, Plaintiffs and
16 the other class members are entitled to restitution of the wages withheld and retained by
17 Defendants during a period that commences four years prior to the filing of this Complaint; an
18 award of attorneys' fees pursuant to Code of Civil procedure section 1021.5 and other
19 applicable laws; and an award of costs.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiffs, individually, and on behalf of other members of the general public similarly
22 situated, request a trial by jury.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, individually and on behalf of all other members of the
25 general public similarly situated, pray for relief and judgment against Defendants, jointly and
26 severally, as follows:

27 **Class Certification**

28 1. That this action be certified as a class action;

- 1 2. That Plaintiffs be appointed as representatives of the Class;
- 2 3. That counsel for Plaintiffs be appointed as Class Counsel; and
- 3 4. That Defendants provide to Class Counsel immediately the names and most
- 4 current contact information (address, e-mail, and telephone numbers) of all class members.

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

6 5. That the Court declare, adjudge, and decree that Defendants violated Labor

7 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all

8 overtime wages due to Plaintiffs and the other class members;

9 6. For general unpaid wages at overtime wage rates and such general and special

10 damages as may be appropriate;

11 7. For pre-judgment interest on any unpaid overtime compensation commencing

12 from the date such amounts were due;

13 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to

14 Labor Code section 1194; and

15 9. For such other and further relief as the court may deem just and proper.

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

17 10. That the Court declare, adjudge, and decree that Defendants violated Labor

18 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide

19 all meal periods (including second meal periods) to Plaintiffs and the other class members;

20 11. That the Court make an award to Plaintiffs and the other class members of one

21 (1) hour of pay at each employee's regular rate of compensation for each workday that a meal

22 period was not provided;

23 12. For all actual, consequential, and incidental losses and damages, according to

24 proof;

25 13. For premium wages pursuant to Labor Code section 226.7(b);

26 14. For pre-judgment interest on any unpaid wages from the date such amounts

27 were due;

28 15. For reasonable attorneys' fees and costs of suit incurred herein; and

1 16. For such other and further relief as the court may deem just and proper.

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

3 17. That the Court declare, adjudge, and decree that Defendants violated Labor
4 Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest
5 periods to Plaintiffs and the other class members;

6 18. That the Court make an award to Plaintiffs and the other class members of one
7 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
8 period was not provided;

9 19. For all actual, consequential, and incidental losses and damages, according to
10 proof;

11 20. For premium wages pursuant to Labor Code section 226.7(b);

12 21. For pre-judgment interest on any unpaid wages from the date such amounts
13 were due; and

14 22. For such other and further relief as the court may deem just and proper.

15 **As to the Fourth Cause of Action**

16 23. That the Court declare, adjudge, and decree that Defendants violated Labor
17 Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiffs and the
18 other class members;

19 24. For general unpaid wages and such general and special damages as may be
20 appropriate;

21 25. For pre-judgment interest on any unpaid compensation from the date such
22 amounts were due;

23 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
24 Labor Code section 1194(a);

25 27. For liquidated damages pursuant to Labor Code section 1194.2; and

26 28. For such other and further relief as the court may deem just and proper.

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1 **As to the Fifth Cause of Action**

2 29. That the Court declare, adjudge, and decree that Defendants violated Labor
3 Code sections 201, 202, 203, and 204 by willfully failing to pay all compensation owed during
4 employment and at the time of termination of the employment of Plaintiffs and other class
5 members no longer employed by Defendants;

6 30. For all actual, consequential, and incidental losses and damages, according to
7 proof;

8 31. For statutory wage penalties pursuant to Labor Code section 203 for the other
9 class members who have left Defendants' employ;

10 32. For pre-judgment interest on any unpaid compensation from the date such
11 amounts were due; and

12 33. For such other and further relief as the court may deem just and proper.

13 **As to the Sixth Cause of Action**

14 34. That the Court declare, adjudge, and decree that Defendants violated the record
15 keeping provisions of Labor Code section 226(a) and applicable IWC Wage Orders as to
16 Plaintiffs and the other class members, and willfully failed to provide accurate itemized wage
17 statements thereto;

18 35. For actual, consequential, and incidental losses and damages, according to
19 proof;

20 36. For statutory penalties pursuant to Labor Code section 226(e);

21 37. For injunctive relief to ensure compliance with this section, pursuant to Labor
22 Code section 226(g); and

23 38. For such other and further relief as the court may deem just and proper.

