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Filed via the LWDA's PAGA Claim Notice Online Form

Copies Sent via Certified U.S. Mail to:

Subaru of America, Inc.
% C T Corporation System
330 North Brand Boulevard
Glendale, California 91203

Human Resources
Subaru of America, Inc.
One Subaru Drive
Camden, New Jersey 08103

Re: ***Raymond Emanuel v. Subaru of America, Inc.***
Notice of Intent to File Suit Pursuant to California Labor Code Section 2699

To Whom It May Concern:

This office represents Raymond Emanuel ("Plaintiff") in a forthcoming lawsuit against Subaru of America, Inc. ("Defendant" or "Defendant Subaru"). The action, entitled *Raymond Emanuel v. Subaru of America, Inc.*, is to be filed in the Superior Court of the State of California for the County of Sacramento (the "Action"). A copy of the complaint as currently drafted, and as is intended to be filed in the Action, is enclosed as **Exhibit A**. This letter incorporates by reference the facts, law, and allegations of Exhibit A.

I. Notice of Intent to File PAGA Action

This letter serves as notice pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), codified at California Labor Code sections 2698 through 2699.6, that we intend to include representative claims in the Action for civil penalties under PAGA on behalf of a group of aggrieved employees. For the purposes of this letter, "Aggrieved Employees" is defined as: *All individuals who performed work (or continue to perform work) in California during the PAGA Period and who:* ***(1)*** *have received commission payments, bonus payments, or other forms of wages from Defendant Subaru; and* ***(2)*** *were issued IRS Form 1099s from Defendant Subaru or who have otherwise been treated as independent contractors by Defendant Subaru in connection with those commission payments, bonus payments, or other forms of wages*. The "PAGA Period" for these purposes is defined as the period from September 9, 2024, and continuing into the present and ongoing.

As set forth in more detail in Exhibit A, Defendant violated its obligations to Plaintiff and the Aggrieved Employees under California law by: willfully engaging in a pattern and practice of misclassifying employees as independent contractors, failing to pay all overtime wages earned, failing to provide lawful rest periods and pay missed rest period premiums, failing to provide lawful meal periods and pay missed meal period premiums, failing to maintain accurate records, failing to provide accurate and complete wage statements, failing to pay all wages in full and on time during employment, and failing to pay all sick pay wages due and owing.

Because of these systemic violations, Defendant violated: Labor Code sections 204, 210, 226, 226.3, 226.7, 226.8, 246, 510, 512, 1174, 1174.5,1185, 1198, 1198.5, 1199, 2775, and California Industrial Welfare Commission Wage Orders Wage Orders 4-2001, 7-2001, and/or 9-2001, and others that may be applicable. (Cal. Code of Regs., tit. 8, §§ 11040, 11070, 11090.) The enclosed Complaint further details: **(1)** the alleged violations; **(2)** the facts and theories supporting these violations; **(3)** the people and entities, dates, classifications, violations, events, and actions at issue; and **(4)** the illegal practices instituted by Defendant.

II. Plaintiff's Specific Experiences

Plaintiff was employed by Defendant within the statutory PAGA Period, working as an hourly, non-exempt sales consultant for Defendant. Plaintiff's duties included assisting customers in selecting and purchasing or leasing vehicles. Specifically, Plaintiff was employed by Defendant from approximately February 2021 to present. During this period, Defendant acted as Plaintiff's joint employer along with Maita Hyundai Subaru—a fictitious business name of Maita Hyundai—at Maita Hyundai's location, branded as "Maita Subaru" in Sacramento, California. While Maita Hyundai correctly classified Plaintiff as an employee, and is therefore not named in this action, Defendant incorrectly classified Plaintiff as an independent contractor (as will be described below)—disclaiming employment of Plaintiff, despite acting as his joint employer with Maita Hyundai.

Plaintiff was paid commission wages by Defendant. These financial incentives were paid by Defendant to Plaintiff as compensation for the performance of Plaintiff's sales activities for Defendant. These payments were made directly to Plaintiff on a 1099 basis as an independent contractor, rather than as an employee. Despite the pretext, however, Plaintiff was an employee of Defendant. Defendant exerted significant direction and control over Plaintiff during his employment:

- As part of his employment with Defendant, Plaintiff was required by Defendant to enroll new Subaru owners in Defendant Subaru's "Care Connect" software—a national program initiated, controlled, directed, and monitored by Defendant for the purpose of ensuring vehicle maintenance compliant with Defendant's warranty program for new customers.
- For each of these activities, Plaintiff was representing Defendant when he participated in them.
- Plaintiff's performance of these duties was carefully monitored by Defendant, both for the purposes of tracking Plaintiff's earned commission wages, as well as for the purpose of ensuring that Plaintiff diligently followed Defendant's instructions and evaluating his performance.

