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7 Attorneys for Plaintiff DAVIDE GILIBERTI

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

11 DAVIDE GILIBERTI, on behalf of the State
of California, and others similarly situated and
12 aggrieved,

13 Plaintiff,

14 v.

15 SOUTH BAY MOTORS, LLC, a California
16 Limited Liability Company; SULLIVAN
AUTOMOTIVE GROUP, LLC, a Delaware
17 Limited Liability Company; LACARGUY
WHOLESALE DIVISION, INC., a
18 California Corporation; and DOES 1-100,
19 inclusive,

20 Defendants.

Case No.: 23STCV15499

Assigned for all purposes to
Hon. Armen Tamzarian
Dept. 52

**DECLARATION OF SEPIDEH ARDESTANI
IN SUPPORT OF MOTION FOR APPROVAL
OF SETTLEMENT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT**

Date: May 15, 2025
Time: 9:00:00 AM
Dept.: 52

Reservation ID: 010012821465

Complaint filed: July 3, 2023
Trial date: None set

1 I, Sepideh Ardestani, declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of California,
3 and I am associated with Crosner Legal, PC, counsel of record for Plaintiff Davide Giliberti in this
4 action. I submit this declaration in support of Plaintiffs' Motion for Approval of Settlement under
5 the Private Attorneys General Act. I have personal knowledge of all facts stated herein, and if called
6 as a witness, I could and would competently testify thereto.

7 2. I am unaware of any other pending lawsuits that overlap with this matter in any way,
8 including the claims alleged or the time period and aggrieved employees covered.

9 3. Attached hereto as Exhibit 1 is a fully-executed, true and correct copy of the Parties'
10 PAGA Settlement Agreement ("Settlement Agreement"). Attached hereto as Exhibit 2 is a redline of
11 the Settlement Agreement reflecting changes made from the LASC model agreement. Attached as
12 Exhibit 3 is a true and correct copy of Plaintiff Giliberti's PAGA notice letter and proof of submission
13 to the Labor & Workforce Development Agency ("LWDA"). Attached hereto as Exhibit 4 is proof
14 of submission of the Giliberti complaint to the LWDA. Attached hereto as Exhibit 5 is proof of
15 submission of the settlement to the LWDA.

16 **BACKGROUND**

17 4. Defendants all are part of Sullivan Automotive Group, LLC, dba South Bay Motors,
18 LLC, which owns and operates around twelve "LAcarGuy" dealerships in Southern California, which
19 operate as discrete business entities. This matter concerns only four of these dealerships, including
20 Genesis Santa Monica and South Bay, which includes Porsche South Bay, Pacific VW, and Audi
21 Pacific, as the named defendants. Plaintiff Giliberti worked as a non-exempt full-time Sales
22 Consultant at South Bay Motors, LLC, dba Porsche South Bay, from approximately October 2021
23 through July 2022. Mr. Leduc worked as a non-exempt Sales Representative from approximately June
24 2021 to December 2022. I am aware there are at least 3 other pending PAGA matters involving other
25 dealerships that are part of the Sullivan Group and the "LAcarGuy" trade name.

26 5. After appropriate notice to the Labor & Workforce Development Agency ("LWDA"),
27 on July 3, 2023, Plaintiff Giliberti filed a PAGA representative action in the Los Angeles Superior Court,
28 on behalf of the State of California and all other aggrieved employees. The Giliberti PAGA complaint

1 alleges unpaid minimum and overtime wages, meal and rest break violations, inaccurate wage statements,
2 waiting time, and unreimbursed expenses, as well as other violations. On September 26, 2023, Plaintiff
3 Leduc filed a class action complaint in Los Angeles Superior Court, alleging claims on behalf of “[a]ll
4 persons who worked for any Defendant in California as a salesperson or sales representative and paid a
5 commission at any time during the period beginning four years before the filing of the initial complaint in
6 this action and ending when notice to the Class is sent.” On October 30, 2023, Plaintiff Leduc submitted
7 a PAGA notice to the LWDA, Case No. LWDA-CM-990770-23, alleging Labor Code violations against
8 Sully Insurance Center, LLC dba LAcarGuy. Mr. Leduc submitted an amended PAGA notice on
9 December 15, 2023, adding Genesis Santa Monica and Porsche South Bay as defendants. On January 8,
10 2024, Plaintiff Leduc filed a First Amended Complaint in his class action that added a PAGA cause of
11 action.

12 6. After Plaintiffs filed their respective complaints, upon discussing the merits of her
13 allegations and engaging in several meet and confer sessions regarding prospective discovery, law
14 and motion, etc., the Parties agreed to mediation. The Parties further agreed to a protocol for
15 exchanging additional documents and information before the mediation. Through this informal
16 discovery, Defendants provided Plaintiffs with information including, inter alia, the number of
17 potential Aggrieved Employees, the number of aggregate pay periods, pay stubs and time records for
18 a sampling of about 25% of the allegedly Aggrieved Employees (which number our experts was
19 statistically meaningful and would enable them to extrapolate to the entire Aggrieved Employee
20 population), employee handbooks and manuals, and other relevant policy documents regarding
21 Defendants’ time keeping and reporting policies.

22 7. The mediation took place in August 2024 with Todd Smith, Esq., a well-respected
23 neutral with extensive wage and hour experience. Before and during the mediation, Plaintiffs and
24 their counsel analyzed, researched, and investigated the Plaintiffs’ allegations, including matters
25 related to the calculation of damages, trial, and appellate issues and risks. During mediation, the
26 Parties vigorously debated the likelihood of Plaintiffs' ability to proceed on a representative basis as
27 to the PAGA claims, the legal grounds for Plaintiffs' claims and Defendants’ defenses, and the Parties'
28 data analyses and conclusions based on data provided by Defendants. After a contentious full day of

1 negotiations, the Parties reached agreement and subsequently formalized their tentative settlement in
2 the Settlement Agreement now before the Court for approval.

3 **SUMMARY OF SETTLEMENT TERMS**

4 8. Under the settlement, Defendants will pay a non-reversionary settlement amount of
5 \$275,000 (the “Gross Settlement Amount” or “GSA”). The GSA is inclusive of payments to the
6 LWDA and Aggrieved Employees, costs of settlement administration, modest service awards to the
7 Plaintiffs, and reasonable attorney’s fees and costs. After payment of settlement administration costs,
8 Plaintiffs’ service awards, and attorney’s fees and costs from the GSA, I presently estimate about
9 \$140,685.08 will remain (the “Net Settlement Amount” or “NSA”). Seventy-five percent of the NSA
10 (\$105,513.81) will go to the LWDA, and the remaining twenty-five percent (\$35,171.27) will be
11 distributed to the Aggrieved Employees in proportion to the total number of Pay Periods each
12 individual worked during the PAGA Period. I estimate the average award at about \$__ per Aggrieved
13 Employee.

14 9. The Parties propose using Phoenix Settlement Administrators as the Settlement
15 Administrator. Phoenix has extensive experience administering PAGA settlements and has agreed to
16 cap its fees at \$3,750.00. Defendants shall fully fund the Gross Settlement Amount by transmitting
17 the funds to the Administrator no later than 15 days after the Effective Date. Within 14 days of receipt
18 of the settlement funds, Phoenix will mail a Notice and settlement check to all Aggrieved Employees
19 via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in
20 Defendants’ records. Aggrieved Employees need not submit claim forms and will automatically
21 receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after which
22 time any unclaimed residual funds will be forwarded to the California State Controller’s Unclaimed
23 Property Fund.

