Lilit Tunyan (SBN 329351)
ltunyan@tunyanlaw.com
Artur Tunyan (SBN 349174)
atunyan@tunyanlaw.com
**TUNYAN LAW, APC**
1336 Rossmoyne Avenue
Glendale, California 91207
Telephone: (323) 410-5050

Attorneys for Plaintiff Yadira Gonzalez, as an individual and on behalf of all employees similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF RIVERSIDE**

YADIRA GONZALEZ, as an individual and on behalf of all employees similarly situated,

Plaintiff,

v.

RV RETAILER SAN DIEGO, LLC, a Limited Liability Company; RV RETAILER, LLC, a Limited Liability Company; BLUE COMPASS RV, LLC, a Limited Liability Company; and DOES 1 through 50, inclusive,

Defendants.

Case No. CVRI2301403

**SECOND AMENDED COMPLAINT**

1. Violation of the Private Attorneys General Act, Labor Code sections 2698, *et seq*

Plaintiff Yadira Gonzalez (hereinafter referred to as "Plaintiff") on behalf of herself and all others similarly situated, and as representative of the State of California and the Labor and Workforce Development Agency ("LWDA"), based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, complains and alleges as follows:

**INTRODUCTION**

1. Plaintiff brings this action against Defendants RV Retailer San Diego, LLC, RV Retailer, LLC, Blue Compass RV, LLC ( RV Retailer San Diego, LLC, RV Retailer, LLC, Blue Compass RV, LLC and Does 1 through 10 are collectively referred to as "Defendants") for civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. ("PAGA") stemming from Defendants' failure to pay all wages due in violation of Labor Code sections 204, 510 and 1194, including both regular and overtime wages; failure to provide meal periods or compensation in lieu thereof pursuant to Labor Code sections 226.7 and 512, the applicable Industrial Welfare Commission Wage Orders, and Code of Regulations, Title 8, section 11000 et seq.; failure to provide rest periods or compensation in lieu thereof pursuant to Labor Code sections 226.7 and 512, the applicable Industrial Welfare Commission Wage Orders, and Code of Regulations, Title 8, section 11000 et seq.; failure to provide accurate itemized wage statements upon payment of wages pursuant to Labor Code sections 226, subdivision (a), 1174, and 1175 and provide notice of available paid sick leave pursuant to Labor Code section 246, subdivision (i); failure to reimburse for necessary expenditures pursuant to Labor Code Section 2802; and failure to pay wages of terminated or resigned employees pursuant to Labor Code sections 201, 202, and 203; failure to provide notice of a potential COVID-19 workplace exposure pursuant to Labor Code section 6409.6.

2. For over 50 years, California's courts and legislature have recognized that this state's wage-and-hour laws serve a compelling public interest of fostering a stable job market. Wages are not ordinary debts. Because of the economic position of the average worker and his or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that employees are promptly paid the minimum/overtime wages that the Legislature has required

for employees. So fundamental are California's wage-and-hour laws that the Legislature has criminalized certain types of violations. In extending extra protection to deter violations of these underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or other damages other than civil penalties—California has enacted the PAGA to permit an individual to bring an action on behalf of himself and on behalf of others for PAGA penalties only, which is the precise and sole nature of this action.

3. All California non-exempt employees of Defendants during the relevant statutes of limitations who are or were harmed by Defendants' illegal practices are "Aggrieved Employees."

4. Plaintiff brings this action against Defendants seeking only to recover penalties for herself, on behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of California. Plaintiff does not seek to recover anything other than penalties as permitted by California Labor Code Section 2699 at this time. To the extent that statutory violations are mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages for those violations, but simply penalties as permitted by California Labor Code Section 2699, declaratory relief, and injunctive relief for herself and all aggrieved employees as permitted by the PAGA.

5. At all relevant times herein, Defendants have consistently maintained and enforced against Plaintiff and Aggrieved Employees the following unlawful practices and policies:

(a) willfully refusing to pay Plaintiff and Aggrieved Employees for all hours worked, including both regular and overtime;

(b) willfully refusing to permit Plaintiff and Aggrieved Employees from taking meal periods or compensation in lieu thereof;

(c) willfully refusing to permit Plaintiff and Aggrieved Employees from taking rest periods or compensation in lieu thereof;

(d) willfully refusing to furnish to Plaintiff and Aggrieved Employees accurate itemized wage statements upon payment of wages;

(e) willfully refusing to compensate Plaintiff and certain members of the Aggrieved Employees wages due and owing at the time of Plaintiff and Aggrieved Employees Members' employment with Defendants ended;

(f) willfully refusing to reimburse Plaintiff and Aggrieved Employees for necessary expenditures; and

(g) failing to provide notice of a potential COVID-19 workplace exposure pursuant to Labor Code section 6409.6

6. On information and belief, Defendants were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendant's violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

## JURISDICTION AND VENUE

8. Venue is proper in this judicial district and in the County of Riverside, California because Defendants maintained its location and/or transacted business in this county, the obligations and liability arise in this county, and work was performed by members of the proposed Aggrieved Employees made the subject of this action in this county.