24 **As to the Seventh Cause of Action**

25 39. That the Court declare, adjudge, and decree that Defendants violated Labor
26 Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other class
27 members for all necessary business-related expenses as required by Labor Code sections 2800
28 and 2802;

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

41. For the imposition of civil penalties and/or statutory penalties;

42. For punitive damages and/or exemplary damages according to proof at trial;

43. For reasonable attorneys' fees and costs of suit incurred herein; and

44. For such other and further relief as the court may deem just and proper.

As to the Eighth Cause of Action

45. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants' violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

46. Upon this cause of action, for costs and attorneys' fees pursuant to Labor Code sections 210, 218.5, 1194, and 2699, and any other applicable statute; and

47. For such other and further relief the court may deem just and proper.

As to the Ninth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiffs and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiffs and the other class members, failing to pay at least minimum wages to Plaintiffs and the other class members, failing to pay Plaintiffs and the other class members' wages timely as required by Labor Code section 201 and 202.

49. For restitution of unpaid wages to Plaintiffs and the other class members and all pre-judgment interest from the day such amounts were due and payable;

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

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

1 52. For injunctive relief to ensure compliance with this section, pursuant to
2 Business and Professions Code sections 17200, *et seq.*; and

3 53. For such other and further relief as the court may deem just and proper.
4

5 Dated: April 2, 2024

JUSTICE LAW CORPORATION

6
7 By: 
8 Douglas Han
9 Shunt Tatavos-Gharajeh
Halina Szymanski
Attorneys for Plaintiff Cristal Lombera

10 Dated: April 2, 2024

WILSHIRE LAW FIRM

11
12 By: /s/ Diego Aviles
13 John G. Yslas
14 Diego Aviles
15 Harry Erganyan
16 Mariam Nazaretyan
17 *Attorneys for Plaintiff Jesus Cabrera*
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EXHIBIT 1

February 16, 2023

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: CREEKSIDE AUTO GROUP

Dear Representative:

We have been retained to represent Cristal Lombera against Creekside Auto Group (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "CAG").

Ms. Lombera is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Lombera may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Creekside Auto Group is a California corporation located at 94 Acoma Boulevard South, Suite 104, Lake Havasu City, Arizona 86403-6922.

CAG employed Ms. Lombera as an hourly-paid non-exempt employee within one year of the date of this letter (until in or about January of 2023) in the State of California. CAG directly controlled the wages, hours and/or working conditions of Ms. Lombera and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Ms. Lombera may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of CAG within the State of California.

¹ Ms. Lombera does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Lombera will amend this notice when the true names and capacities are known. Ms. Lombera is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Lombera and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

CAG failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Lombera has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at CAG, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

CAG has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Lombera and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. CAG failed to compensate Ms. Lombera and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. CAG also failed to include non-discretionary bonuses, commissions, and incentives in Ms. Lombera and other aggrieved employees' regular rate of pay for purposes of overtime compensation, vacation wages, sick pay, and premium wages. Therefore, Ms. Lombera and aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, CAG failed to pay Ms. Lombera and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, CAG routinely required Ms. Lombera and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with CAG's policies and expectations. CAG failed to provide coverage to Ms. Lombera and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Moreover, CAG also failed to authorize and permit Ms. Lombera and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, CAG failed to compensate Ms. Lombera and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Ms. Lombera and other aggrieved employees' regular rate of pay.

California Labor Code section 551 states "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Section 552 further states "[n]o employer of labor shall cause his employees to work more than six days in seven." CAG required aggrieved employees to work seven days in a row or more without one day's rest.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, CAG failed to pay Ms. Lombera and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, CAG failed to pay Ms. Lombera and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, CAG did not provide Ms. Lombera and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from CAG were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Lombera and other aggrieved employees, (2) total hours worked by Ms. Lombera and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Lombera and other aggrieved employees (4) all deductions for Ms. Lombera and other aggrieved employees, (5) net wages earned by Ms. Lombera and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Lombera and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Lombera and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) 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 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Lombera and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, CAG failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Lombera and other aggrieved employees.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, CAG did not provide Ms. Lombera and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Ms. Lombera and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by CAG.

We believe that Ms. Lombera and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Lombera will seek these penalties on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt or misclassified employees of CAG within one year of the date of this letter, as allowed by law.