Defendant thus exerted significant control and direction over Plaintiff's employment, together with Maita Hyundai, in connection with the performance of Plaintiff's car sales duties. Defendant also set Plaintiff's compensation and objectives for those duties.

As an entity whose business model centers on the sales and distribution of Subaru vehicles, Plaintiff's sales-related duties on behalf of Defendant fell directly within the usual course of Defendant's business (i.e., selling Subaru vehicles to customers).

During Plaintiff's employment with Defendant, Plaintiff did not engage in an independently established trade, occupation, or business. To the contrary, Plaintiff worked exclusively at a Subaru-branded dealership during the entirety of the PAGA Period.

Defendant's misclassification of Plaintiff resulted in several additional violations. For example, Defendant failed to keep any record of the hours worked by Plaintiff based on its (incorrect) assertion that Plaintiff was not an employee of Defendant. While this violation is remedied to some extent by Maita Hyundai's records of Plaintiff's hours worked, Defendant has nevertheless violated Labor Code section 1174, which requires Defendant to keep "records showing the hours worked daily," which Defendant has failed to do. Plaintiff has sent Defendant a records request seeking such records and received a response stating that Defendant was unable to locate any records for Plaintiff. The failure "to keep the records required in subdivision (a) of Section 226," including the failure to track the total hours worked by the employee, also subjects Defendant to penalties under Labor Code section 226.3 and PAGA penalties for violations of Labor Code section 226, subdivision (a).

Likewise, because Defendant failed to track any pertinent data with regard to Plaintiff's employment, Defendant never issued Plaintiff code-compliant wage statements—again, because Defendant incorrectly claimed that it was not obligated to do so because Plaintiff was not an employee of Defendant.

Defendant also failed to incorporate the non-discretionary commission wages it paid to Plaintiff into his regular rate of pay. For example, in the pay period ending on June 30, 2025, Plaintiff earned meal and rest period premium pay, overtime pay, and sick pay while working for Defendant—all of which must normally be paid out at Plaintiff's regular rate of pay under applicable law. When Defendant issued commission payments to Plaintiff attributable to that pay period, however, it failed to true-up or otherwise provide additional compensation to Plaintiff to account for the increase in his regular rate of pay resulting from his non-discretionary commission payments for that pay period. Defendant thus violated Plaintiff's rights with regard to overtime pay, meal and rest period premium pay, and sick pay.

These payments were also late, in violation of Labor Code section 204. Commission wages must generally be paid during the first pay period in which the earned commission can reasonably be calculated. Defendant, however, would wait until several weeks after the commissions had been fully "earned" within the meaning of Plaintiff's commission sales structure to pay them—far after the conclusion of the pay period in which they were due.

These experiences are provided by way of example and do not include the sum total of violations experienced by Plaintiff. Nor were these experiences unique to Plaintiff. Through our investigation of this case, we have determined that these practices by Defendant were widespread and applied to many workers across the State of California. Further, each of these violations were experienced by Plaintiff during the PAGA Period.

III. Conclusion

Together with this correspondence, the enclosed complaint provides notice that we intend to proceed with a claim for civil penalties in the Action pursuant to PAGA. (See Lab. Code, §§ 2698–2699.6.) We intend to fully prosecute the representative claims alleged in the complaint, including by obtaining civil penalties under PAGA.

Please do not hesitate to contact me if you have any questions.

Sincerely,

KYLE D. SMITH

Enclosure

EXHIBIT A

(Anticipated Complaint in *Raymond Emanuel v. Subaru of America, Inc.*)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

RAYMOND EMANUEL, an individual, on behalf of himself and the State of California, as a private attorney general, Plaintiff, v. SUBARU OF AMERICA, INC., a New Jersey Corporation; and DOES 1 TO 50, Defendants.	Case Number: ___________________ **Representative Action Complaint For:** **1.** Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA") for Willful Misclassification in Violation of Labor Code section 226.8 and Other Violations of the Labor Code.