9. The wages, statutory penalties, monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction over this action pursuant to the California Constitution, article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

10. The California Superior Court has jurisdiction in the matter because the individual

claims are under the seventy-five thousand dollars ($75,000.00) jurisdictional threshold for Federal Court and the five million dollars ($5,000,000.00) aggregate jurisdictional threshold for Federal Court and, upon information and belief, Plaintiff and Defendants are residents of, domiciled in, or otherwise subject to jurisdiction in the State of California. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law including the Labor Code, Industrial Welfare Commission ("IWC") Wage Orders, the Code of Civil Procedure, the Rules of Court, and the Business and Professions Code.

**THE PARTIES**

**A. Plaintiff**

11. Plaintiff, at all relevant times herein, was Defendants' employee and was entitled to compensation for all hours worked, including regular time and overtime compensation, and penalties from Defendants. Plaintiff was employed by Defendants as a non-exempt, hourly paid employee during the statutory period . Specifically, Plaintiff worked as a detailer for Defendants from approximately October 2017 to October 28, 2022 at Defendants' facility located at 77840 Varner Road, Palm Desert, CA 92211. Each of the Aggrieved Employees are identifiable, current and/or former similarly situated persons who were employed in non-exempt hourly positions in California by Defendants during the statutory period.

**B. Defendants**

12. Plaintiff is informed and believes, and based thereon alleges, that Defendants are limited liability companies. Defendants are companies providing RV dealership services in three locations in California. On information and belief, Defendants were and/or are the employer of Plaintiff and Aggrieved Employees during the Aggrieved Employees Period. Plaintiff also alleges that Defendants are conducting business in good standing in California.

13. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that these Defendants are legally responsible for the payment of overtime compensation, rest and meal period compensation, and wages to Plaintiff and Aggrieved Employees by virtue of their unlawful practices, and therefore sues these

Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of each DOE Defendants when ascertained.

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

15. Plaintiff is informed and believes, and based thereon alleges, that each Defendants acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the Defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with permission and consent of the Defendants. Plaintiff also alleges the acts of each Defendants are legally attributable to the other Defendants.

16. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein was, at all times relevant hereto, the employer, owner, shareholder, principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer and/or alter-ego of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent, and knowledge, approval and/or ratification of the other Defendants.

17. The above Defendants, managing agents, and supervisors aided, abetted, condoned, permitted, approved, authorized and/or ratified the unlawful acts described herein.

## ADMINISTRATIVE PREREQUISITE

18. On March 15, 2023, prior to filing this complaint, Plaintiff gave written notice by electronically filing the notice with the Labor Workforce Development Agency ("LWDA") (LWDA Case No. LWDA- 942263-23), and by certified mail to Defendants of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3. On September 8, 2023, Plaintiff gave

amended written notice by electronically filing the notice with the Labor Workforce Development Agency ("LWDA") (LWDA Case No. LWDA- 942263-23), and by certified mail to Defendants of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3.

19. A true and correct copy of Plaintiff's letters sent to the LWDA and Defendants dated March 15, 2023 and September 8, 2023, are attached hereto as "**Exhibit A**". As of the filing of this complaint, LWDA has not responded to the written notice.

20. Under Labor Code section 2699.3 subsection (a), a plaintiff may bring a cause of action under PAGA only after giving notice to the Labor Workforce Development Agency ("LWDA") and the employer of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice.

21. More than sixty-five (65) days have passed without notice from the LWDA. Accordingly, all administrative prerequisites to filing this action have been fulfilled.

## GENERAL ALLEGATIONS

22. Plaintiff began her employment with Defendants on October 2017 to October 28, 2022. Plaintiff was employed by Defendants as a detailer, where her job duties include, but are not limited to general RV detailing activities, vacuuming, shampooing, and deodorizing cleaning and polishing windows, washing interiors, applying cleaning products.

