

1 Robert Drexler (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
2 Molly DeSario (SBN 230763)
Molly.DeSario@CapstoneLawyers.com
3 Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
4 Capstone Law APC
1875 Century Park East, Suite 1000
5 Los Angeles, California 90067
Telephone: (310) 556-4811
6 Facsimile: (310) 943-0396

7 Attorneys for Plaintiffs Aram Rosas
and David Barrientos
8

Electronically FILED by
Superior Court of California,
County of Los Angeles
4/21/2023 9:36 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By D. Jackson Aubry, Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12

13 ARAM ROSAS and DAVID
14 BARRIENTOS, as aggrieved employees
pursuant to the Private Attorneys General
Act ("PAGA"), on behalf of the State of
15 California and other aggrieved employees,

16 Plaintiffs,

17 vs.

18 LONG BEACH LINCOLN MERCURY,
INC., a Delaware corporation; PACIFIC
19 FORD, INC., a Delaware corporation; and
DOES 1 through 10, inclusive,
20

21 Defendants.
22
23
24
25
26
27
28

Case No.: 23STCV08854

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiffs Aram Rosas and David Barrientos, as aggrieved employees and on behalf of
2 the State of California and all other non-party Aggrieved Employees, allege as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiffs, the State of California, and other current
7 and former employees who worked for Defendants in California as non-exempt, hourly paid
8 employees and against whom one or more violations of any provision in Division 2 Part 2
9 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the
10 applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth
11 in this complaint, at any time between one year prior to the filing of the pre-filing written
12 notice to the Labor and Workforce Development Agency (“LWDA”) in this case on
13 September 12, 2022, until judgment (“non-party Aggrieved Employees”). Plaintiffs’ share of
14 civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiffs’ share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants filed Statement of Information forms with the California Secretary of State designating a principal place of business in Long Beach, County of Los Angeles, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and employed Plaintiffs in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Aram Rosas (“Plaintiff Rosas”) is a resident of Bell, in Los Angeles County, California. Defendants employed Plaintiff Rosas as an hourly paid, non-exempt employee from approximately January 2022 to July 2022. Plaintiff Rosas worked as a Service Technician at Defendants’ auto dealership in Long Beach, California. During his employment, Plaintiff Rosas typically worked eight (8) hours or more per day and six (6) days per week. Plaintiff Rosas’s primary job duties included, without limitation, reviewing repair orders; performing warranty and customer repairs, recalls, routine maintenance, and diagnostics; ordering parts; sending pre-approvals; and preparing quotes for customers.

7. Plaintiff David Barrientos (“Plaintiff Barrientos”) is a resident of Temecula, in Riverside County, California. Defendants employed Plaintiff Barrientos as an hourly paid, non-exempt employee from approximately November 2021 to April 2022. Plaintiff Barrientos worked as a Service Technician at Defendants’ auto dealership in Long Beach, California. During his employment, Plaintiff Barrientos typically worked nine (9) to ten (10) hours per day and five (5) days per week. Plaintiff Barrientos’s primary job duties included, without limitation, performing warranty and customer repairs, recalls, routine maintenance, and diagnostics.

1 8. LONG BEACH LINCOLN MERCURY, INC. was and is, upon information
2 and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose
3 employees are engaged throughout this county and the State of California.

4 9. PACIFIC FORD, INC. was and is, upon information and belief, a Delaware
5 corporation, and at all times hereinafter mentioned, an employer whose employees are
6 engaged throughout this county and the State of California.

7 10. Plaintiffs are unaware of the true names or capacities of the Defendants sued
8 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
9 amend the complaint and serve such fictitiously named Defendants once their names and
10 capacities become known.

11 11. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
12 were the partners, agents, owners, or managers of LONG BEACH LINCOLN MERCURY,
13 INC. and PACIFIC FORD, INC., at all relevant times.

14 12. Plaintiffs are informed and believe, and thereon allege, that each and all of the
15 acts and omissions alleged herein was performed by, or is attributable to, LONG BEACH
16 LINCOLN MERCURY, INC.; PACIFIC FORD, INC.; and/or DOES 1 through 10
17 (collectively, “Defendants” or “CARUSO FORD LINCOLN”), each acting as the agent,
18 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
19 Defendants and was acting within the course and scope of such agency, employment, joint
20 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any
21 and all Defendants were in accordance with, and represent, the official policy of Defendants.