24 10. The California Supreme Court has explained that a judgment in “a representative
25 action brought by an Aggrieved Employee under the Labor Code Private Attorneys General Act of
26 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any
27 Aggrieved Employee not a party to the proceeding.” Arias v. Superior Court (2009) 46 Cal.4th 969,
28 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty

1 claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended to
2 be “binding not only on the named employee plaintiff but also on government agencies and any
3 Aggrieved Employee not a party to the proceeding.” While Plaintiffs are entering into a general
4 release any and all claims against Defendants, the Settlement Agreement protects the rights of the
5 Aggrieved Employees to bring their own individual claims should they wish. For these reasons, the
6 Parties contend the release narrowly applies only to the PAGA claims alleged, and the Settlement
7 Agreement specifically provides the Release is inapplicable to any claims other than those brought
8 under PAGA.

9 **THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS THE**
10 **PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL**

11 11. Plaintiffs alleged Defendants failed to pay all minimum and overtime wages to
12 Plaintiffs and the Aggrieved Employees, primarily by requiring employees to work during some or
13 all of a meal break due to alleged chronic understaffing and the overall press of business. Plaintiffs
14 also allege employee time frequently was edited by management to reduce employee hours and avoid
15 paying overtime, and also that they regularly worked “off the clock” on tasks such as delivering
16 vehicles to customers where work time was not recorded or paid for. Plaintiffs estimate they lost at
17 least 3 hours of compensable time per week as a result of these policies and practices that resulted in
18 off the clock work.

19 12. Next, Plaintiffs alleges they did not receive all required meal and rest breaks on a fully
20 compliant basis. Here, Plaintiffs contend Defendants placed successful sales interactions with
21 customers ahead of labor law compliance, and a result working through meal and rest breaks was
22 commonplace in order to secure successful sales. Plaintiffs further allege managers would nevertheless
23 record timely meal periods for employees in order to avoid paying break premiums. Plaintiffs likewise
24 allege second meal periods were not provided for shifts lasting over 10 hours. For the same reasons,
25 Plaintiff claims rest breaks also either were not provided or were not compliant due to the pressure to
26 work through breaks in order to secure a sale, and that third rest breaks were not provided on shifts over
27 10 hours.
28

1 13. Plaintiffs also contend that employees had to use their personal cellular phones as part
2 of their sales duties. While Plaintiffs concede they did receive some reimbursement, they further
3 allege it was insufficient to fully compensate them for the amount of time they had to use their own
4 phones and accordingly Defendants still were in violation of Labor Code § 2802, which requires full
5 and complete reimbursement.

6 14. Plaintiffs next alleged facial violations of Labor Code § 226 and contend that the wage
7 statements Defendants issued failed on their face to accurately reflect employee pay in several
8 respects. Here, employees were paid both a base hourly wage and commissions, and further received
9 a recoverable draw on future commissions. Per Plaintiffs the wage statements they received contained
10 a confusing amalgamation of hourly pay, rest and recovery pay, commissions, draws, amounts
11 recaptured from previous draws, that collectively did not accurately reflect gross or net wages, or all
12 applicable hourly rates and the number of hours worked at each rate. They further contend employees
13 had to refer to several different documents at once when trying to decipher the information on the pay
14 stubs, in violation of Labor Code § 226(e) (employee must be able to “promptly and easily
15 determine...from the wage statement alone” all information required for the pay period).

16 15. Lastly, Plaintiff also brings claims derivative of the foregoing claims, including a
17 derivative wage statement claim based on the failure to pay all wages due, and failure to pay all wages
18 due upon separation of employment under Labor Code §§ 201-203.

19 16. For mediation, Defendants indicated that during the PAGA Period they employed 255
20 non-exempt employees in California, including 90 former employees, who worked an aggregate
21 4,908 PAGA pay periods during that time. Based on the data and information provided by Defendants,
22 Plaintiffs estimated Defendants’ maximum PAGA exposure at approximately \$2,463,000 assuming
23 a 100% violation rate on all claims. This estimate includes approximately \$490,800 in civil penalties
24 for the unpaid wage claims, \$490,800 for the meal period claims, about \$490,800 in civil penalties
25 on the rest break claims, around approximately \$490,800 in civil penalties on the inaccurate wage
26 statement claim, \$490,800 in civil penalties for the unreimbursed business expenses claim, and
27 approximately \$9,000 in civil penalties for failing to timely pay wages on separation of employment.

28 17. We calculated these estimated amounts as follows:

Unpaid Wages – Off the Clock

4,908 pay periods * 100% violation rate * \$100/violation = \$490,800

Meal Break Violations

4,908 pay periods * 100% violation rate * \$100/violation = \$490,800

Rest Break Violations

4,908 pay periods * 100% violation rate * \$100/violation = \$490,800

Expense Reimbursement

4,908 pay periods * 100% violation rate * \$100/violation = \$490,800

Inaccurate Wage Statements

4,908 pay periods * 100% violation rate * \$100/violation = \$490,800

Untimely Final Wages

90 violations * \$100/violation = \$9,000

18. In response to Plaintiffs’ unpaid wage claims for alleged “off the clock work,” South Bay took the position that its time keeping policies are legally compliant, that it accurately tracked all hours worked, paid the allegedly Aggrieved Employees for all hours worked consistent with those policies. South Bay further argued that off the clock work was strictly prohibited and if any employee did work off the clock, they were in violation of company policy and Defendants had no knowledge of it. Defendants emphasized Plaintiffs allegations of time record manipulation were purely speculative, and that any time spent on tasks away from the dealership, such as delivering vehicles to customers after hours, was recorded and accounted for the following day. Lastly, Defendants argued any trial of this issue on a representative basis would be unmanageable since it would depend entirely on a myriad of individualized inquiries as to each employee regarding any discrepancies in actual time worked versus what was reported and paid for.

19. For the meal and rest break claims, South Bay likewise offered multiple defenses. First, it emphasized its written meal and rest break policy generally was compliant, that it authorized and permitted all necessary breaks, and that employees received full uninterrupted lunch periods. While Plaintiffs’ review of the time records suggested a substantial violation rate for late and short meal breaks, Defendants countered that even to the extent this occurred, it was in violation of

1 company policy and aberrational, and would require significant individual inquiries to determine the
2 reasons underlying any such alleged violations and whether it was by employee choice or some other
3 reason. Thus, per Defendants, any trial on this issue would be unmanageable because of these
4 individualized issues.

5 20. As with meal breaks, South Bay argued the applicable rest break policies complied
6 with California law, and that it authorized and permitted employees to take all required breaks.
7 Defendants further contended that, in light of the fact that it is not required to maintain a record of
8 rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking
9 rest periods would be purely anecdotal and individual issues would predominate on liability. This
10 arguably would once again make a trial unmanageable since the number of instances an employee
11 missed a rest break would have to be tested on a case by case basis to determine compliance.

12 21. For the expense reimbursement claim, South Bay emphasized it paid a generous
13 \$30/month for phone reimbursement, which was sufficient to cover most, if not all, of a typical
14 monthly phone plan and certainly was ample to pay for all conceivable business use. Thus, per
15 South Bay, no additional reimbursement was required.

16 22. On the wage statement claims, South Bay contended the wage statements accurately
17 reflected all information required under Labor Code § 226, and that employees could easily
18 determine their pay from the wage statements alone and that Defendants had a good faith belief that
19 they wage statements were in compliance. Plaintiffs also alleged derivative violations of Labor
20 Code § 226 (wage statement violations) and §§ 201-203 (waiting time penalties). The derivative
21 claims (based on the unpaid wage and meal/rest claims), will rise or fall along with the primary
22 claims, while all of these claims also are subject to “good faith” and other defenses available to
23 Defendants. Accordingly, Plaintiffs had to discount the value of this claim significantly in light of
24 these multiple potential defenses. Defendants also contended a substantial discount should be
25 applied to the civil penalties for these derivative (i.e., “stacked”) violations, as it would be unfair to
26 penalize Defendants multiple times for the same violation.