23. Labor Code section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of his or her overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

24. Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was

performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Labor Code Section 204(a). The requirements of the Labor Code Section 204 (d) shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Here, Defendants have not designated regular pay dates and often times issued wages after the 26th day of the month for the labor performed between the 1st and 15th days and after the10$^{th}$ day of the following month for the labor performed between the 16th and the last day of the month as well as more than seven calendar days following the close of the payroll period. Additionally, throughout the statute of limitations period applicable to this cause of action, Plaintiff and Aggrieved Employees were entitled to be paid twice a month at rates required by law, including minimum wages. However, during all such times, Defendants systematically failed and refused to pay Plaintiff and Aggrieved Employees all such wages due and failed to pay all wages due twice a month.

25. During all, or a portion of the statutory period , Plaintiff and each member of the Aggrieved Employees was employed by Defendants in the State of California.

26. Plaintiff and Aggrieved Employees were non-exempt employees covered under one or more IWC Wage Order(s), and Labor Code section 510, and/or other applicable Wage Orders, regulations and statutes, and each Aggrieved Employee was not subject to an exemption for executive, administrative or professional employees, which imposed obligations on the part of Defendants to pay Plaintiff and Aggrieved Employees lawful overtime compensation.

27. Plaintiff and Aggrieved Employees were covered by one or more IWC Wage Order(s), and Labor Code section 226.7 and other applicable Wage Orders, regulations and statutes which imposed an obligation on the part of Defendants to pay Plaintiff and Aggrieved Employees rest and meal period compensation.

28. During the statutory period, Defendants were obligated to pay Plaintiff and Aggrieved Employees for all hours worked. Throughout the statutory period, Defendants maintained a policy and practice of requiring Plaintiff and Aggrieved Employees to perform work “off-the-clock”. Defendants required Plaintiff and Aggrieved Employees to work through

their meal periods requiring them to keep their cell phones turned on during meal periods and to receive and respond to work related calls and text messages. Defendants also required Plaintiff and Aggrieved Employees to interrupt their meal periods and return to work as soon as they receive a call or a text message from their supervisors. Plaintiff and Aggrieved Employees were also required to use their personal cellular telephones for work purposes at home after their scheduled work time to communicate with Defendants regarding their work schedule changes and work assignments. Sometimes Plaintiff and Aggrieved Employees did not receive sufficient compensation to meet the minimum wage requirements, and the overtime requirements, leading to underpayment of wages to Plaintiff and Aggrieved Employees. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and Aggrieved Employees worked.

29. During the statutory period, Defendants were obligated to pay Plaintiff and Aggrieved Employees Members overtime compensation for all hours worked in excess of eight (8) hours of work in one (1) day or forty (40) hours in one (1) week and double-time compensation for hours worked in excess of twelve (12) in one (1) day. However, often times Plaintiff and Aggrieved Employees Members were required to work overtime in excess of eight (8) hours per workday and in excess of forty (40) hours per workweek but were not paid at the proper overtime rate of pay.

30. During the statutory period, Defendants were obligated to provide Plaintiff and Aggrieved Employees with a work-free meal period within the first five (5) hours of a shift when the workday was longer than six (6) hours. Plaintiff and Aggrieved Employees were entitled to a full, thirty (30) minute, off-duty meal period when they worked in excess of six (6) hours within the first five (5) hours of their shifts. However, Plaintiff and Aggrieved Employees were routinely not provided with timely, 30-minute off-duty meal periods, and were not permitted and authorized to take uninterrupted rest periods. Moreover, Defendants did not have adequate written policies or practices providing meal periods for Plaintiff and Aggrieved Employees. Plaintiff and Aggrieved Employees would often times miss their meal periods, have interrupted,

late or short meal periods. Defendants required Plaintiff and Aggrieved Employees to work through their meal periods requiring them to keep their cell phones turned on during meal periods and to receive and respond to work related calls and text messages. Defendants also required Plaintiff and Aggrieved Employees to interrupt their meal periods and return to work as soon as they receive a call or a text message from their supervisors.  Additionally, meal periods were cut short by the time taken from Plaintiff and Aggrieved Employees to walk to the meal break area and back to their workstation. Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and Aggrieved Employees in compliance with California law.