22 13. At all relevant times, Defendants, and each of them, ratified each and every act
23 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
24 and abetted the acts and omissions of each and all the other Defendants in proximately causing
25 the damages herein alleged.

26 14. Plaintiffs are informed and believe, and thereon allege, that each of said
27 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
28 omissions, occurrences, and transactions alleged herein.

1 15. Under California law, Defendants are jointly and severally liable as employers
2 for the violations alleged herein because they have each exercised sufficient control over the
3 wages, hours, working conditions, and employment status of Plaintiffs and other non-party
4 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiffs and other
5 non-party Aggrieved Employees, supervised and controlled their work schedule and/or
6 conditions of employment, determined their rate of pay, and maintained their employment
7 records. Defendants suffered or permitted Plaintiffs and other non-party Aggrieved
8 Employees to work and/or “engaged” Plaintiffs and other non-party Aggrieved Employees so
9 as to create a common-law employment relationship. As joint employers of Plaintiffs and
10 other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil
11 penalties available to Plaintiffs and other non-party Aggrieved Employees under the law.

12 16. Plaintiffs are informed and believe, and thereon allege, that at all relevant
13 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs
14 and other non-party Aggrieved Employees because Defendants have:

- 15 (a) jointly exercised meaningful control over the work performed by
16 Plaintiffs and other non-party Aggrieved Employees;
- 17 (b) jointly exercised meaningful control over Plaintiffs’ and other non-party
18 Aggrieved Employees’ wages, hours, and working conditions, including
19 the quantity, quality standards, speed, scheduling, and operative details
20 of the tasks performed by Plaintiffs and other non-party Aggrieved
21 Employees;
- 22 (c) jointly required that Plaintiffs and other non-party Aggrieved
23 Employees perform work which is an integral part of Defendants’
24 businesses; and
- 25 (d) jointly exercised control over Plaintiffs and other non-party Aggrieved
26 Employees as a matter of economic reality in that Plaintiffs and other
27 non-party Aggrieved Employees were dependent on Defendants, who
28 shared the power to set the wages of Plaintiffs and other non-party

1 Aggrieved Employees and determined their working conditions, and
2 who jointly reaped the benefits from the underpayment of their wages
3 and noncompliance with other statutory provisions governing their
4 employment.

5 17. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
6 there has existed a unity of interest and ownership between Defendants such that any
7 individuality and separateness between the entities has ceased.

8 18. LONG BEACH LINCOLN MERCURY, INC.; PACIFIC FORD, INC.; and/or
9 DOES 1 through 10 are therefore alter egos of each other.

10 19. Adherence to the fiction of the separate existence of Defendants would permit
11 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
12 from liability for the wrongful acts committed by them under the name CARUSO FORD
13 LINCOLN.

14 20. Plaintiffs further allege, upon information and belief, that the Defendants
15 LONG BEACH LINCOLN MERCURY, INC. and PACIFIC FORD, INC. are alter egos of
16 each other for the following reasons:

17 (a) According to CARUSO FORD LINCOLN's website¹, the Caruso family
18 acquired PACIFIC FORD, INC.'s dealership "Pacific Ford" in 1985 and
19 founded LONG BEACH LINCOLN MERCURY, INC.'s dealership
20 "Long Beach Lincoln" in 1992. In 2012, "Pacific Ford" and "Long
21 Beach Lincoln" adopted their current names "Caruso Ford" and "Caruso
22 Lincoln," respectively;

23 (b) According to the most recent "Statement of Information" forms filed
24 with the California Secretary of State, LONG BEACH LINCOLN
25 MERCURY, INC.'s and PACIFIC FORD, INC.'s officers share the
26 same mailing address, which is "101 The Grove Drive, Los Angeles,
27

28 ¹ See "About Us," Ford and Used Car Dealer in Long Beach | Caruso Ford, available at
<https://www.carusoford.com/about-us/> (last visited April 3, 2023).