27 23. Defendants further emphasized PAGA gives the Court wide latitude to reduce the
28 amount of civil penalties “based on the facts and circumstances of a particular case” if “to do

1 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor
2 Code § 2699(h). I am aware of several state and federal courts in California have applied significant
3 reductions to PAGA civil penalties even after plaintiff prevailed on the merits.

4 24. Thus, Defendants raised various and multi-layered defenses to each of Plaintiffs’
5 claims, anyone of which, if successful, could have decimated Plaintiffs’ case. And Defendants
6 vowed to raise all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward
7 with this litigation, and it could have taken several more years to realize any recovery in this action
8 along with the possibility of post-trial appeals. In addition to its merits defenses and arguing trial
9 would be unmanageable, Defendants also intended to raise additional defenses on damages,
10 including the proper measure of civil penalties and the appropriate discount to place on any
11 assessment of such penalties.

12 25. Although Plaintiffs, co-counsel and I believe we could have prevailed, there was no
13 such guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the
14 merits on all claims, and securing 100% of the theoretical civil penalties for every single pay period
15 at issue all are factored into the equation, the settlement value is reasonable and supported. Of
16 course, to recover anywhere near the maximum penalties Plaintiffs would have to shoot the moon
17 and win both liability and maximum penalties on all claims, which outcome, for the reasons
18 discussed, is unlikely. Given Defendants’ various procedural and merits defenses, and the
19 substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed
20 settlement is eminently reasonable.

21 **SUBMISSION TO THE LWDA**

22 26. My office timely served the LWDA with the Settlement Agreement and this Motion,
23 and notified the LWDA of this approval hearing. Accordingly, the LWDA will be able to weigh in
24 as necessary and, importantly, many courts find it persuasive of approval if the LWDA ultimately
25 declines to offer any comment or objection to a proposed PAGA settlement.

26 **THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE**

27 27. Under the terms of the Settlement Agreement, Plaintiffs’ counsel respectfully requests
28 an award of attorney’s fees equal to one-third of the total settlement amount, or \$91,666.67. A one-

1 third common fund attorney fee award is consistent with what courts have awarded Plaintiff's counsel
2 in other representative actions. Awarding attorney's fees of one-third of a gross settlement amount
3 is favored by California courts when a fund established for the common benefit of others is involved,
4 such as here.

5 28. There are several additional factors why I believe that the Court should award one-
6 third of the common fund as reasonable attorney's fees. First, our efforts resulted in a common fund
7 settlement amount of \$275,000.00, which for the reasons explained herein, is fair and reasonable in
8 light of the risks/defenses Defendants raised in litigation and threatened to raise at trial and in post-
9 trial appeals. Moreover, this result was achieved by the work and success of this office and our co-
10 counsel, who negotiated the settlement after extensive preparation, informal discovery, a full
11 mediation session, and substantial negotiations.

12 29. Second, Plaintiffs faced significant risks going forward with the litigation. As
13 discussed above, Defendants raised various defenses throughout this litigation, anyone of which, if
14 successful, could have decimated Plaintiffs' case. And Defendants vowed to raise all these defenses
15 at trial. Accordingly, Plaintiffs faced risky issues going forward with this litigation, and it would
16 have taken several more years to realize any recovery in this action along with the possibility of
17 post-trial appeals.

18 30. Third, Crosner Legal are experienced class and representative action litigators, and
19 have achieved several approved PAGA settlements. This experience and expertise, combined with
20 the high quality of work performed, resulted in the settlement achieved in this case.

21 31. I graduated from the University of California, Los Angeles in 2004 with a
22 bachelor's in science. I then graduated from Whittier Law School in 2009 after earning my J.D.,
23 and I later earned an L.L.M. from Santa Clara University School of Law in 2010. I have been a
24 member of the California Bar since 2010 and have extensive experience in employment matters,
25 including wage and hour litigation. I worked as a wage and hour class action attorney at Gaines
26 & Gaines, APLC from 2012 through 2021. Prior to joining Gaines & Gaines, APLC, I worked at
27 Sirkin Law Group, P.C. as a litigation associate from 2010-2012. I joined Crosner Legal in
28 December 2021 as a senior associate. I've solely handled employment, wage and hour class

1 actions, and PAGA lawsuits for eleven (11) years. I was selected for 2020-2021 by Super
2 Lawyers as a “Southern California Rising Star” for employment and labor law.

3 32. Zach Crosner is a 2010 graduate of University San Diego School of Law and he
4 has approximately thirteen years of experience as a practicing attorney. For nearly his entire
5 career, his practice has focused on litigation of wage & hour, consumer, and privacy class action
6 and representative action claims. Following graduation he immediately began working for a
7 nationally recognized plaintiff’s complex litigation firm, CaseyGerry, where he worked directly
8 with past presidents of the consumer attorneys and recipients of trial attorneys of the year awards.
9 He also worked for other firms that included former CAALA and CLAY trial attorney of the year
10 recipients. While with these firms, he advocated for the rights of consumers and employees in
11 class action litigation, civil rights and employment litigation, catastrophic injuries, insurance bad
12 faith and appellate litigation.

13 33. In 2013, he founded the law firm of Crosner Legal, P.C. which since its inception
14 has focused almost exclusively on plaintiff-side class actions lawsuits representing employees,
15 consumers and other victims. Currently, over ninety percent (95%) of his practice is dedicated
16 exclusively to the prosecution of class actions and representative action lawsuits, and his law firm
17 is currently responsible as lead counsel or co-lead counsel for prosecuting over one hundred (100)
18 active wage and hour class actions and/or PAGA representative actions, as well as a multitude of
19 consumer and privacy class actions, in both federal and state courts throughout California. He has
20 been a direct participant in over one hundred (100) class action and/or representative action
21 settlements where he has been approved as adequate lead counsel.

22 34. Mr. Crosner has been selected by Super Lawyers as a “Southern California Rising
23 Star” for employment and labor law consecutively from 2018 through 2023. Super Lawyers has
24 also named me on their “Up-and-Coming 100” Southern California Rising Stars List for
25 consecutive years from 2021 through 2023. Only 2.5% of lawyers within California are named a
26 Super Lawyer Rising Star and even less are added to their Top Lists. Additionally, he has been
27 selected as a Top 40 Under 40 Civil Plaintiff Attorney by the National Trial Lawyers, invitation-
28 only organization composed of the premier trial lawyers, from 2019 through 2023. He is an active

1 participant in advocacy groups, including as an executive board member of the Wage and Hour
2 Committee and the Legislative Committee for the California Employment Lawyers Association; a
3 member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
4 Wage and Hour Committee member and Class Action Committee member for the National Trial
5 Lawyers; a member of the American Association for Justice; and a member of the Pound Civil
6 Justice Institute.

7 35. Jamie Serb graduated from the University of California, San Diego in 2004 and
8 graduated from California Western School of Law in 2013, and has been a member of the
9 California Bar since 2013. She gained extensive experience in wage and hour litigation, beginning
10 work as a class action attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law
11 Firm, APLC; Turley Law Firm, APLC). She joined Crosner Legal on January 4, 2021 as an
12 associate attorney. She has handled wage and hour class actions and PAGA lawsuits for over six
13 (6) years and has assisted in obtaining millions of dollars for employees during her years of
14 practice.

15 36. Kiara Bramasco received her undergraduate degree, magna cum laude, from
16 Loyola Marymount University in Political Science, and then received her JD from Loyola Law
17 School in 2018. She then spent several years with well-known plaintiff's firm Moss Bollinger,
18 first as a law clerk and then as an associate, where her practice focused on employment law,
19 particularly wage and hour class action and PAGA litigation. She joined Crosner Legal in 2021,
20 and now is head of the Firm's Prelitigation Department.