31. Additionally, Defendants were obligated to provide Plaintiff and Aggrieved Employees Members with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each day. Defendants prevented Plaintiff and Aggrieved Employees Members from taking rest breaks throughout their shifts. Plaintiff and Aggrieved Employees Members were generally precluded from taking rest periods due to Defendants' failure to maintain the rest break policy to provide relief and thereby allow Plaintiff and Aggrieved Employees Members the opportunity to take rest breaks. Moreover, Defendants did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing of rest periods. Plaintiff and Aggrieved Employees would mostly miss their first and second rest periods or have interrupted or short rest periods. Defendants also required Plaintiff and Aggrieved Employees to work through their rest periods requiring them to keep their cell phones turned on during rest periods and to receive and respond to work related calls and text messages. Defendants required Plaintiff and Aggrieved Employees to interrupt their rest periods and return to work as soon as they receive a call or a text message from their supervisors. Accordingly, Defendants' policy and practice was for Plaintiff and Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods. Further, Defendants did not maintain accurate records of employee work periods, and therefore Defendants cannot demonstrate that Plaintiff and Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and

practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

32. Further, due to the pressure from Defendants and failure to maintain an adequate policy, and in violation of Labor Code and applicable IWC Wage Orders, Plaintiff was not authorized and permitted to take a second rest period, on shifts exceeding six hours of work, and/or third rest breaks, on shifts exceeding ten hours of work. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1030 (2012). "Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on."

33. Furthermore, Defendants failed and/or refused to pay Plaintiff and Aggrieved Employees Members one (1) hour's pay at the employees' regular rate of pay as premium compensation for Defendants' failure to provide lawful thirty (30) minute, off-duty meal periods and failure to provide lawful ten (10) minute rest periods within the statutory time frames.

34. Defendants also failed to indemnify Plaintiff and Aggrieved Employees Members all necessary expenditures incurred in direct discharge of their duties. During the course of employment, Plaintiff and Aggrieved Employees Members were required to incur various business expenses at their own cost, including, but not limited to purchasing and maintaining the uniforms. Further, Plaintiff and Aggrieved Employees were required to use their cellular telephones for work purposes to download and use a timekeeping application for recording their time worked for Defendants and receive work related text messages and calls regarding their schedule changes or work assignments. Defendants failed to provide any reimbursement to Plaintiff and Aggrieved Employees Members for the cost of the uniforms and cell phone usage.

35. Defendants continue to employ non-exempt, hourly-paid employees within California.

36. Plaintiff and Aggrieved Employees Members primarily performed non-exempt work, often in excess of the maximum regular rate hours set forth in the applicable IWC Wage Order(s), regulations or statutes, and therefore entitled the Plaintiff and Aggrieved Employees to overtime compensation at the rate of one and a half times their regular rate of pay and, when

applicable, double time compensation as set forth by the applicable IWC Wage Order(s), regulations and/or statutes.

37. During the statutory period, Defendants required Plaintiff and Aggrieved Employees to work regular hours, off the clock hours, and overtime hours without lawful compensation in violation of the applicable IWC Wage Order(s), regulations and statutes, and Defendants: (1) willfully failed and refused, and continue to fail and refuse to pay compensation for all hours worked, including lawful regular time and overtime compensation, to Aggrieved Employees; and (2) willfully failed and refused, and continue to fail and refuse to pay due and owing wages promptly upon termination of employment to Plaintiff and affected Aggrieved Employees.

38. Aggrieved Employees Members who ended their employment with Defendants during the statutory period but were not paid the above due compensation for all hours worked timely upon the termination of their employment as required by Labor Code sections 201, 202, and 203 are entitled to penalties as provided by Labor Code section 203.

39. During the statutory period, Defendants failed to furnish Plaintiff and 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 earned for hours worked, correct overtime hours worked, correct wages for meal periods that were not provided in accordance with California law, correct wages for rest periods that were not authorized and permitted to take in accordance with California law). Additionally, during the statutory period, Defendants failed to provide the employer entity correct address and names on the wage statements and included the paid time off (PTO) in the number of hours worked. During the statutory period, Defendants also maintained a policy and practice of failing to provide written notice of accrued paid sick leave in violation of Labor Code section 246 (i). As a result of these violations of California Labor Code § 226(a), Plaintiff and Aggrieved Employees suffered injury because, among other things:

(a) the violations led them to believe that they were not entitled to be paid minimum wages, overtime wages, meal period premium wages, and rest period premium wages to which they were entitled, even though they were entitled;

(b) the violations led them to believe that they had been paid the minimum, overtime, meal period premium, and rest period premium wages, even though they had not been;

(c) the violations led them to believe they were not entitled to be paid overtime, meal period premium, and rest period premium wages at the correct California rate even though they were;

(d) the violations led them to believe they had been paid overtime, meal period premium, and rest period premium wages at the correct California rate even though they had not been;

(e) the violations hindered them from determining the amounts of overtime, meal period premium, and rest period premium owed to them;

(f) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;

(g) by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;

(h) the wage statements inaccurately understated the wages, hours, and wages rates to which Plaintiff and Aggrieved Employees were entitled, and

Plaintiff and Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

Thus, Plaintiff and Aggrieved Employees are owed the amounts provided for in California Labor Code § 226(e), including actual damages.