Plaintiff Raymond Emanuel ("Plaintiff"), on behalf of himself and the State of California, as a private attorney general, complains and alleges of defendants Subaru of America, Inc. and Does 1 to 50 (collectively, "Defendants"), and each of them, as follows:

I. <u>INTRODUCTION</u>

1. This action is a representative action brought pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), codified at California Labor Code sections 2698 through 2699.6.

2. The "PAGA Period" as used herein, is defined as the period from September 9, 2025, and continuing into the present and ongoing.

3. This PAGA action is brought on behalf of Plaintiff, the State of California as private attorney general, and on behalf of the following aggrieved employees: *All individuals who performed work (or continue to perform work) in California during the PAGA Period and who:* ***(1)*** *have received commission payments, bonus payments, or other forms of wages from Defendants; and* ***(2)*** *were issued IRS Form 1099s from Defendants or who have otherwise been treated as independent contractors by Defendants in connection with those commission payments, bonus payments, or other forms of wages.* (the "Aggrieved Employees").

4. Plaintiff is informed and believes and thereon alleges that the California Industrial Welfare Commission ("IWC") Wage Orders applicable to the facts of this case are IWC Wage Orders 4-2001, 7-2001, and/or 9-2001 (the "Applicable Wage Orders") and possibly others that may be applicable. (Cal. Code of Regs., tit. 8, §§ 11040, 11070, 11090.) Plaintiff reserves the right to amend or modify the definition of "Applicable Wage Orders" with greater specificity or add additional IWC Wage Orders if additional applicable wage orders are discovered in litigation.

II. <u>JURISDICTION & VENUE</u>

5. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds $25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

6. This Court has personal jurisdiction over Defendants because Defendants have caused injuries in the County of Sacramento and the State of California through their acts, and by their violation of the California Labor Code and California state common law. Defendants transact millions of dollars of business within the State of California. Defendants own, maintain offices, transact business, have an agent or agents within the County of Sacramento, and/or otherwise are found within the County of Sacramento, and Defendants are within the jurisdiction of this Court for purposes of service of process.

7. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the Code of Civil Procedure. Defendants operate within California and do business within Sacramento County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of Defendants' employees identified above within Sacramento County and surrounding counties where Defendants may remotely operate. (See *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County* (2021) 60 Cal.App.5th 1069, 1075 ["We hold that venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred."].)

III. <u>THE PARTIES</u>

A. PLAINTIFF

8. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly employee in the County of Sacramento.

9. Plaintiff brings this action on behalf of himself and the State of California, as a private attorney general, and on behalf of the following group of aggrieved employees: *All individuals who performed work (or continue to perform work) in California during the PAGA Period and who: **(1)** have received commission payments, bonus payments, or other forms of wages from Defendants; and **(2)** were issued IRS Form 1099s from Defendants or who have otherwise been treated as independent contractors by Defendants in connection with those commission payments, bonus payments, or other forms of wages.* (the "Aggrieved Employees").

10. The Aggrieved Employees, at all times pertinent hereto, are or were employees of Defendants during the relevant statutory period.

B. DEFENDANTS

11. Plaintiff is informed and believes and thereon alleges that Defendants were authorized to and doing business in Sacramento County and is and/or was the legal employer of Plaintiff and the other Aggrieved Employees during the applicable statutory periods. Plaintiff and the other Aggrieved Employees were, and are, subject to Defendants' policies and/or practices complained of herein and have been deprived of the rights guaranteed to them by: California Labor Code sections 204, 210, 226, 226.3, 226.7, 226.8, 246, 510, 512, 1174, 1185, 1198, 1198.5, 1199, 2775, and others that may be applicable; California Business and Professions Code sections 17200 through 17210 ("UCL"); and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11040, 11070, 11090).

12. Plaintiff is informed and believes, and based thereon alleges, that during the PAGA Period, Defendants did (and continue to do) business in the State of California, County of Sacramento.

13. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the other Aggrieved Employees to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and/or are the employers of Plaintiff and the other Aggrieved Employees. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the agents, representatives, and employees of each and every one of the other Defendants, and at all times herein mentioned were acting within the course and scope of said agency, representation, and employment. Defendants, and each of them, approved of, condoned, or otherwise ratified every one of the acts or omissions complained of herein.