CA 90036”;

(c) According to the most recent “Statement of Information” forms filed with the California Secretary of State, LONG BEACH LINCOLN MERCURY, INC. and PACIFIC FORD, INC. share the same business type, “Automobile Dealership”; and

(d) On information and belief, LONG BEACH LINCOLN MERCURY, INC. and PACIFIC FORD, INC. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

21. Defendants operate automobile dealerships under the names “Caruso Ford” and “Caruso Lincoln,” serving the Long Beach, California area. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Long Beach, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

22. In particular, Plaintiffs and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

23. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Long Beach, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations in California, including Plaintiffs and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-

1 exempt, hourly paid employees in California, irrespective of their work locations. Upon
2 information and belief, Defendants process payroll for departing employees in the same
3 manner throughout the State of California, regardless of the manner in which each employee's
4 employment ends.

5 24. Defendants continue to employ non-exempt or hourly paid employees in
6 California.

7 25. Plaintiffs are informed and believe, and thereon allege, that at all times herein
8 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
9 and advisors knowledgeable about California labor and wage law, employment and personnel
10 practices, and about the requirements of California law.

11 26. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
12 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
13 were not recorded.

14 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
16 receive certain wages for overtime compensation and that they were not receiving certain
17 wages for overtime compensation.

18 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and/or other non-party Aggrieved Employees were entitled
20 to be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or
21 rest period premiums, that included as eligible income all remuneration required by law,
22 including but not limited to, all income derived from incentive pay, nondiscretionary bonuses,
23 and/or other forms of compensation, but failed to include all forms of remuneration in
24 calculating the regular rate of pay for Plaintiffs and/or other non-party Aggrieved Employees.

25 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
26 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
27 receive at least minimum wages for compensation and that they were not receiving at least
28 minimum wages for work that was required to be done off-the-clock. In violation of the

1 California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not paid at
2 least minimum wages for work done off-the-clock.

3 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
5 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
6 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
7 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and
8 other non-party Aggrieved Employees were not provided with all meal periods or payment of
9 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
10 uninterrupted, thirty (30) minute meal period.

11 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
13 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
14 payment of one (1) additional hour of pay at their regular rates of pay when they were not
15 authorized and permitted to take a compliant rest period and that Plaintiffs and other non-party
16 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
17 provided with payment of one (1) additional hour of pay at their regular rates of pay when
18 they were not authorized and permitted to take a compliant rest period.

19 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
21 receive complete and accurate wage statements in accordance with California law. In
22 violation of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees
23 were not provided complete and accurate wage statements.

24 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that they had a duty to maintain accurate and complete payroll records in
26 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
27 knowingly, and intentionally failed to do so.

28 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

1 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
2 timely payment of all wages earned upon termination of employment. In violation of the
3 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
4 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
5 meal and rest period premiums, and/or sick leave pay, within permissible time periods.

6 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
8 timely payment of wages during their employment. In violation of the California Labor Code,
9 Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages,
10 including, but not limited to, overtime wages, minimum wages, meal and rest period
11 premiums, and/or sick leave pay, within permissible time periods.

12 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and/or other non-party Aggrieved Employees were entitled
14 to receive sick leave benefits to be paid at a regular rate of pay, that included, as eligible
15 income, all income derived from incentive pay, nondiscretionary bonuses, and/or other forms
16 of compensation, but failed to include all forms of remuneration in calculating the regular rate
17 of pay for sick leave pay.

18 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
20 receive full reimbursement for all business-related expenses and costs they incurred during the
21 course and scope of their employment and that they did not receive full reimbursement of
22 applicable business-related expenses and costs incurred.

23 38. Plaintiffs are informed and believe, and thereon allege, that at all times herein
24 mentioned, Defendants knew or should have known that Defendants had a duty to provide
25 Plaintiffs and other non-party Aggrieved Employees with written notice of the material terms
26 of their employment with Defendants as required by the California Wage Theft Prevention
27 Act, but failed to do so.

28 39. Plaintiffs are informed and believe, and thereon allege, that at all times herein

1 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiffs
2 and other non-party Aggrieved Employees with safety devices and safeguards to protect their
3 life, safety, and health in the workplace, but failed to do so.

4 40. Plaintiffs are informed and believe, and thereon allege, that at all times herein
5 mentioned, Defendants knew or should have known that they had a duty to compensate
6 Plaintiffs and other non-party Aggrieved Employees for all hours worked, and that Defendants
7 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
8 failed to do so, and falsely represented to Plaintiffs and other non-party Aggrieved Employees
9 that they were properly denied wages, all in order to increase Defendants' profits.