21 37. Branden Hamilton obtained her undergraduate degree from UCLA in 2004, and her
22 law degree from George Washington University in 2007. She has been affiliated with my firm since
23 2017 and became Of Counsel with Crosner Legal in 2019, and her practice focuses almost exclusively
24 on wage and hour class and representative actions. She has spent her entire career representing
25 plaintiffs in employment litigation, including several years as an associate at well-known plaintiff's
26 firm Carlin & Buchsbaum.

27 38. Karen Wallace was a Senior Associate at Crosner Legal from July 2023 to August
28 2024, during which she spent significant time dedicated to the litigation of this case. During her

1 employment with Crosner Legal, Ms. Wallace exclusively handled a wage and hour class and
2 PAGA cases. She earned her Bachelor's degree from U.C. Berkeley, her PhD from UCLA, and
3 her J.D. from Southwestern Law School. Ms. Wallace was admitted to the California State Bar in
4 December 2010 and has since spent almost a decade of her legal career litigating wage and hour
5 class and PAGA actions at Capstone Law, APC, Matern Law Group, PC and at Crosner Legal.

6 39. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
7 action settlements while serving as lead class counsel in recent years, including but not limited to
8 a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America,*
9 *Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action
10 settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252
11 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017
12 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a
13 \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc.*
14 *dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and
15 hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160
16 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v.*
17 *Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15
18 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case
19 No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in
20 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara
21 Cty. Super Ct.); a \$2.2 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v.*
22 *West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million
23 dollar wage and hour settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*,
24 Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class
25 action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty.
26 Super. Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v.*
27 *FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.)), a \$2.38
28 million wage and hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*,

1 Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action
2 settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino
3 Cty. Super. Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo*
4 *Autism Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million
5 wage and hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*,
6 Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action
7 settlement in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super.
8 Court); a \$1.3 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case
9 No. 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class
10 settlement in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super.
11 Ct); a \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature*
12 *Flight Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.); and a \$2.65 million
13 wage and hour class action settlement in 2024 in *Shilevinatz v. Airport Terminal Services*, Case
14 No. CIVSB2229072 (San Bernardino Cty. Super Ct.)

15 40. Fourth, our office has been representing Plaintiff Giliberti (and the State of
16 California) in this matter on a strictly contingent basis and as such, had to forego other financial
17 opportunities to litigate other cases, incurred the risk of non-recovery after a substantial investment
18 of time, money, and resources, and have done so since the inception of this case without any
19 payment or compensation. This is not an easy burden for a small firm. If, despite these hardships
20 and risks, the best this office could hope for is merely to be paid our customary hourly rate
21 multiplied by the number of hours worked on the case, then we would not be compensated for the
22 hardships and serious risks it faced litigating this contingency case, and would not be incentivized
23 to take on similar private attorney general cases in the future.

24 41. Fifth, the request for attorney's fees in the amount of one-third of the common fund
25 falls well within the norms accepted by state and federal courts in California in comparable wage
26 and hour actions actually handled by this office. Moreover, the award of a one-third fee recovery
27 under the common fund doctrine was recently approved by the California Supreme Court in Laffitte
28 v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480.

1 42 Under the adjusted Laffey Matrix, a reasonable rate for an attorney with 20-plus
2 years of experience, such as myself, Mr. Crosner and Ms. Serb, is over \$800. Similarly, the
3 December 8, 2008 article, “Billable Hours Aren’t the Only Game in Town Anymore,” NATIONAL
4 LAW JOURNAL, which set forth the following hourly billing rates as reported by Sheppard,
5 Mullin, Richter & Hampton, a leading firm in the defense of wage-and-hour class actions that I
6 have opposed when litigating wage-and-hour class actions: Partners: \$475-\$795; Associates: 1st
7 Year - \$275, 2nd Year - \$310, 3rd Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415,
8 7th Year - \$435, 8th Year - \$455.36.

9 43. I have personal knowledge of the hourly rates charged by a number of plaintiff-side
10 wage and hour class action firms in the Bay Area, Los Angeles and San Diego markets, for partner-
11 level attorneys with experience comparable to mine and to that of my colleagues. These rates have
12 range from \$650 to \$850 per hour for calendar years 2017-2021. Some examples include attorney
13 Matthew Matern of Matern Law Group in Los Angeles, with approximately 26 years of experience
14 \$850/hour (2018); Sean Setareh of Setareh Law Group, with approximately 25 years of experience,
15 \$1,125/hr (2023); Craig Ackermann of Ackermann & Tilajef, PC with approximately 25 years of
16 experience \$850/hour (2021), Michael Malk of Malk APC in Los Angeles, with approximately 16
17 years of experience \$650/hour (2018), Michael Singer and Isam Khoury of Cohelan Khoury &
18 Singer in San Diego, 35 years and 45 years of experience respectively, both \$825/hour (2018),
19 Jason Ehrlich of McCormack & Ehrlich LLP in San Francisco, with approximately 17 years of
20 experience \$750/hour (2017), and James Kawahito of Kawahito Law Group in Los Angeles, with
21 approximately 16 years of experience \$750/hour (2020).

22 44. Based upon the foregoing, as well as our qualifications and experience set forth
23 above, the following hourly rates are reasonable: Zachary M. Crosner \$800/hour, Jamie Serb
24 \$750/hour, Kiara Bramasco and Michael Jones \$650/hour, Branden Hamilton \$600/hour, and
25 Sepideh Ardestani and Karen Wallace \$700/hour. Plaintiff Giliberti requests the Court apply the
26 above hourly billing rates in this case, as these rates are reasonable in the California legal market for
27 attorneys handling wage and hour class actions and PAGA representative actions.
28

45. I have reviewed the work performed on the case and the billing inputted, Crosner Legal's lodestar currently totals approximately \$120,480 based on 166.1 attorney hours spent litigating the case, exclusive of time for attending the hearing on the approval motion and time to be incurred thereafter to implement and administer the settlement. A true and correct summary of Crosner Legal's tasks performed and time expended is attached hereto as Exhibit 6. When combined with the lodestar for co-counsel, Plaintiffs' total lodestar in this matter is \$202,480.00, based on ___ total attorney hours.

46. Based the lodestar analysis above, the requested award of 1/3 of the common fund, or \$91,666.67, results in a fee request that is less than the base lodestar and accordingly there is no request for a modifier. I submit this shows the reasonableness of the fee request since the fee request on a percentage of the recovery basis is lower than the actual value of the services rendered. Any fees awarded will be split 50/50 between the plaintiffs' firms, and both plaintiffs have been informed of the proposed fee split and consented thereto in writing.

47. I also request reimbursement of Crosner Legal's actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees.

48. Crosner Legal's costs are \$20,289.53. The requested costs include filing fees, service of process, mediation fees, expert fees, and postage. Notably, the requested costs do not include any and all printing, copying, and research charges. The requested costs are reasonable and uncontested, and should be approved. A true and correct itemization of the costs and expenses incurred is set forth below:

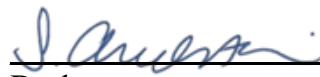
Expense Category	Amount
Court Filing Fees/Service of Process/Attorney Service	\$1,283.15
Mediation Fees	\$10,000.00
PAGA Filing Fees	\$75.00
Expert Witness Fees	\$8,840.00
Postage/Delivery	\$91.38
Legal/Financial Research	(waived)
Photocopies	(waived)
Total Costs and Expenses	\$20,289.53

1 Co-counsel's costs are \$3,608.73, for a combined total of \$23,898.26 in costs and litigation
2 expenses. I respectfully request the Court approve reimbursement of costs in total amount of
3 \$23,898.26, with \$20,289.53 to Crosner Legal and \$3,608.73 to Wilshire Law Group.