15. Plaintiff is further informed, and believes, and thereon alleges, that at all times mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there existed and now exists a unity of interest and ownership between them such that the individuality and separateness of each of them has ceased. Plaintiff is further informed, and believes, and thereon alleges, that at all times mentioned herein, that Defendants, and each of them, have been and now are mere shells and naked frameworks that their principal uses for the conduct of that Defendant's own business, property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their identities as the entities responsible for their ownership, management, and financial interests.

16. Plaintiff is further informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff and the other Aggrieved Employees.

IV. COMMON FACTS & ALLEGATIONS

17. Plaintiff and the other Aggrieved Employees (collectively, the "Aggrieved Employees") are, and were at all relevant times, employed by the Defendants within the State of California.

18. The Aggrieved Employees (including Plaintiff) are, and were, at all relevant times, non-exempt employees for the purposes of overtime, rest breaks, meal periods, and the other claims alleged in this complaint—despite being misclassified as independent contractors.

A. PLAINTIFF'S PERSONAL EXPERIENCES

19. Plaintiff was employed by Defendants within the statutory PAGA Period, working as an hourly, non-exempt sales consultant for Defendants. Plaintiff's duties included assisting customers in selecting and purchasing or leasing vehicles. Specifically, Plaintiff was employed by Defendants from approximately February 2021 to present. During this period, Defendants acted as Plaintiff's joint employer along with Maita Hyundai Subaru—a fictitious business name of Maita Hyundai—at Maita Hyundai's location, branded as "Maita Subaru" in Sacramento, California. While Maita Hyundai correctly classified Plaintiff as an employee, and is therefore not named in this action, Defendants

incorrectly classified Plaintiff as an independent contractor (as will be described below)—disclaiming employment of Plaintiff, despite acting as his joint employer with Maita Hyundai.

20. Plaintiff was paid commission wages by Defendants. These financial incentives were paid by Defendants to Plaintiff as compensation for the performance of Plaintiff's sales activities for Defendants. These payments were made directly to Plaintiff on a 1099 basis as an independent contractor, rather than as an employee. Despite the pretext, however, Plaintiff was an employee of Defendants. Defendants exerted significant direction and control over Plaintiff during his employment:

A. As part of his employment with Defendants, Plaintiff was required by Defendants to enroll new Subaru owners in Defendants' "Care Connect" software—a national program initiated, controlled, directed, and monitored by Defendants for the purpose of ensuring vehicle maintenance compliant with Defendants' warranty program for new customers.

B. For each of these activities, Plaintiff was representing Defendants when he participated in them.

C. Plaintiff's performance of these duties was carefully monitored by Defendants, both for the purposes of tracking Plaintiff's earned commission wages, as well as for the purpose of ensuring that Plaintiff diligently followed Defendants' instructions and evaluating his performance.

21. Defendants thus exerted significant control and direction over Plaintiff's employment, together with Maita Hyundai, in connection with the performance of Plaintiff's car sales duties. Defendants also set Plaintiff's compensation and objectives for those duties.

22. As an entity whose business model centers on the sales and distribution of Subaru vehicles, Plaintiff's sales-related duties on behalf of Defendants fell directly within the usual course of Defendants' business (i.e., selling Subaru vehicles to customers).

23. During Plaintiff's employment with Defendants, Plaintiff did not engage in an independently established trade, occupation, or business. To the contrary, Plaintiff worked exclusively at a Subaru-branded dealership during the entirety of the PAGA Period.

24. Defendants' misclassification of Plaintiff resulted in several additional violations. For example, Defendants failed to keep any record of the hours worked by Plaintiff based on its (incorrect) assertion that Plaintiff was not an employee of Defendants. While this violation is remedied to some extent by Maita Hyundai's records of Plaintiff's hours worked, Defendants have nevertheless violated Labor Code section 1174, which requires Defendants to keep "records showing the hours worked daily," which Defendants has failed to do. Plaintiff has sent Defendants a records request seeking such records and received a response stating that Defendants was unable to locate any records for Plaintiff. The failure "to keep the records required in subdivision (a) of Section 226," including the failure to track the total hours worked by the employee, also subjects Defendants to penalties under Labor Code section 226.3.