40. Defendants knew or should have known that Plaintiff and Aggrieved Employees members were entitled to receive accurate wage statements, which would include meal break premiums, and/or rest break premiums, as required by Labor Code 226.

41. Defendants knew or should have known that Plaintiff and Aggrieved Employees Members were entitled to timely payment of all wages earned upon termination. Plaintiff and Aggrieved Employees Members did not receive payment of all wages, including but not limited to, meal and rest break premiums, in violation of the Labor Code.

42. Labor Code section 6409.6 provides that if an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer shall take all of the actions provided in Labor Code section 6409.6 within one business day of the notice of potential exposure.

43. During the statutory period, based on information and belief, Defendants were notified of employees who were infected with COVID-2019 and other employees were exposed to COVID-2019. Defendants failed to provide any notice to Plaintiff and Aggrieved Employees about exposure to COVID-2019 and failed to take necessary measures to prevent exposure of Aggrieved Employees to COVID-2019.

**FIRST CAUSE OF ACTION**

**(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq.)**

44. Plaintiff re-alleges and incorporates by reference all preceding paragraphs herein, as if fully alleged herein.

45. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney General Act of 2004 (“PAGA.”) (Labor Code sections 2698 et seq.)

46. PAGA permits an “aggrieved employee” to recover penalties on behalf of himself/herself and other employees subject to violations of the Labor Code, including violations of sections 201-204, 226, 226.7, 246, 510, 512, 1174, 1194, 2802 and 6409.6, as well as the applicable Wage Order.

47. Plaintiff is informed and believes Defendants at all relevant times employed one or more employees.

48. For those code sections that provide for the recovery of civil penalties, Plaintiff will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor Code that do not specifically provide for civil penalties, Plaintiff will seek civil penalties of one hundred dollars ($100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code section 2699, subdivision (f).

49. Section 2699, subdivision (a) provides that civil penalties may be “recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.” (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g), provides that an employee who prevails in a civil action under section 2699 shall be entitled to an award of reasonable attorneys’ fees and costs.

50. The State of California, Plaintiff and aggrieved employees are, therefore, entitled to civil penalties, attorneys’ fees and costs, according to proof.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and the Aggrieved Employees pray for judgment as follows:

1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including, but not limited to, those civil penalties provided by statute, provided by PAGA;

2. For costs of suit and expenses incurred herein pursuant to Labor Code sections 2699, subdivision (g) and any other statutory basis or pursuant to the California Rules of Court

3. For reasonable attorneys' fees pursuant to Labor Code sections 2699, subdivision (g), 2802, Code of Civil Procedure section 1021.5, and any other statutory basis, and;

4. For all such other and further relief as the Court may deem just and proper.

Dated: October 11, 2023

**TUNYAN LAW, APC**

Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff Yadira Gonzalez, individually and on behalf of all others similarly situated

# Exhibit “A”

TUNYAN LAW

Lilit Tunyan, Esq.

1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

March 15, 2023

**VIA ONLINE SUBMISSION**
Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAfilings@dir.ca.gov

**VIA CERTIFIED MAIL**
**Return Receipt Requested**
Agent for Service of Process for
RV Retailer San Diego, LLC
CT Corporation System
330 N Brand Blvd.
Glendale, CA 91203

**VIA CERTIFIED MAIL**
**Return Receipt Requested**
RV Retailer San Diego, LLC
100 SE 3rd Ave, Suite 1850
Fort Lauderdale, FL 33394

**VIA CERTIFIED MAIL**
**Return Receipt Requested**
Agent for Service of Process for
RV Retailer, LLC
Blue Compass RV, LLC
CT Corporation System
1200 South Pine Island Road
Plantation, FL 33324

**VIA CERTIFIED MAIL**
**Return Receipt Requested**
RV Retailer San Diego, LLC
RV Retailer, LLC
Blue Compass RV, LLC
301 East Las Olas Blvd, Suite 700
Fort Lauderdale, FL 33301

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Yadira Gonzalez v. RV Retailer San Diego, LLC, et al.*

To Whom It May Concern:

Please be advised that my office has been retained by Yadira Gonzalez ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employers RV Retailer San Diego, LLC, RV Retailer, LLC, Blue Compass RV, LLC ("Defendants"). 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 Defendants engaged in with respect to Plaintiff and all of Defendants' aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendants in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendants suffered the Labor Code violations described below.