4 49. Here, pursuant to the Settlement Agreement, both Plaintiffs seek an incentive award
5 of \$7,500. These requests are reasonable given their efforts in this case and the risks they undertook
6 on behalf of the Aggrieved Employees. Additionally, by contacting and retaining counsel to pursue
7 these claims, Plaintiffs made this settlement possible for the other Aggrieved Employees and the
8 LWDA, while shouldering the risk of being liable for Defendants' litigation costs. Plaintiffs also
9 exposed themselves to unwanted notoriety related to filing a public lawsuit (discoverable even
10 through a simple google search) for the benefit of other employees, placing themselves at risk of
11 discrimination by future prospective employers. Among taking many other actions assisting in the
12 successful litigation of this case, Plaintiffs provided substantial factual information to my office,
13 attended numerous meetings with my office to discuss the case, and generally participated in all
14 phases of the litigation. Accordingly, the requested enhancement payments to Plaintiffs are
15 appropriate and justified as part of the Settlement.

16 50. For the foregoing reasons, it is respectfully requested that the Court approve the
17 settlement.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct. Executed this 3rd day of April, at Los Angeles, California.

20
21 
22 _____
23 Declarant
24
25
26
27
28

EXHIBIT

1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs David Giliberti & Dean Leduc (“Plaintiffs”) and Defendants South Bay Motors, LLC; Sullivan Automotive Group, LLC; Sully Insurance Center, LLC; and GENSM, LLC (“Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Actions” means the following actions captioned: (1) *Giliberti v. South Bay Motors, LLC, et al.*, initiated on July 3, 2023 and pending in Superior Court of the State of California, County of Los Angeles, Case No. 23STCV15499; and (2) *Leduc v. Sully Insurance Center, LLC, et al.*, initiated on September 26, 2023 and pending in Superior Court of the State of California, County of Los Angeles, Case No. 23STCV23411.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means a person employed by Defendants in California and classified as an hourly-paid or non-exempt employee who worked for Defendants during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Los Angeles.
- 1.8. “Defense Counsel” means Robert W. Thompson and Alex A. Zolg of Callahan Thompson Sherman & Caudill LLP.
- 1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on the Approval Order and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court

enters Judgment assuming no appeal is filed; or (b) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for writs of certiorari) resulting in final judicial approval of the Settlement.

- 1.10. “Gross Settlement Amount” means Two Hundred Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00), which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the PAGA Representative Awards, and the Administrator’s Expenses Payment.
- 1.11. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.13. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the PAGA Representative Awards, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16. “PAGA Counsel” means Justin F. Marquez and Arrash T. Fattahi of Wilshire Law Firm and Zachary Crosner, Jamie Serb, and Sepideh Ardestani of Crosner Legal, P.C., the attorneys representing the Plaintiffs in the Actions.
- 1.17. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Actions.
- 1.18. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.19. “PAGA Period” as to Defendants South Bay Motors, LLC and Sullivan Automotive Group, LLC means the period from April 26, 2022 to August 12, 2024. “PAGA

Period” as to Defendants Sully Insurance Center, LLC and GENSM, LLC means the period from October 30, 2022 to August 12, 2024.

- 1.20. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).
- 1.21. “PAGA Notices” means Plaintiffs’ April 26, 2023 and October 30, 2023 letters to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).
- 1.22. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Net Settlement Amount, which is currently estimated to be \$134,583.33, allocated 25% to the Aggrieved Employees (\$33,645.83) and the 75% to LWDA (\$100,937.50) in settlement of PAGA claims.
- 1.23. “Plaintiffs” means David Giliberti & Dean Leduc, the named plaintiffs in the Actions.
- 1.24. "Approval Order" means the Court Order Granting Approval of PAGA Settlement.
- 1.25. “Released PAGA Claims” means the claims being released by the Plaintiffs and PAGA Counsel and as described in Paragraph 5 below.
- 1.26. “Released Parties” means: Defendants and each of their former and present directors, officers, employees, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns.
- 1.27. “Settlement” means the disposition of the Actions effected by this Agreement and the Judgment.
- 1.28. “Defendants” means Defendants South Bay Motors, LLC; Sullivan Automotive Group, LLC; Sully Insurance Center, LLC; and GENSM, LLC.
- 1.29. “PAGA Representative Awards” means the \$15,000 (\$7,500 each) to be paid to Plaintiffs for serving as the named representatives in the Actions.

2. RECITALS.

- 2.1. On July 3, 2023, Plaintiff Giliberti filed a PAGA-only action against Defendants South Bay Motors, LLC and Sullivan Automotive Group, LLC) in the Los Angeles County Superior Court. On September 26, 2023, Plaintiff Leduc filed a wage and hour class action complaint against Sully Insurance Company, LLC in the Los Angeles County Superior Court. On January 8, 2024, Plaintiff Leduc filed a First Amended Complaint adding a cause of action for PAGA. On February 29, 2024, Plaintiff Leduc filed a Second Amended Class and PAGA Complaint, adding South Bay Motors, LLC and GENSM, LLC as defendants. Plaintiff Giliberti intends to amend his complaint to

incorporate the applicable claims and defendants that are part of Plaintiff Leduc's Action, which will become the Operative Complaint. Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint and deny any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiffs gave timely written notice to Defendants and the LWDA by sending the PAGA Notices. On August 12, 2024, the Parties participated in an all-day mediation presided over by Todd Smith, Esq., which led to this Agreement to settle the Actions.
- 2.3. Prior to mediation, Plaintiffs obtained, through informal discovery, among other things, a random sample of timekeeping and payroll data, as well as information about the Aggrieved Employees and Defendants' wage and hour policies.
- 2.4. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendants promise to pay Two Hundred Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00) and no more as the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 1/3 of the Gross Settlement Amount, which is currently estimated to be One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$91,666.67) and PAGA Counsel Litigation Expenses Payment of not more than Thirty Thousand Dollars and Zero Cents (\$30,000.00). Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiffs and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiffs' Counsel arising from any claim to any portion of any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes

full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed Three Thousand Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$3,750.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To the Plaintiffs: The PAGA Representative Awards not to exceed \$15,000.00 (\$7,500 each). To the extent the Court approves payment less than \$15,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.3. Payment from the Net Settlement Amount: The Administrator will make and deduct the following payments from the Net Settlement Amount, the amount specified by the Court in the Approval Order:

3.3.1. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$134,583.33 to be paid from the Net Settlement Amount, with 75% (\$100,937.50) allocated to the LWDA PAGA Payment and 25% (\$33,645.83) allocated to the Individual PAGA Payments.

3.3.1.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$33,645.83) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.3.1.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 255 Aggrieved Employees who worked a total 4,908 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 15 days of the Court's Approval Order, Defendants will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee's privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator

employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 15 days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the PAGA Representative Awards; the Administration Expenses Payment, the PAGA Counsel Expenses Payment, and the PAGA Counsel Fees Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.1. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.
- 4.4.2. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.
- 4.4.3. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiffs and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred up to the Effective Date of this Settlement Agreement, including, but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notices ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notices and ascertained in the course of the Actions including, but not limited to, any claims for civil penalties based on Defendant's alleged: (a) failure to pay minimum, straight time, and overtime wages; (b) failure to provide legally compliant meal periods or pay meal period premiums; (c) failure to authorize and permit rest periods or pay rest period premiums; (d) failure to pay all earned wages twice per month; (e) failure to maintain accurate records of hours worked and meal periods; (f) failure to pay all commissions owed; (g) failure to timely pay final wages at termination; (h) failure to furnish accurate wage statements, and (i) failure to reimburse or indemnify all necessary business expenses.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notices.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

- 6.1 Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2), including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiffs, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator; and (iv) signed declarations from the Plaintiffs. In their Declarations, Plaintiffs and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 60 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Approval Order to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. **AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, Defendants estimate that there are 255 Aggrieved Employees who worked 4,908 Pay Periods during the PAGA Period. In the event that the actual number of Pay Periods worked by all Aggrieved Employees during the PAGA Period increases by 5% or more, then Defendant shall increase the Gross Settlement Fund on a proportional basis in excess of five percent (i.e., if there were an seven percent (7%) increase in the number of Pay Periods, then Defendant will increase the Gross Settlement Fund by two percent (2%)).