10 41. At all times herein set forth, PAGA provides that any provision of law under
11 the California Labor Code and applicable IWC Wage Order that provides for a civil penalty to
12 be assessed and collected by the LWDA for violations of the California Labor Code and
13 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
14 civil action brought on behalf of themselves and other current or former employees pursuant
15 to procedures outlined in California Labor Code section 2699.3.

16 42. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
17 person who was employed by the alleged violator and against whom one or more of the
18 alleged violations was committed."

19 43. Plaintiffs and other current and former employees of Defendants are "aggrieved
20 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
21 or former employees and one or more of the alleged violations were committed against them.

22 44. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
23 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
24 following requirements have been met:

- 25 (a) The aggrieved employee shall give written notice by online filing
26 (hereinafter "Employee's Notice") to the LWDA and by certified mail
27 to the employer of the specific provisions of the California Labor Code
28 alleged to have been violated, including the facts and theories to support

1 the alleged violations.

2 (b) An aggrieved employee's notice filed with the LWDA pursuant to
3 2699.3(a) and any employer response to that notice shall be
4 accompanied by a filing fee of seventy-five dollars (\$75).

5 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
6 employer and the aggrieved employee by certified mail that it does not
7 intend to investigate the alleged violation within sixty (60) calendar
8 days of the postmark date of the Employee's Notice. Upon receipt of
9 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
10 five (65) calendar days of the postmark date of the Employee's Notice,
11 the aggrieved employee may commence a civil action pursuant to
12 California Labor Code section 2699 to recover civil penalties in addition
13 to any other penalties to which the employee may be entitled.

14 45. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
15 through Plaintiffs, may pursue a civil action arising under PAGA for violations of any
16 provision other than those listed in Section 2699.5 after the following requirements have been
17 met:

18 (a) The aggrieved employee or representative shall give written notice
19 by online filing to the LWDA and by certified mail to the employer
20 of the specific provisions of the California Labor Code alleged to
21 have been violated (other than those listed in Section 2699.5),
22 including the facts and theories to support the alleged violation.

23 (b) An aggrieved employee's notice filed with the LWDA pursuant to
24 2699.3(c) and any employer response to that notice shall be
25 accompanied by a filing fee of seventy-five dollars (\$75).

26 (c) The employer may cure the alleged violation within thirty-three (33)
27 calendar days of the postmark date of the notice. The employer
28 shall give written notice by certified mail within that period of time

1 to the aggrieved employee or representative and the agency if the
2 alleged violation is cured, including a description of actions taken,
3 and no civil action pursuant to Section 2699 may commence. If the
4 alleged violation is not cured within the 33-day period, the employee
5 may commence a civil action pursuant to Section 2699.

6 46. On September 12, 2022, Plaintiff Barrientos provided written notice by online
7 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
8 California Labor Code alleged to have been violated, including facts and theories to support
9 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
10 Barrientos's written notice was accompanied with the applicable filing fee of seventy-five
11 dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff
12 Barrientos's written notice and assigned Plaintiff Barrientos PAGA Case Number LWDA-
13 CM-907381-22. On September 13, 2022, Plaintiff Barrientos filed an amended written notice
14 by online filing to the LWDA and by certified mail to Defendants of the specific provisions of
15 the California Labor Code alleged to have been violated, supplementing and/or clarifying the
16 facts and theories to support the alleged violations set forth in his original LWDA notice, in
17 accordance with California Labor Code section 2699.3. True and correct copies of Plaintiff
18 Barrientos's written notices to the LWDA and Defendants dated September 12, 2022, and
19 September 13, 2022, are attached hereto as "Exhibit 1."

20 47. As of the filing date of this complaint, over 65 days have passed since Plaintiff
21 Barrientos sent the written notice described above, and the LWDA has not responded that it
22 intends to investigate Plaintiff Barrientos's claims, and Defendants have not cured the
23 violations.