**Factual Background Regarding Plaintiff's Employment with Defendants**

Defendants own and operate an industry, business, and establishment within the State of California, including Riverside County. As such, Defendants are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendants as a detailer from approximately October 2017 to October 28, 2022, primarily in Riverside County. Defendants classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendants, Plaintiff typically worked 5 days per week, and between 8 to 10 hours each workday.

Throughout Plaintiff's employment, Defendants committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

**Failure to Pay for All Hours Worked, Including Overtime**

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 (8) 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 Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). Throughout the statutory period, Defendants also maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-the-clock". Defendants required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to keep their cell phones turned out during meal periods and to receive and respond to work related calls and text messages. Defendants also required Plaintiff and the Aggrieved Employees to interrupt their meal periods and return to work as soon as they receive a call or a text message from their supervisors. Plaintiff and the Aggrieved Employees were also required to use their personal cellular telephones for work purposes at home after their scheduled work time to communicate with Defendants regarding their work schedule changes and work assignments. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendants also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

**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, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees would often times miss their meal periods, have interrupted, late or short meal periods. Defendants required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to keep their cell phones turned out during meal periods and to receive and respond to work related calls and text messages. Defendants also required Plaintiff and the Aggrieved Employees to interrupt their meal periods and return to work as soon as they receive a call or a text message from their supervisors. Additionally, meal periods were cut short by the time taken from Plaintiff and the Aggrieved Employees to walk to the meal break area and back to their workstation. Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff 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). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 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 periods of 10 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 6 hours and ten minutes, the employee is entitled to two rest periods. Each failure to authorize rest periods as so required is itself a violation of California's rest period laws.

Defendants, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing of rest periods. Plaintiff and the Aggrieved Employees would mostly miss their first and second rest periods or have interrupted or short rest periods. Defendants also required Plaintiff and the Aggrieved Employees to work through their rest periods requiring them to keep their cell phones turned out during rest periods and to receive and respond to work related calls and text messages. Defendants required Plaintiff and the Aggrieved Employees to interrupt their rest periods and return to work as soon as they receive a call or a text message from their supervisors. Accordingly, Defendants' policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff 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). Defendants, however, regularly failed to pay Plaintiff 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, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

**Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by 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.

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

Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff 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 Defendants' records. Therefore, Plaintiff 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 Defendants. As a direct result, Plaintiff 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 Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff 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.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

**<u>Failure to Reimburse and Indemnify Expenses</u>**

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement, which included the purchase and maintenance of the uniforms.  Further, Plaintiff and the Aggrieved Employees were required to use their cellular telephones for work purposes to download and use a timekeeping application for recording their time worked for Defendants and receive work related text messages and calls regarding their schedule changes or work assignments.  Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

**<u>Failure to Timely Pay All Wages at Termination</u>**

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.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be.  However, during the relevant time period, Defendants failed, and continues to fail to pay Plaintiff 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 Defendants' employ.  These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

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

Moreover, Defendants are liable to Plaintiff 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 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).

Defendants intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, the failure to list the true net wages earned, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Additionally, Defendants failed to provide the employer entity correct address and names on the wage statement and included the paid time off (PTO) in the number of hours worked.

As a result of Defendants violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding $4,000 dollars per employee.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

**Failure to Pay All Earned Wages Twice Per Month**

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

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Here, Defendants have not designated regular pay dates and often times issued wages after the 26th day of the month for the labor performed between the 1st and 15th days and after the10th day of the following month for the labor performed between the 16th and the last day of the month as well as more than seven calendar days following the close of the payroll period.

Throughout the statute of limitations period applicable to this cause of action, employees were also 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 hours worked. However, during all such times, Defendants systematically 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 Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are liable to Plaintiff 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 Provide Written Notice of Available Paid Sick Leave**

Labor Code § 246 (i) requires employers to provide an employee with written notice that sets forth the amount of paid sick leave available.

During the statutory period, Defendants maintained a policy and practice of failing to provide written notice of accrued paid sick leave. On information and belief, Defendants' failure to provide an employee with written notice that sets forth the amount of paid sick leave available was not a single, isolated incident, but was instead part of Defendants' policy and practice that applied to the Aggrieved Employees.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to provide any information on accrued sick leave.

**Action for Civil Penalties Under PAGA**

In light of the above, Plaintiff alleges that Defendants 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, 512 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 § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 204 by failing to pay all earned wages two times per month.
10. Labor Code § 246 (i) by failing to provide an employee with written notice that sets forth the amount of paid sick leave available.