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Actions, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

- 9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be

suspended until such time as the appeal is finally resolved and the Judgment becomes final.

10. ADDITIONAL PROVISIONS.

10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Actions have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Actions, and Plaintiffs reserve the right to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Actions will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

10.6 No Tax Advice. Neither Plaintiffs, PAGA Counsel, Defendants nor Defense

Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Actions and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants unless, prior to the Administrator's payment of all Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.
- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly

given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

Justin F. Marquez, Esq.
Arrash T. Fattahi, Esq.
Wilshire Law Firm
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010

Jamie Serb, Esq.
Sepideh Ardestani, Esq.
Crosner Legal, P.C.
9440 Santa Monica Blvd., Suite 301
Beverly Hills, California 90210

To Defendants:

Robert W. Thompson, Esq.
Alex A. Zolg, Esq.
Callahan Thompson Sherman & Caudill LLP
2601 Main St., Suite 800
Irvine, California 92614

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

On Behalf of Plaintiffs

Dated: _____, 2024

Davide Giliberti, Plaintiff

Dated: 11/15/2024
_____, 2024

DocuSigned by:
DEAN LEDUC
1F849D4081DD480...

Dean Leduc, Plaintiff

given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

Justin F. Marquez, Esq.
Arrash T. Fattahi, Esq.
Wilshire Law Firm
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010

Jamie Serb, Esq.
Sepideh Ardestani, Esq.
Crosner Legal, P.C.
9440 Santa Monica Blvd., Suite 301
Beverly Hills, California 90210

To Defendants:

Robert W. Thompson, Esq.
Alex A. Zolg, Esq.
Callahan Thompson Sherman & Caudill LLP
2601 Main St., Suite 800
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On Behalf of Plaintiffs

Dated: 11 / 05 / 2024, 2024



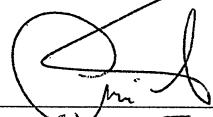
Davide Giliberti, Plaintiff

Dated: _____, 2024

Dean Leduc, Plaintiff

On Behalf of Defendant South Bay Motors, LLC:

Dated: November 6, 2024


Name: Chris Foy
Title: CEO

On Behalf of Defendant Sullivan Automotive Group, LLC:

Dated: November 6, 2024


Name: Chris Foy
Title: CEO

On Behalf of Defendant Sully Insurance Center, LLC:

Dated: November 6, 2024


Name: Chris Foy
Title: CEO

On Behalf of Defendant GENSM, LLC:

Dated: November 6, 2024


Name: Chris Foy
Title: CEO

EXHIBIT

2

EXHIBIT

3



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (424) 335-5236
office: (866) 276-7637
fax: (310) 510-6429

April 26, 2023

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

CSC - Lawyers Incorporating Service
Agent for Service of Process for:
South Bay Motors, LLC
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

South Bay Motors, LLC

Attn: CA Registered Agent Authorized Employees:
Becky DeGeorge, Koy Saechao, Lai Saevang, Nicole
Stauss, Jenn Bautista, Trudy Desbiens, Rebecca Vang,
Wendy Harris, Melissa Dekoven, Carolyn Valle, Kaci
Ransom, Kelli Shortte, Annette Kuhlman, Brejet
Stephens, Crystal Chapman, Janette McIntyre, Jerome
Suarez, Samantha Wiltz, and Parid Kurbini
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

South Bay Motors, LLC

Attn: Human Resources / Legal Department
14610 Hindry Avenue
Hawthorne, Ca 90250

CSC - Lawyers Incorporating Service
Agent for Service of Process for:
Sullivan Automotive Group, LLC
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

Sullivan Automotive Group, LLC

Attn: CA Registered Agent Authorized
Employees: Becky DeGeorge, Koy
Saechao, Lai Saevang, Nicole Stauss,
Jenn Bautista, Trudy Desbiens,
Rebecca Vang, Wendy Harris, Melissa
Dekoven, Carolyn Valle, Kaci Ransom,
Kelli Shortte, Annette Kuhlman, Brejet
Stephens, Crystal Chapman, Janette
McIntyre, Jerome Suarez, Samantha
Wiltz, and Parid Kurbini
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

Lacarguy Wholesale Division, Inc.

582 29th Street
Manhattan Beach, CA 90266

Lacarguy Wholesale Division, Inc.

Attn: Human Resources / Legal Department
582 29th Street
Manhattan Beach, CA 90266

Sullivan Automotive Group, LLC

Attn: Human Resources / Legal
Department
1501 Santa Monica Boulevard
Santa Monica, CA 90404

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; South Bay Motors, LLC;
Sullivan Automotive Group, LLC; and Lacarguy Wholesale Division, Inc.
Date: April 26, 2023
Subject: *Davide Giliberti v. South Bay Motors, LLC et. al.*

Introduction

This office represents COMPLAINANT, Davide Giliberti (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: South Bay Motors, LLC; Sullivan Automotive Group, LLC; and Lacarguy Wholesale Division, Inc. (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by any one or more of the EMPLOYER entities at any location in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by any one or more of the EMPLOYER entities at any location in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State and/or the Secretary of State in which the entity was formed and/or to the address listed on wage statements issued by EMPLOYER.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE.

This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER. Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.*, (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee's individual claim is time-barred.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.2, 226.7, 245-248.6, 432, 432.5, 432.7, 510, 512, 551, 552, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2751, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular

working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010)).

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, each of the EMPLOYER entities maintains the same agent for service of process and/or principal place of business as provided to the California Secretary of State and/or maintains some of the same attorneys and/or human resources personnel to oversee employment-related matters. Moreover, various documents contained in COMPLAINANT's personnel file, such as but not limited to, employment policy documents and/or human resources documents and/or job performance related documents and/or human resources' email signature lines identify the following entity as the name of COMPLAINANT's employer: "Sullivan Automotive Group, LLC". Still other documents contained in COMPLAINANT's personnel file, including without limitation, employment policies related to compensation and/or email addresses to EMPLOYER's human resources department/personnel provided to COMPLAINANT identify "Lacarguy" and/or "lacarguy" as the name of COMPLAINANT's employer. Based on information and belief, other employment-related documents contained in COMPLAINANT's personnel file and/or pay records, including but not limited to, compensation-related documents and/or agreements and/or wage statements issued by EMPLOYER to COMPLAINANT identify the following entity and/or entities as the legal name of COMPLAINANT's employer: "South Bay Motors, LLC" and/or "South Bay Motors, LLC (dba Porsche South Bay)." As such and by reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, operates and/or otherwise manages automotive dealerships and/or automotive dealership groups, with multiple locations, facilities and/or dealerships in California, including but not limited to, locations, facilities and/or dealerships operating under the following names in the following cities in California: Audi Pacific in Torrance, California; Genesis Santa Monica, Honda Santa Monica, Hyundai Santa Monica, Lexus Santa Monica, Subaru Santa Monica, Toyota Santa Monica, and Volkswagen Santa Monica, in Santa Monica, California; Pacific Volkswagen, Porsche South Bay, and Subaru Pacific, in Hawthorne, California; Honda Lancaster and Subaru Antelope Valley in Lancaster, California; and Toyota Hollywood in Hollywood, California. EMPLOYER regularly assigned COMPLAINANT to work out of one of EMPLOYER's locations, facilities, and/or dealerships located in Hawthorne, California, which operated/operates under the name Porsche South Bay.¹ Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a salesperson, sales consultant, customer service representative and/or similar title(s) and/or position(s), from in or around October 2021 through in or around mid-July

¹ See <https://www.lacarguy.com/locations/index.htm> (Last visited on April 24, 2023).