24 48. Thus, Plaintiffs have satisfied the administrative prerequisites under California
25 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
26 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
27 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

28 49. Labor Code section 558(a) provides "[a]ny employer or other person acting on

1 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
2 provision regulating hours and days of work in any order of the Industrial Welfare
3 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
4 dollars (\$50) for each underpaid employee for each pay period for which the employee was
5 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
6 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
7 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
8 to any other civil or criminal penalty provided by law.” Plaintiffs, acting in the public interest
9 as private attorneys general, seek assessment and collection of civil penalties under Labor
10 Code section 558 for themselves, all other non-party Aggrieved Employees, and the State of
11 California against Defendants for violations of Labor Code sections 510, 512(a), 516, and
12 1198, and the applicable IWC Wage Order. Plaintiffs, acting in the public interest as private
13 attorneys general, do not seek the recovery of unpaid wages under Labor Code section 558
14 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
15 applicable IWC Wage Order.

16 50. Defendants, at all times relevant to this complaint, were employers or persons
17 acting on behalf of an employer(s) who violated Plaintiffs’ and other non-party Aggrieved
18 Employees’ rights by violating various sections of the California Labor Code as set forth
19 above.

20 51. As set forth below, Defendants have violated numerous provisions of both the
21 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
22 Order.

23 52. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
24 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as
25 private attorneys general, seek assessment and collection of civil penalties for themselves, all
26 other non-party Aggrieved Employees, and the State of California against Defendants for
27 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
28 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

1 **FIRST CAUSE OF ACTION**

2 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

3 **(Against all Defendants)**

4 53. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
5 and every allegation set forth above.

6 54. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
9 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits
10 aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those
11 Labor Code sections not found in section 2699.5, including sections 246, 516, 1182.12,
12 2810.5, 6401, and 6403.

13 55. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

- 15 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
16 Wage Order for Defendants’ failure to compensate Plaintiffs and other
17 non-party Aggrieved Employees with all required overtime pay, as set
18 forth below;
- 19 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
20 applicable IWC Wage Order for Defendants’ failure to include all forms
21 of remuneration in the “regular rate” of pay as required by law for
22 purposes of paying overtime wages and/or meal and rest period
23 premiums, to Plaintiffs and/or other non-party Aggrieved Employees, as
24 set forth below;
- 25 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
26 the applicable IWC Wage Order for Defendants’ failure to compensate
27 Plaintiffs and other non-party Aggrieved Employees with at least
28 minimum wages for all hours worked, as set forth below;

- 1 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
2 applicable IWC Wage Order for Defendants' failure to provide
3 Plaintiffs and other non-party Aggrieved Employees with meal periods,
4 as set forth below;
- 5 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
6 applicable IWC Wage Order for Defendants' failure to authorize and
7 permit Plaintiffs and other non-party Aggrieved Employees to take rest
8 periods, as set forth below;
- 9 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
10 IWC Wage Order for failure to provide accurate and complete wage
11 statements to Plaintiffs and other non-party Aggrieved Employees, as
12 set forth below;
- 13 (f) Violation of Labor Code section 204 for failure to pay all earned wages
14 during employment, as set forth below;
- 15 (g) Violation of Labor Code sections 201 and 202 for failure to pay all
16 earned wages upon termination, as set forth below;
- 17 (h) Violation of Labor Code section 246 for failure to properly calculate the
18 sick leave paid to Plaintiffs and/or other non-party Aggrieved
19 Employees, as set forth below;
- 20 (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
21 and other non-party Aggrieved Employees for all business expenses
22 necessarily incurred, as set forth below;
- 23 (j) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
24 provide written notice of information material to Plaintiffs' and other
25 non-party Aggrieved Employees' employment with Defendants, as set
26 forth below; and
- 27 (k) Violation of Labor Code sections 6401 and 6403 for failure to provide
28 Plaintiffs and other non-party Aggrieved Employees with safety devices

and safeguards for the workplace, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

56. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

57. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

58. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and other non-party Aggrieved Employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

59. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs and other non-party Aggrieved Employees working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

60. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

1 61. During the relevant time period, Defendants willfully failed to pay all overtime
2 wages owed to Plaintiffs and other non-party Aggrieved Employees. During the relevant time
3 period, Plaintiffs and other non-party Aggrieved Employees were not paid overtime premiums
4 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
5 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
6 not recorded.