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LWDA
February 16, 2023
Page 7 of 7

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a long horizontal flourish extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Shalon Hite
c/o Creekside Auto Group
775 Capitol Expressway Auto Mall
San Jose, California 95136
Agent for Service of Process for Creekside Auto Group

EXHIBIT 2

WILSHIRE LAW FIRM, PLC

3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010
Tel: (213) 381-9988
Fax: (213) 381-9989
www.wilshirelawfirm.com



Bobby Saadian, Esq. JD/MBA

Colin M. Jones, Esq.
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Tae Kim, Esq.
Jon Teller, Esq.
Johnny Ogata, Esq.
Carolyn Shining, Esq.
Brad Stuckey, Esq.
Nicol Hajjar, Esq.
Thiago Coelho, Esq.

Christina Le, Esq.
Jennifer Leinbach, Esq.
Jeffrey Bils, Esq.
Nathan Kingery, Esq.
Elizabeth Votra, Esq.
Benjamin Haber, Esq.
Ghazaleh Attaran, Esq.
Jesenia Martinez, Esq.
Christian Girgis, Esq.
Jesse Chen, Esq.

May 24, 2023

LWDA
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(Via Online Submission)

Creekside Auto Group dba Capitol Toyota
775 Capital Expressway Auto Mall
San Jose, CA 95136
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6362 4876 53

Creekside Auto Group
94 Acoma Blvd S Ste 104
Lake Havasu City, AZ 86403-6922
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6362 4876 46

Shalon Hite
Agent for Service of Process for
Creekside Auto Group
775 Capital Expressway Auto Mall
San Jose, CA 95136
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6362 4876 39

Re: ***Jesus Cabrera adv. Creekside Auto Group dba Capitol Group,
Notice of Labor Code Violations and PAGA Penalties***

To Whom It May Concern:

Please be advised that my office has been retained by Jesus Cabrera ("Employee") to pursue a Labor Code Private Attorneys General Act of 2004 ("PAGA") representative action (Cal. Lab. Code §§ 2699, *et seq.*) against Employee's former employer, Creekside Auto Group dba Capitol Group ("Employer"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Employer engaged in with respect to Employee and all of Employer's Aggrieved Employees.

Employee wishes to pursue this action on behalf of Employee as an aggrieved employee, on behalf of the State of California, as well as on behalf of all other persons who worked for Employer in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Employee and the Aggrieved Employees suffered the Labor Code violations described below.

Employee's Employment with Employer

Employer owns/owned and operates/operated an industry, business, and establishment within the State of California, including Santa Clara County. As such, and based upon all the facts and circumstances incident to Employer's business in California, Employer is subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Employee Jesus Cabrera is a resident of San Jose, California who worked for Employer in Santa Clara County, California as an hourly-paid, non-exempt employee from approximately February 2016 to February 2023.

During Employee's employment for Employer, Employer paid Employee an hourly wage and classified Employee as non-exempt from overtime. Employer typically scheduled Employee to work at least five days in a workweek and at least eight hours per day, but Employee also worked more than eight hours in a workday and more than forty (40) hours in a workweek.

Throughout Employee's employment, Employer failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Employee with legally compliant meal periods, failed to authorize and permit Employee to take rest periods, failed to timely pay all final wages to Employee when Employer terminated Employee's employment, failed to furnish accurate wage statements to Employee, and failed to indemnify Employee for business expenditures. As discussed below, Employee's experience working for Employer was typical and illustrative.

Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Employer failed to pay Employee and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Employer required

Employee and the Aggrieved Employees to work “off-the-clock,” uncompensated, by, for example, requiring Employee and the Aggrieved Employees to perform work during uncompensated meal periods and rest periods, and requiring Employee and the Aggrieved Employees to perform work before clocking in and/or after clocking out. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Employer also failed to maintain accurate records of the hours Employee and the Aggrieved Employees worked.

As a result, Employer is liable to Employee and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Employer wrongfully failed to provide Employee and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law. Employer also continued to assert control over Employee and the Aggrieved Employees by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Employee and the Aggrieved Employees permission to take a meal period under the conditions required by law, and without properly compensating Employee and the Aggrieved Employees for meal periods that were not provided as required by law. Employer also did not inform Employee of Employee’s right to, nor permitted Employee to take, all of Employee’s second meal periods when Employee worked at least ten hours of work in a workday and otherwise unlawfully pressured Employee to waive such breaks. Accordingly, Employer failed to provide meal periods to Employee and the Aggrieved Employees in compliance with California law.

Employee and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Employer, however, regularly failed to pay Employee and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Employer is liable to Employee and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Employer has wrongfully failed to authorize and permit Employee and the Aggrieved Employees to take legally compliant rest periods in a manner required by law. Employer regularly required Employee and the Aggrieved Employees to work in excess of four consecutive hours a day without Employer authorizing and permitting Employee to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Employee and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Employer continued to assert control over Employee and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Employee and the Aggrieved Employees permission to take a rest period. Accordingly, Employer failed to authorize and permit Employee and the Aggrieved Employees to take rest periods in compliance with California law.