25. Likewise, because Defendants failed to track any pertinent data with regard to Plaintiff's employment, Defendants never issued Plaintiff code-compliant wage statements—again, because Defendants incorrectly claimed they were not obligated to do so because Plaintiff was not an employee of Defendants.

26. Defendants also failed to incorporate the non-discretionary commission wages they paid to Plaintiff into his regular rate of pay. For example, in the pay period ending on June 30, 2025, Plaintiff earned meal and rest period premium pay, overtime pay, and sick pay while working for Defendants—all of which must normally be paid out at Plaintiff's regular rate of pay under applicable law. When Defendants issued commission payments to Plaintiff attributable to that pay period, however, they failed to true-up or otherwise provide additional compensation to Plaintiff to account for the increase in his regular rate of pay resulting from his non-discretionary commission payments for that pay period. Defendants thus violated Plaintiff's rights with regard to overtime pay, meal and rest period premium pay, and sick pay.

27. These payments were also late, in violation of Labor Code section 204. Commission wages must generally be paid during the first pay period in which the earned commission can reasonably be calculated. Defendants, however, would wait until several weeks after the commissions had been fully "earned" within the meaning of Plaintiff's commission sales structure to pay them—far after the conclusion of the pay period in which they were due.

28. These experiences are provided by way of example and do not include the sum total of violations experienced by Plaintiff. Nor were these experiences unique to Plaintiff. Rather, these practices by Defendants were widespread and applied to many workers across the State of California. Further, each of these violations were experienced by Plaintiff during the PAGA Period.

B. WILLFUL MISCLASSIFICATION

29. Labor Code section 2775, subdivision (b), provides the test for determining whether an individual performing work for another is an independent contractor or an employee. It states as follows:

> "[A] person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:
>
> "**(A)** The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
>
> "**(B)** The person performs work that is outside the usual course of the hiring entity's business.
>
> "**(C)** The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed."

30. This standard is commonly referred to as the "ABC Test." Under the ABC Test, the alleged employer, rather than the worker, has the burden of establishing that the worker is an independent contractor and not intended to be included within the relevant wage orders' coverage. "The focus is not on the label attached to a worker's position, but on how that individual's job may reasonably be viewed." (*Gonzales v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1154–1155.) Further, the alleged employer must establish that the worker meets ***all three*** factors of the ABC Test or falls within an exception to the ABC Test. (*Id.* at p. 1154 ["The ABC test is conjunctive, and the hiring entity's failure to establish *any* of the following three factors precludes a finding that the worker is an independent contractor . . . ."].) Otherwise, Labor Code section 2775's default

presumption applies and the worker must be treated as an employee. (See *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903, 955 ["The ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies each of three conditions . . . ."].)

31. Here, at all times during the PAGA Period, Defendants treated the Aggrieved Employees as independent contractors despite the fact that Defendants failed to meet any of the prongs of the ABC Test, let alone all three. First, Defendants retained the right to control the manner and method of how the Aggrieved Employees performed their job duties, and Defendants retained all necessary control over the Aggrieved Employees during their employment. Among other things, the Aggrieved Employees were required to follow detailed requirements imposed by Defendants governing the performance of their job. Among other things, the Aggrieved Employees were required to follow detailed requirements imposed by Defendants governing the performance of their job, including detailed instructions governing enrolling new Subaru owners in Defendant Subaru's "Care Connect" software—a national program initiated, controlled, directed, and monitored by Defendant for the purpose of ensuring vehicle maintenance compliant with Defendant's warranty program for new customers. Further, Defendants set their compensation.

32. Second, the job duties performed by the Aggrieved Employees fell within Defendants' usual course of business. Specifically, the roles performed by the Aggrieved Employees are clearly comparable to those of Defendants' employees whose services are provided within the usual course of Defendants' business (i.e., selling Subaru vehicles to customers). Thus, the work of the Aggrieved Employees was not merely incidental to Defendants' business, but rather, was an integral and ordinary part of that business.