2022. EMPLOYER regularly assigned COMPLAINANT to work out of one of EMPLOYER's locations, facilities, and/or dealerships located in Hawthorne, California, which operated/operates under the name Porsche South Bay. COMPLAINANT regularly worked at least seven (7) to nine-and one-half (9 ½) hours per day, at least five (5) to six (6) days per week. 7-9.5 hours per day, 5-6 days a week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked. COMPLAINANT also earned commissions (e.g., a percentage of the invoice price of vehicle sales) and/or other non-discretionary compensation.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) fails and continues to fail to provide proper written commissions agreements to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES compensated on a commission basis; (15) failed and continues to fail to provide suitable seating; and (16) required and continues to require

COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER’s time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER’s failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ meal periods.

Based on further information and belief, EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES’ work shifts.

Based on further information and belief, EMPLOYER further failed and continues to fail to accurately record all split shift intervals worked by NON-EXEMPT AGGRIEVED EMPLOYEES.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a written request for payroll and personnel records to EMPLOYER. Yet,

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

EMPLOYER failed to timely produce complete records, including but not limited to, wage statements, within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision 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"); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, during most of COMPLAINANT's shifts, COMPLAINANT was unable to take a full thirty-minute, uninterrupted off-duty meal period due to lack of coverage, lack of relief workers, the need to assist customers/clients and/or complete other work tasks. Typically, COMPLAINANT was forced to eat his lunch while working and/or to take a shortened meal break/quickly eat his lunch when time permitted. Based on information and belief, EMPLOYER performed an automatic meal period deduction of at least thirty minutes per shift for most if not all shifts COMPLAINANT worked even though EMPLOYER had actual and/or constructive knowledge that COMPLAINANT was more often than not required to work through part or all of his purported meal period and/or was not relieved of all duties and EMPLOYER's control during purported meal periods. Based on information and belief, EMPLOYER engaged in similar systemic time record manipulation as to other NON-EXEMPT AGGRIEVED EMPLOYEES by automatically deducting at least thirty minutes per shift for meal periods that were missed, interrupted and/or during which NON-EXEMPT AGGRIEVED EMPLOYEES were not relieved of all duties and EMPLOYER's control, resulting in meal period law violations as well as EMPLOYER's failure to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were also suffered, permitted and/or required to take their single meal periods after working more than five (5) hours but were not paid any and/or all owed meal period premiums for these late meal periods.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to EMPLOYER's premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet EMPLOYER's goals and expectations.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which

EMPLOYER failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, when COMPLAINANT worked shifts lasting longer than ten hours, COMPLAINANT did not receive any version of a second meal period.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to EMPLOYER's premises), despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, EMPLOYER illegally rounded the start and end times of purported meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest 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 work day that the rest period is not provided").

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Moreover, under California law rest periods must be a “net” ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to its employees.”).

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, per EMPLOYER’s unlawful rest period policy and practice, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were only authorized to take rest periods if at all once assigned work tasks were completed and/or as time permitted. As such, COMPLAINANT rarely if ever received a full ten-minute, off-duty rest period during COMPLAINANT’s employment. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES similarly were required to work through most or all of their owed rest periods due to lack of coverage, lack of relief workers, the need to assist customers/clients, respond to work-related communications and/or complete other work tasks.

Moreover, based on information and belief, EMPLOYER failed to authorize and permit rest periods that were a “net” ten minutes in a suitable rest area and instead, to the extent rest periods were provided at all, limited NON-EXEMPT AGGRIEVED EMPLOYEES to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving, in violation of California rest period law. EMPLOYER’s failure to communicate that the rest period is a net ten minutes deprived NON-EXEMPT AGGRIEVED EMPLOYEES of their rights to a full rest period, as such as policy only relieves NON-EXEMPT AGGRIEVED EMPLOYEES from their workstation for ten minutes to travel to and from a rest area and be back at the workstation by the end of that ten minutes.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES’ rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours. For example, when COMPLAINANT worked shifts lasting longer than ten hours, EMPLOYER failed to provide any version of a third rest period.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain tethered to work to their workstations and/or were required to monitor and be responsive to work communication devices during purportedly off-duty rest periods, resulting in EMPLOYER's failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods, in violation of California rest period law. *See Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 269 (Cal. 2016) ("Nonetheless, one cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods.")

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); and All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order defines “hours worked” as “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.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER’s automatic deduction and time rounding policies for shift start and shift end times and meal period start and end times, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and

other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to EMPLOYER's control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, COMPLAINANT was frequently required to complete work tasks before clocking in for work and/or after clocking out of work, including but not limited to, communicating with customers/clients, delivering vehicles to customer's/clients' residences and/or completing other work off the clock as EMPLOYER did not want COMPLAINANT to continue working overtime hours. As such, COMPLAINANT was frequently forced to complete his work tasks off-the-clock in order to avoid and/or reduce the number of overtime hours worked. EMPLOYER knew that the assigned workload would require COMPLAINANT to work well over eight (8) hours in a shift and/or more than forty hours in a week and knew when COMPLAINANT worked off-the-clock in order to complete sales and/or assist customers/clients and/or complete other work tasks, yet EMPLOYER failed to pay COMPLAINANT for all hours worked.

Based on information and belief, EMPLOYER engaged in systemic time record manipulation to shave time worked off COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' workdays, by, for example, editing electronic time records to delete portions of total hours worked or otherwise understate actual hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. For example, as explained above, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES working as salespersons, sales consultants, customer service representatives and/or other similar title(s) and/or position(s) were consistently suffered, permitted and/or required to communicate with customers/clients outside of their scheduled work hours as well as deliver vehicles to customers/clients' residences and/or perform other off-the-clock work tasks outside of their scheduled shift times. For example, based on information and belief, from including but not limited to, from in or around at least May 2022 through in or around mid-July 2022, EMPLOYER engaged in systemic time record manipulation, whereby EMPLOYER deducted, shaved and/or otherwise deleted portions of COMPLAINANT's total hours worked and/or otherwise understated actual hours worked by COMPLAINANT on most if not all shifts COMPLAINANT worked resulting in EMPLOYER's failure to pay COMPLAINANT for all time worked, including but not limited to, at least approximately ninety percent of COMPLAINANT's time worked beyond eight (8) hours in a day and/or beyond forty hours in a week. As such, EMPLOYER failed to pay COMPLAINANT all owed minimum wages and overtime wages.

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete other work tasks outside of their reported work time, before clocking in for the start of their shift and/or after clocking out for the end of their shift and/or otherwise outside of their scheduled shift times resulting in EMPLOYER's failure to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of minimum wages and

overtime wages to NON-EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-related phone calls and/or messages they received to their personal phones and were required to respond to, including but not limited to, communications from supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES regarding scheduling and/or other work tasks as well as work-related communications from customers/clients, resulting in the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, at times, EMPLOYER's electronic/computer time-keeping system/app malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate and/or otherwise troubleshoot the system and/or wait for the system to boot prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under EMPLOYER's control was not recorded and not compensated and resulted in unpaid minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER failed to pay COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES split shift premium wages when they worked split shifts during the relevant period.

For example, based on information and belief, at times, EMPLOYER required COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES to work two separate shifts in the same day. Based on information and belief, EMPLOYER failed to pay COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever COMPLAINANT's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' work schedules were interrupted by non-paid non-working periods established by EMPLOYER, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday..."). See, also, Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment).