Employee and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Employer, however, regularly failed to pay Employee and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Employer is liable to Employee and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Employee and the Aggrieved Employees for all wages as discussed above, Employer also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Employer failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Employer, all wages for all rest periods not authorized and permitted by Employer,

and all wages for all hours worked. As a result, Employer owes employees the legally required wages for unpaid wages, and Employee and the Aggrieved Employees suffered damages in those amounts.

Moreover, Employer is liable to Employee and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Employee seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Employer, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Employee and the Aggrieved Employees.

Employer's failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Employee and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Employer's records. Therefore, Employee and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Employer. As a direct result, Employee and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Employer to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Employer's knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Employee and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

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

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Within the applicable statute of limitations, the employment of Employee and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Employer failed, and continues to fail to pay Employee and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Employer's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Employer's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Employee and the Aggrieved Employees are entitled to recover from Employer their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

Moreover, Employer is liable to Employee and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Throughout the statutory period, Employer failed to, and continues to fail to timely furnish Employee and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Employer violated Labor Code § 226, Employee and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Employee and similarly Aggrieved Employees are entitled to recover from Employer the greater of their actual damages caused by Employer's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee. Moreover, Employer is liable to Employee and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to timely furnish accurate itemized wage statements.

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) provides that employers shall indemnify his or her employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the statute of limitations period applicable to this cause of action, Employer wrongfully required Employee and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Employer. Employee and the Aggrieved Employees regularly paid out-of-pocket for necessary employment-related expenses, including, without limitation, use of personal cell phone and work attire. Employee and the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Employer, but Employer failed to indemnify Employee and the Aggrieved Employees for these employment-related expenses.

As a result, Employer is liable to Employee and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Employee and the Aggrieved Employees for necessary business expenditures.

Failure to Produce Requested Employment Records

Labor Code § 226 provides that current and former employees have the right to inspect or receive a copy of their records pertaining to their employment, upon reasonable request to their employer. Under this statute, an employer that receives a request to inspect or receive a copy of records pertaining to a current or former employee must comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request. Labor Code § 1198.5(a) also provides that every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. Under this statute, upon written request from a current or former employee or his or her representative, an employer

must make the contents of those personnel records available for inspection or provide a copy of the personnel records to the current or former employee, or his or her representative, not later than thirty (30) calendar days from the date the employer receives the written request, subject to some limited exceptions. Labor Code § 432 provides that if an employee or applicant signs any instrument relating to the obtaining or holding of employment, he or she shall be given a copy of the instrument upon request. On information and belief, Employee and the Aggrieved Employees, or some of them, submitted written request(s) to Employer for their payroll records, timecards, and personnel records but did not timely receive them as required by the Labor Code.

As a result, Employer is liable to Employee and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 226(f), 1198.5(k), and 2699 for failing to timely produce the requested records.

Action for Civil Penalties Under PAGA

In light of the above, Employee alleges that Employer violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 204 by failing to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 2802 by failing to indemnify for necessary expenditures; and
9. Labor Code §§ 226, 432, and 1198.5 by failing to timely produce requested payroll records, timecards, and personnel records.

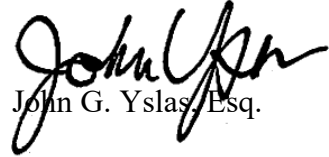
Therefore, on behalf of all Aggrieved Employees, Employee seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

Employee has placed Employer on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

LWDA
Notice of Labor Code Violations and PAGA
May 24, 2023
Page 9 of 9

Sincerely,

WILSHIRE LAW FIRM

A handwritten signature in black ink, appearing to read "John Yslas". The signature is fluid and cursive, with the first name "John" and last name "Yslas" clearly distinguishable.

John G. Yslas, Esq.

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is mluna@justicelawcorp.com

On April 3, 2024, I served the foregoing document described as

FIRST AMENDED AND CONSOLIDATED CLASS AND REPRESENTATIVE ACTION COMPLAINT

for the following case: **Lombera v. Creekside Auto Group**
LWDA/Court Case No.: **LWDA Case No.: CM-936776-23**
Court Case No.: 23CV415661
Santa Clara County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

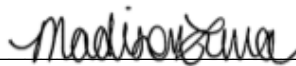
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 3, 2024, at Pasadena, California.



Madison Luna