33. Finally, the Aggrieved Employees were not engaged in an independently established trade, occupation, or business of the same nature as the work performed for Defendants. The Aggrieved Employees did not, for example, take any of the usual steps to establish and promote their businesses. Nor did the Aggrieved Employees—through incorporation, licensure, advertisements, or routine offerings to provide services to the public or to a number of potential customers—independently choose the burdens and benefits of self-employment by engaging in an independently established trade,

occupation, or business. Critically, this last prong of the ABC Test requires that Defendants show the Aggrieved Employees "*actually . . . engaged* in an independent business, *not merely that [they] could be*." (*Gonzales v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1155, emphasis in original.) That simply did not happen here: the Aggrieved Employees did not *actually engage* in independent businesses. Rather, they worked at dealerships selling Subaru vehicles directly for the benefit of Defendants. "A company that labels as independent contractors a class of workers who are not engaged in an independently established business in order to enable the company to obtain the economic advantages that flow from avoiding the financial obligations that a wage order imposes on employers unquestionably violates the fundamental purposes of the wage order." (*Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903, 962.) Here, Defendants violated California law by attempting to do so.

34. Labor Code section 226.8 provides, in pertinent part, as follows:

> "**(a)** It is unlawful for any person or employer to engage in any of the following activities:
>
> "**(1)** Willful misclassification of an individual as an independent contractor.
>
> "**(2)** Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.
>
> "**(b)** If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars ($5,000) and not more than fifteen

thousand dollars ($15,000) for each violation, in addition to any other penalties or fines permitted by law.

> "**(c)** If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than twenty-five thousand dollars ($25,000) for each violation, in addition to any other penalties or fines permitted by law."

35. As explained above, Defendants' treatment of the Aggrieved Employees cannot meet any part of the ABC Test and Defendants knew it. Defendants thus intentionally and willfully misclassified the Aggrieved Employees as independent contractors in violation of Labor Code section 226.8, subdivision (a). Moreover, this treatment was not merely occasional, but reflected Defendants' pattern and practice of willfully misclassifying Defendants' employees as independent contractors. Defendants are thus liable, through PAGA, for the civil penalties of up to $25,000 for *each* violation as provided by Labor Code section 226.8, subdivisions (b) and (c). (Lab. Code, § 2699, subd. (a).)

C. OVERTIME VIOLATIONS

36. Labor Code section 510 requires employers to compensate employees who work more than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510, subd. (a).) These rules are also reflected in the Applicable Wage Orders.

37. In accordance with Labor Code section 1194 and the Applicable Wage Orders, the Aggrieved Employees could not then agree and cannot now agree to work for a lesser wage than the amount provided by Labor Code sections 510 or the Applicable Wage Orders.

38. Here, Defendants violated their duty to accurately and completely compensate the Aggrieved Employees for all overtime worked. The Aggrieved Employees periodically worked hours that entitled them to overtime compensation under the law but were not fully compensated for those hours.

39. Moreover, during the relevant statutory periods, Defendants had a policy and practice of failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when Defendants paid overtime wages to the Aggrieved Employees, Defendants failed to include all compensation when calculating the regular rate of pay used in overtime calculations and when paying overtime.

40. For instance, the Aggrieved Employees would often receive, along with their hourly rates of pay for their working hours, additional renumeration and/or non-discretionary bonus pay. Defendants, however, calculated the regular rate of pay for the Aggrieved Employees without factoring into the regular rate of pay all other non-hourly pay earnings received during the pay period. As a result, the Aggrieved Employees were underpaid overtime wages when they worked in excess of eight hours in any workday and/or forty hours in a workweek when such additional forms of renumeration were earned. By its practice of periodically requiring the Aggrieved Employees to work in excess of eight hours in a workday and/or forty hours in a workweek without compensating them at the rate of one and one-half (1½) their regular rate of pay, Defendants willfully violated the provisions of Labor Code sections 510, 1194, and 1199.

41. These actions were and are in clear violation of California's overtime laws as set forth in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8, §§ 11040, 11070, 11090.) As a result of Defendants' faulty policies and practices, the Aggrieved Employees were not compensated for all hours worked or paid accurate overtime compensation.

D. REST BREAK VIOLATIONS

42. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants were and are required to provide the Aggrieved Employees with compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. Under the Applicable Wage

Orders, an employer must authorize and permit all employees to take ten minute duty free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, §§ 11040, 11070, 11090.)

43. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission . . . .” (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must factor in all nondiscretionary payments for work performed by the employee, including non-discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.)