7 62. First, Defendants had, and continue to have, a company-wide policy and/or
8 practice of discouraging and impeding Plaintiffs and other non-party Aggrieved Employees
9 from recording hours worked that were outside of their scheduled shifts in order to limit the
10 amount of overtime employees could accrue. On information and belief, this policy of
11 limiting overtime, coupled with Defendants' practice of assigning heavy workloads and
12 productivity expectations (*see infra*), led Plaintiffs and other non-party Aggrieved Employees
13 to work off-the-clock outside of their scheduled shift times in order to complete their assigned
14 tasks. Because Defendants discouraged overtime accrual by, among other things, requiring
15 employees to obtain approval of overtime hours from Defendants' supervisors and shaving off
16 the time that employees worked before and after their shifts (*see infra*), Plaintiffs and other
17 non-party Aggrieved Employees were required to complete assigned tasks outside of their
18 scheduled shifts without being compensated for the time they worked.

19 63. For example, Plaintiffs were required to complete online classes, but they were
20 not permitted to complete them during their shifts. As a result, they were forced to review
21 materials and complete classes before or after their scheduled shifts and/or on days off.
22 Plaintiff Rosas spent approximately 8 hours while Plaintiff Barrientos spent approximately
23 120 hours completing online classes over the course of their employment, time for which they
24 were not paid. As another example, Plaintiff Rosas clocked out at the end of his scheduled
25 shifts, as instructed by Defendants' management, and continued working to complete
26 paperwork. Additionally, Defendants' management would ask Plaintiff Barrientos to stay and
27 assist customers, such as checking their tire pressure or battery or running other diagnostic
28 tests, which would take Plaintiff Barrientos about 20 minutes each occurrence.

1 64. As a further example, Defendants implemented, on a company-wide basis, an
2 employer-imposed requirement that Plaintiffs and other non-party Aggrieved Employees
3 undergo mandatory COVID-19 temperature checks and/or health screenings before clocking
4 in for their scheduled shifts. Plaintiff Rosas spent a few minutes per instance filling in a
5 health screening form, before clocking in for his shift. Additionally, prior to their shifts,
6 Plaintiff Barrientos would be required to spend up to ten (10) minutes per instance waiting
7 and then undergoing a mandatory temperature check and signing a health screening form,
8 before being permitted to clock in for his shifts. Even though Defendants required these
9 temperature checks and/or health screenings, Defendants did not provide Plaintiffs and other
10 non-party Aggrieved Employees a mechanism to record this time worked so they could be
11 compensated for the time spent undergoing mandatory temperature checks and/or health
12 screenings.

13 65. Further, Plaintiffs and other non-party Aggrieved Employees were required to
14 change into their uniforms, which consisted of a logoed polo shirt and cargo pants, at
15 Defendants' facility; however, Defendants did not allow Plaintiffs and other non-party
16 Aggrieved Employees to report the time spent donning their uniform at the beginning of their
17 shifts and/or doffing their uniform at the end of their shifts as hours worked, despite being on
18 Defendants' premises and under Defendants' control, due to a company policy requiring that
19 employees be in their uniforms when clocking in for their shifts. As a result, Plaintiffs and
20 other non-party Aggrieved Employees were required to spend approximately five (5) minutes
21 donning their uniforms before clocking in and/or doffing their uniforms after clocking out.
22 This off-the-clock work could have been recorded by Defendants, but they refused to do so to
23 avoid the payment of additional wages to Plaintiffs and other non-party Aggrieved
24 Employees.

25 66. Second, upon information and belief, Defendants' management engaged in a
26 company-wide practice and/or policy of altering and/or falsifying Plaintiff Rosas's and other
27 non-party Aggrieved Employees' time records to reflect only their scheduled shift start-times
28 and shift end-times, instead of the actual hours they worked. Further, Defendants' company-

1 wide timekeeping system prevented Plaintiff Barrientos and other non-party Aggrieved
2 Employees from recording all hours worked when they were required to stay after their
3 scheduled shifts to assist customers, because, on information and belief, the system locked out
4 Plaintiff Barrientos and other non-party Aggrieved Employees once they clocked out at the
5 end of their shift, and would not permit them to clock back in until the next day. Thus,
6 Plaintiff Barrientos and other non-party Aggrieved Employees were prevented from recording
7 time worked after clocking out for their scheduled shifts and were forced to work off-the-
8 clock. Upon information and belief, Defendants' timekeeping practices and/or policies are,
9 and continue to be, unfair and have, over time, resulted in the underpayment of wages to
10 Plaintiffs and other non-party Aggrieved Employees. To the extent Defendants' timekeeping
11 practices and/or policies have taken away time worked that was eligible for overtime,
12 Plaintiffs and other non-party Aggrieved Employees have been denied overtime pay for all
13 hours worked.