EMPLOYER also failed to separately itemize these split shift premium wages on COMPLAINANT's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements, in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders. See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on the pay stub provided to the employee, and it should be shown as a separate category such as "Split Shift Premium" and should not be lumped into another category such as wages, bonus, etc. EMPLOYER failed to separately account for the split shift premiums earned by

COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to EMPLOYER's premises and/or subject to EMPLOYER's control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §3(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "in addition to any other civil

Violation of Labor Code Section 226.2: Labor Code section 226.2 requires an employer to pay employees compensated on a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any piece-rate pay. This statute further requires an employer to include on the wage statements for these employees the total hours of compensable rest and recovery period, the total hours for other non-productive time, the rates of compensation for these hours, and the gross wages paid for these hours. In addition, the statute requires that employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

Based on information and belief, some of EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES were paid on a piece rate and/or commission basis. EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES who were paid solely on a piece rate and/or commission basis separately for the rest periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based on information and belief, EMPLOYER further failed to include this information on such NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements. As such, EMPLOYER failed to comply with Labor Code section 226.2.

Failure to Provide Written Commission Agreements: Labor Code section 2751 requires that all commission contracts "be in writing and . . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

Based on information and belief, some EXEMPT AGGRIEVED EMPLOYEES and/or NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, COMPLAINANT, were paid on a commission basis at least during some pay periods during the relevant period. Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES who were compensated on a commission basis with proper written commission agreements, in violation of including but not limited to, Labor Code section 2751.

Violation of California Day of Rest Law

Under California law, every employee in California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days in

penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

seven." *See* Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

Based on information and belief, EMPLOYER has and continues to have a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to work at least seven days consecutively in a workweek, in violation of including but not limited to, Labor Code Section 551. Based on information and belief, COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES were suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of California law, including but not limited to Labor Code Section 551.

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

Based on information and belief, EMPLOYER failed to put NON-EXEMPT AGGRIEVED EMPLOYEE on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, EMPLOYER failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (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; (5) 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. Cal. Lab. Code. section 226(a).

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT

⁷ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on information and belief, wage statements issued by EMPLOYER failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid.

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by EMPLOYER failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

Based on information and belief, EMPLOYER issued wage statements that failed to list the number of piece rate units completed/earned during the pay period and the applicable rate of pay for each piece rate unit.

Based on information and belief, EMPLOYER issued wage statements that failed to list the number of non-discretionary bonuses and/or commissions earned and/or failed to list the applicable rate for each non-discretionary bonus and/or commission earned. Instead, based on information and belief, wage statements issued by EMPLOYER either fail to list and/or identify all earned bonuses/commissions and/or list the total amount of non-discretionary bonuses and/or commissions earned without listing the number of bonuses/commissions and/or the rate for each bonus and/or commission, thereby making it impossible for NON-EXEMPT AGGRIEVED EMPLOYEES to know whether they received all owed non-discretionary compensation.

Moreover, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

⁸ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, suitable seating, and business expenses, result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief EMPLOYER made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES paychecks, including but not limited to, from paychecks of employees correctly classified as exempt, during the relevant period, including but not limited to deducting costs of uniforms and/or other business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or deducting costs advanced by EMPLOYER from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES' final paychecks. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects EMPLOYER to civil penalties under Labor Code Section 2699.

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEES and each EXEMPT AGGRIEVED EMPLOYEES, for each pay period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee’s final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, EMPLOYER had and continues to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than

72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES’ final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates. For example, EMPLOYER did not furnish COMPLAINANT with his final paycheck until at least approximately six (6) days following COMPLAINANT’s date of termination, and COMPLAINANT’s late final paycheck was devoid of all wages owed, including but not limited to, all owed minimum wages, overtime wages, commissions, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

Moreover, EMPLOYER failed to timely provide all owed wages immediately upon discharge of employment. For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES experienced breaks in their employment caused by EMPLOYER whereby NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to EMPLOYER’s lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, EMPLOYER failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

¹⁰ (establishing that “[i]n addition to, and 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 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms, work clothing/shoes, protective equipment/safety gear and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phone, personal computers and data usage for work-related purposes, including but not limited to, receiving and responding to work related messages and/or phone calls.

For example, based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES received work-related calls/messages to their personal phones from managers and/or supervisors and/or customers/clients and/or prospective customers/clients and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding

scheduling and other work tasks without being provided any and/or full reimbursement from EMPLOYER for these business expenses.

For example, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES working as salespersons, sales consultants, customer service representatives and/or other similar title(s) and/or position(s) to use their personal cell phones to communicate with customers/clients and prospective customers/clients without providing any and/or full reimbursement for these business expenses.

Furthermore, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES also were required to use and did use personal devices, including but not limited to, to perform work duties at home/remotely, such as, but not limited to, reviewing and/or completing work-related paperwork and/or other documents as mandated by EMPLOYER, however EMPLOYER failed to provide reimbursement / full reimbursement for expenses NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES incurred as a result of working for EMPLOYER remotely and/or from their homes, including but not limited to, cost of internet service, home electricity, cost of additional memory and/or virus software for home computer /personal computer use, among other business expenses associated with remote work required by EMPLOYER. For example, EMPLOYER required COMPLAINANT to use his personal laptop for work without providing any and/or full reimbursement to COMPLAINANT for the business expenses COMPLAINANT incurred in connection therewith, including but not limited to, cost of internet service, data usage, home electricity, cost of additional memory and/or virus software for home computer / personal computer use and/or other related business expenses.

Additionally, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal vehicles, including but not limited to, mileage, vehicle wear and tear, and/or cost of fuel when they were required to drive between EMPLOYER's locations, offices, dealerships and/or facilities and/or otherwise use their personal vehicles to perform their job duties. As such, EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the Internal Revenue Service (IRS) mandated per mile compensation rate for the relevant period.

As explained above, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phones and/or computers/devices for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of, including but not limited to, Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and

EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT

AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California’s Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 866.276.7637
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Kiara Bramasco". The signature is written in a cursive, flowing style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "prelit@crosnerlegal.com" <prelit@crosnerlegal.com>

Wed, Apr 26, 2023 at 4:48 PM

4/26/2023

LWDA Case No. LWDA-CM-951135-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Davide Giliberti
Employer: South Bay Motors, 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

EXHIBIT

4



Manny Martinez <manny@crosnerlegal.com>

Thank you for your Court Complaint Submission.

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: prelit@crosnerlegal.com

Thu, Oct 5, 2023 at 4:58 PM

10/05/2023 04:56:35 PM

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

Item submitted: Court Complaint

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

EXHIBIT

5

EXHIBIT

6

Giliberti v South Bay Motors, LLC
(Los Angeles Superior Court Case Number 23STCV15499)

Crosner Legal Time Report

Tasks	Zachary Crosner	Jamie Serb	Sepideh Ardestani	Kiara Bramasco	Karen Wallace	Branden Hamilton
Pre-filing Case Investigation	3.1	0.0	0.0	1.3	0.0	6.8
Pleadings and Law and Motion	2.8	0.0	0.0	3.5	0.0	.4
Discovery and Post-Filing Investigation	4.6	0.0	0.0	0.0	6.2	0.0
Court Appearances	0.0	0.0	0.0	0.0	0.9	0.0
Case Management; Litigation Strategy & Analysis	12.2	35.9	5.5	0.0	56.5	0.0
Mediation and Settlement	5.7	10.7	10.0	0.0	0.0	0.0
Total Hours	28.4	46.6	15.5	4.8	63.6	7.2
Hourly Rate	\$800	\$750	\$700	\$650	\$700	\$600
Lodestar	\$22,720	\$34,950	\$10,850	\$3,120	\$44,520	\$4,320
Total Hours: 166.1 Total Lodestar: \$120,480						