44. Here, the Aggrieved Employees were periodically not provided with legally-compliant and timely rest periods of at least ten minutes for each four hour work period, or major fraction thereof. When they were paid rest period premiums for those missed rest periods, however, those premiums failed to include all non-discretionary remuneration in their premium pay—thus paying rest period premiums at a rate lower than their regular rate of pay. As such, the Aggrieved Employees were not compensated with one hour’s worth of pay at their regular rate of compensation when they were not provided with a compliant rest period in accordance with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage Orders.

E. MEAL BREAK VIOLATIONS

45. Labor Code section 512 and the Applicable Wage Orders require employers to provide employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes . . . .”]; Cal. Code of Regs., tit. 8, §§ 11040, 11070, 11090 [“No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes . . . .”].) Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a)

["An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes . . . ."].)

46. Labor Code section 226.7 provides that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission." (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate employers to pay employees one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of Regs., tit. 8, §§ 11040, 11070, 11090 ["If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided."].) The "regular rate" for these purposes must factor in all nondiscretionary payments for work performed by the employee, including non-discretionary bonuses, commissions, and other forms of wage payments exceeding the employees' base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.)

47. During the applicable statutory periods here, the Aggrieved Employees were periodically denied legally-compliant and timely off-duty meal periods of at least thirty minutes. When they were paid meal period premiums for those missed meal periods, however, those premiums failed to include all non-discretionary remuneration in their premium pay—thus paying meal period premiums at a rate lower than their regular rate of pay. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage Orders.

F. UNTIMELY WAGES DURING EMPLOYMENT

48. Labor Code section 204 expressly requires employers who pay employees on a weekly, biweekly, or semimonthly basis to pay all wages "not more than seven calendar days following the close of the payroll period." Labor Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a penalty of:

> "(1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.

> "(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." (Lab. Code, § 210, subd. (a).)

49. Notably, the penalty provided by Labor Code section 210 is "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article . . . ." (Lab. Code, § 210, subd. (a).)

50. Due to Defendants' failure to pay the Aggrieved Employees the wages described above, along with rest and meal break premiums, Defendants failed to timely pay the Aggrieved Employees within seven calendar days following the close of payroll in accordance with Labor Code section 204 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under Labor Code sections 203 and 204].) Moreover, Defendants' payment of commission wages to the Aggrieved Employees was also late, in violation of Labor Code section 204. Commission wages must generally be paid during the first pay period in which the earned commission can reasonably be calculated. (DLSE Manual, § 5.2.5 ["Commission wages are due and payable when they are reasonably calculable."].) Defendant, however, would wait until several weeks after the commissions had been fully "earned" within the meaning of Plaintiff's commission sales structure to pay them—far after the conclusion of the first pay period in which they were reasonably calculable and thus far after the pay period in which they were due.

G. WAGE STATEMENT VIOLATIONS

51. Defendants also failed to provide accurate itemized wage statements in accordance with Labor Code sections 226, subdivisions (a). Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

(1) The gross wages earned;

(2) The 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) The net wages earned;

(6) The inclusive dates of the period for which the employee is paid;

(7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;

(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.

52. Due to Defendants' misclassification of the Aggrieved Employees and their failure to pay the Aggrieved Employees properly as described above, Defendants failed to issue any proper, code-compliant wage statements to the Aggrieved Employees. Thus, Defendants have violated Labor Code section 226, subdivisions (a).

53. Defendants also failed to include the accrued sick hours on the wage statements provided to the Aggrieved Employees as required by Labor Code section 246, subdivision (i).

54. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and intentionally failed to provide the Aggrieved Employees with accurate itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing the Aggrieved Employees with wage statements required by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement."].)

H. RECORDKEEPING VIOLATIONS

55. Labor Code section 226, subdivision (a), requires employers to keep an accurate record of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent part, as follows:

> "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law." (Lab. Code, § 226.3, emphasis added.)

56. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including Defendants, 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 in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned." (Lab. Code, § 1174, subd. (d), emphasis added.)

57. As explained in detail above, Defendants failed to provide the Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately track hours worked by the Aggrieved Employees. Defendants have thus failed to keep accurate records of the "total hours worked by the employee[s]" in violation of Labor Code section 226, subdivision (a),

and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are "in addition to any other penalty provided by law." (Lab. Code, § 226.3.)

58. The failure to accurately track hours worked also resulted in a failure of Defendants to keep a record of all "payroll records showing the hours worked daily by" Defendants' employees, including Plaintiff, in violation of Labor Code section 1174, subdivision (d).