Therefore, on behalf of all Aggrieved Employees, Plaintiff 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, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendants on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendants, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

**Lilit Tunyan, Esq.**
**Partner**
**TUNYAN LAW, APC**

TUNYAN LAW

Lilit Tunyan, Esq.
1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

September 8, 2023

**VIA ONLINE SUBMISSION**
Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAfilings@dir.ca.gov

**VIA MAIL AND EMAIL**
Boris Sorsher
bsorsher@fisherphillips.com
Zator, Harrison
hzator@fisherphillips.com
**FISHER AND PHILLIPS LLP**
2050 Main St Ste 1000 Irvine, CA 92614-8240
Phone: 949-798-2101
Attorneys for Defendants RV Retailer San Diego, LLC, RV Retailer LLC, Blue Compass RV, LLC

**VIA MAIL**
RV Retailer San Diego, LLC
100 SE 3rd Ave, Suite 1850
Fort Lauderdale, FL 33394

**VIA MAIL**
RV Retailer San Diego, LLC
RV Retailer, LLC
Blue Compass RV, LLC
301 East Las Olas Blvd, Suite 700
Fort Lauderdale, FL 33301

**AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Yadira Gonzalez v. RV Retailer San Diego, LLC, et al.*

To Whom It May Concern:

Please be advised that my office has been retained by Yadira Gonzalez ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employers RV Retailer San Diego, LLC, RV Retailer, LLC, Blue Compass RV, LLC ("Defendants"). The purpose of this amended letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants' aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendants in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendants suffered the Labor Code violations described below.

**<u>Factual Background Regarding Plaintiff's Employment with Defendants</u>**

Defendants own and operate an industry, business, and establishment within the State of California, including Riverside County. As such, Defendants are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendants as a detailer from approximately October 2017 to October 28, 2022, primarily in Riverside County. Defendants classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendants, Plaintiff typically worked 5 days per week, and between 8 to 10 hours each workday.

Throughout Plaintiff's employment, Defendants committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

**<u>Failure to Pay for All Hours Worked, Including Overtime</u>**

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 (8) 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 Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). Throughout the statutory period, Defendants also maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-the-clock". Defendants required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to keep their cell phones turned out during meal periods and to receive and respond to work related calls and text messages. Defendants also required Plaintiff and the Aggrieved Employees to interrupt their meal periods and return to work as soon as they receive a call or a text message from their supervisors. Plaintiff and the Aggrieved Employees were also required to use their personal cellular telephones for work purposes at home after their scheduled work time to communicate with Defendants regarding their work schedule changes and work assignments. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendants also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

**<u>Failure to Provide Meal Periods</u>**

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, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees would often times miss their meal periods, have interrupted, late or short meal periods. Defendants required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to keep their cell phones turned out during meal periods and to receive and respond to work related calls and text messages. Defendants also required Plaintiff and the Aggrieved Employees to interrupt their meal periods and return to work as soon as they receive a call or a text message from their supervisors. Additionally, meal periods were cut short by the time taken from Plaintiff and the Aggrieved Employees to walk to the meal break area and back to their workstation. Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff 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). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 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 periods of 10 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 6 hours and ten minutes, the employee is entitled to two rest periods. Each failure to authorize rest periods as so required is itself a violation of California's rest period laws.

Defendants, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing of rest periods. Plaintiff and the Aggrieved Employees would mostly miss their first and second rest periods or have interrupted or short rest periods. Defendants also required Plaintiff and the Aggrieved Employees to work through their rest periods requiring them to keep their cell phones turned out during rest periods and to receive and respond to work related calls and text messages. Defendants required Plaintiff and the

Aggrieved Employees to interrupt their rest periods and return to work as soon as they receive a call or a text message from their supervisors. Accordingly, Defendants' policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff 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). Defendants, however, regularly failed to pay Plaintiff 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, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

**Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by 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.

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

Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff 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 Defendants' records. Therefore, Plaintiff 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 Defendants. As a direct result, Plaintiff 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 Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff 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.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

**Failure to Reimburse and Indemnify Expenses**

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement, which included the purchase and maintenance of the uniforms. Further, Plaintiff and the Aggrieved Employees were required to use their cellular telephones for work purposes to download and use a timekeeping application for recording their time worked for Defendants and receive work related text messages and calls regarding their schedule changes or work assignments. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

**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.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continues to fail to pay Plaintiff 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 Defendants' employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

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

Moreover, Defendants are liable to Plaintiff 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 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).