I. SICK PAY VIOLATIONS

59. Labor Code section 246 provides that every employee who works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. (Lab. Code, § 246, subd. (a).) These paid sick days generally accrue at a rate of not less than one hour per every 30 hours worked, and must be paid out using the employees' regular rate of pay. (Lab. Code, § 246, subds. (b), (l).) The "regular rate of pay" for these purposes must factor in all nondiscretionary payments for work performed by the employee, including non-discretionary bonuses, commissions, and other forms of wage payments exceeding the employees' base hourly rate. (Lab. Code, § 246, subds. (l)(1), (2); see, e.g., *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.)

60. Here, Defendants employed the Aggrieved Employees for 30 or more days within a year from the commencement of employment. Defendants nevertheless failed to fully pay the Aggrieved Employees for all sick pay that was lawfully earned and accrued at their regular rate of pay.

61. By failing to fully pay accrued sick time, Defendants have underpaid the Aggrieved Employees and have violated California Labor Code provisions including, but not limited to, section 246.

V. EXHAUSTION OF REMEDIES

62. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior to proceeding with the PAGA claims stated in this complaint. On September 9, 2025, Plaintiff filed a PAGA notice online with the Labor Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

63. As required by PAGA, Plaintiff submitted the $75.00 filing fee with the LWDA by regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil action pursuant to Labor Code section 2699.

VI. CAUSES OF ACTION

First Cause of Action

Penalties Pursuant to PAGA for Willful Misclassification in Violation of Labor Code section 226.8 and Other Violations of the Labor Code

(Against All Defendants)

64. Plaintiff realleges and incorporates by reference all previous paragraphs.

65. Based on the above allegations incorporated by reference, Defendants violated Labor Code sections 204, 210, 226, 226.3, 226.7, 226.8, 246, 510, 512, 1174, 1185, 1198, 1198.5, 1199, 2775, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11040, 11070, 11090), and others that may be applicable.

66. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections 2698 through 2699.6 because of Defendants' violation of Labor Code sections 204, 210, 226, 226.3, 226.7, 226.8, 246, 510, 512, 1174, 1185, 1198, 1198.5, 1199, 2775, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11040, 11070, 11090), and others that may be applicable.

67. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation, Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial. These penalties must be allocated sixty-five percent to the Labor and Workforce Development Agency ("LWDA") and thirty-five percent to the affected employees. With limited exceptions provided by subdivision (i) of Labor Code section 2699, these penalties may be stacked separately for each of Defendants violations of the California Labor Code.

68. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny

employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law Plaintiff and the Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and seeks default PAGA penalties for each of Defendants' numerous violations of Labor Code section 226, subdivision (e).

69. Labor Code section 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of the faulty compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover penalties under Labor Code section 210 through PAGA.

70. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and liquidated damages, in the amount of: (1) one hundred dollars ($100) for any initial violation that is intentionally committed for each underpaid employee for each pay period for which the employee is underpaid, and (2) two hundred fifty dollars ($250) for each subsequent violation for the same specific offense for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

71. Plaintiff was compelled to retain the services of counsel to file this action to protect his interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is also entitled to recover under Labor Code section 2699, subdivision (k)(1).

VII. PRAYER FOR RELIEF

Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For willful misclassification, penalties as provided by Labor Code section 226.8, subdivisions (b) and (c), any other penalties applicable under Labor Code section 2699, and attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (k)(1);

2. For the failure to maintain accurate employment records, penalties pursuant to Labor Code sections 226.3, 1174.5, and others that may be applicable;

3. For the failure to pay all sick time wages due and owed, penalties applicable under Labor Code section 2699, and attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (k)(1);

4. For the claim of penalties pursuant to PAGA and other provisions of the California Labor Code, civil penalties in any amount to be proven at trial for each violation as specified in Labor Code section 2699, subdivision (f)(2), in the representative action brought on behalf of Plaintiffs and the Aggrieved Employees pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties available under Labor Code section 210;

5. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

6. On all causes of action for which attorneys' fees may be available, for attorneys' fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section 1021.5, and others as may be applicable;

7. For an order enjoining Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint; and

8. For such other and further relief, this Court may deem just and proper.

Dated: September 9, 2025

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