Defendants intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, the failure to list the true net wages earned, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Additionally, Defendants failed to provide the employer entity correct address and names on the wage statement and included the paid time off (PTO) in the number of hours worked.

As a result of Defendants violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding $4,000 dollars per employee.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

**Failure to Pay All Earned Wages Twice Per Month**

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

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Here, Defendants have not designated regular pay dates and often times issued wages after the 26th day of the month for the labor performed between the 1st and 15th days and after the10th day of the following month for the labor performed between the 16th and the last day of the month as well as more than seven calendar days following the close of the payroll period.

Throughout the statute of limitations period applicable to this cause of action, employees were also 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 hours worked. However, during all such times, Defendants systematically 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 Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are liable to Plaintiff 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 Provide Written Notice of Available Paid Sick Leave**

Labor Code § 246 (i) requires employers to provide an employee with written notice that sets forth the amount of paid sick leave available.

During the statutory period, Defendants maintained a policy and practice of failing to provide written notice of accrued paid sick leave. On information and belief, Defendants' failure to provide an employee with written notice that sets forth the amount of paid sick leave available was not a single, isolated incident, but was instead part of Defendants' policy and practice that applied to the Aggrieved Employees.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to provide any information on accrued sick leave.

**Failure to Provide Notice of a Potential COVID-19 Workplace Exposure**

Labor Code § 6409.6 provides that if an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer shall take all of the following actions within one business day of the notice of potential exposure:

(1) Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19 in a manner the employer normally uses to communicate employment-related information.

(2) Provide a written notice to the exclusive representative, if any, of employees under paragraph (1).

(3) Provide all employees who may have been exposed and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws.

(4) Notify all employees, and the employers of subcontracted employees and the exclusive representative, if any, on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.

Despite the fact that, based on information and belief, Defendants were notified of employees who were infected with COVID-2019 and other employees were exposed to COVID-2019, Defendants failed to provide any notice to Plaintiff and Aggrieved Employees about exposure to COVID-2019 and failed to take necessary measures to prevent exposure of Aggrieved Employees to COVID-2019.

**Action for Civil Penalties Under PAGA**

In light of the above, Plaintiff alleges that Defendants 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, 512 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 § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;

5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;

7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;

8. Labor Code § 226 by failing to provide accurate itemized wage statements.

9. Labor Code § 204 by failing to pay all earned wages two times per month.

10. Labor Code § 246 (i) by failing to provide an employee with written notice that sets forth the amount of paid sick leave available; and
11. Labor Code § 6409.6 for failure to provide notice of a potential COVID-19 workplace exposure

Therefore, on behalf of all Aggrieved Employees, Plaintiff 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, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendants on notice by mailing a certified copy of this correspondence to its corporate address and counsel for Defendants, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendants, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

**Lilit Tunyan, Esq.**
**Partner**
**TUNYAN LAW, APC**

| | |
|---|---|
| **From:** | noreply@salesforce.com on behalf of LWDA DO NOT REPLY |
| **To:** | ltunyan@tunyanlaw.com |
| **Subject:** | Thank you for submission of your PAGA Case. |
| **Date:** | Wednesday, March 15, 2023 5:05:47 PM |

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3/15/2023

LWDA Case No. LWDA-CM-942263-23
Law Firm : Tunyan Law, APC
Plaintiff Name : Yadira Gonzalez
Employer: RV Retailer San Diego, LLC
Filing Fee : $75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

| | |
|---|---|
| **From:** | DIR PAGA Unit |
| **To:** | ltunyan@tunyanlaw.com |
| **Subject:** | Thank you for your Amended PAGA Claim Notice Submission. |
| **Date:** | Friday, September 8, 2023 10:09:56 AM |

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09/08/2023 10:09:37 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

**PROOF OF SERVICE**

STATE OF CALIFORNIA )
) ss
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 1336 Rossmoyne Avenue Glendale, California 91207. On October 11, 2023, I served the foregoing document described as:

On the date indicated below, I served the document described as: **SECOND AMENDED COMPLAINT** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Boris Sorsher
bsorsher@fisherphillips.com
Harrison M. Zator
hzator@fisherphillips.com
Dorothy Wang
dwang@fisherphillips.com
Brianna Huschke
bhuschke@fisherphillips.com
**FISHER & PHILLIPS LLP**
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

Attorneys for Defendants RV RETAILER SAN DIEGO, LLC, RV RETAILER, LLC and BLUE COMPASS RV, LLC

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

[✓] **BY ELECTRONIC SERVICE:** Based on a court order, Rule of Court, or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 11, 2023 at Glendale, California.

Lilit Tunyan
Name

Signature