14 67. Third, as stated, Defendants had, and continue to have, a company-wide policy
15 and/or practice of understaffing and/or assigning heavy workloads, including pressuring
16 employees to meet deadlines and productivity requirements. Further, Defendants had a
17 company-wide practice of failing to schedule and/or adhere to a schedule for meal periods,
18 which exacerbated the lack of meal period coverage and prevented Plaintiffs and other non-
19 party Aggrieved Employees from taking all uninterrupted meal periods to which they were
20 entitled. Thus, Defendants' policies and/or practices resulted in a failure to provide Plaintiffs
21 and other non-party Aggrieved Employees with adequate meal period coverage, and thus,
22 Plaintiffs and other non-party Aggrieved Employees were not always afforded uninterrupted
23 30-minute meal periods during shifts when they were entitled to receive a meal period. For
24 example, Plaintiffs' meal periods were interrupted by their supervisors inquiring about
25 ongoing repairs and status of vehicles either in person or over the phone. On other occasions,
26 Plaintiffs worked through their meal periods entirely due to the heavy workload. Thus,
27 Plaintiffs and other non-party Aggrieved Employees worked through meal periods and/or had
28 meal periods cut short or interrupted in order to complete their assigned workloads and meet

1 productivity expectations. Defendants did not compensate Plaintiffs and other non-party
2 Aggrieved Employees for the time they spent working off the clock during meal periods.

3 68. Furthermore, on information and belief, because Defendants frowned upon
4 employees accruing meal period penalties, Defendants' management adjusted employee time
5 records to reflect compliant meals and/or pressured them to clock out for meal periods
6 regardless of whether they had received a compliant meal period or not, in order to strictly
7 limit the meal penalties that would need to be paid by Defendants. Furthermore, on
8 information and belief, Defendants' company-wide timekeeping system prevented Plaintiff
9 Rosas and other non-party Aggrieved Employees from recording all hours worked when their
10 meal periods were shortened or interrupted, because the system locked out Plaintiff Rosas and
11 other non-party Aggrieved Employees once they clocked out for a meal period, and would not
12 permit them to clock back in from a meal period before 30 minutes had elapsed. Thus,
13 Defendants did not record all hours worked during meal periods, and Plaintiffs and other non-
14 party Aggrieved Employees performed work during meal periods for which they were not
15 paid.

16 69. Defendants knew or should have known that, as a result of these company-wide
17 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were
18 performing their assigned duties off-the-clock before and after their shifts and during meal
19 periods, and were suffered or permitted to perform work for which they were not paid.
20 Because Plaintiffs and other non-party Aggrieved Employees regularly worked shifts of eight
21 (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work
22 qualified for overtime premium pay.

23 70. Furthermore, Defendants did not pay Plaintiff Barrientos and other non-party
24 Aggrieved Employees the correct overtime rate for the recorded overtime hours that they
25 generated. For example, for the pay period ending January 15, 2022, Defendants paid
26 Plaintiff Barrientos overtime wages at the rate of \$42 per hour, which was less than 1.5 times
27 Plaintiff Barrientos's regular hourly rate of pay of \$30 per hour.

28 71. Moreover, in addition to an hourly wage, Defendants paid Plaintiffs and/or

1 other non-party Aggrieved Employees incentive pay, nondiscretionary bonuses, and/or other
2 forms of remuneration. However, in violation of the California Labor Code, Defendants
3 failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses,
4 and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes
5 of calculating the overtime wage rate. Therefore, during times when Plaintiffs and/or other
6 non-party Aggrieved Employees worked overtime and received these other forms of pay,
7 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

8 72. For example, Defendants paid Plaintiffs and/or other non-party Aggrieved
9 Employees incentive pay and/or nondiscretionary bonuses which were listed on their wage
10 statements as “Tech Production Bonus.” During pay periods that Plaintiffs and/or other non-
11 party Aggrieved Employees were paid overtime wages, Defendants did not incorporate the
12 incentive pay and/or nondiscretionary bonuses into Plaintiffs and/or other non-party
13 Aggrieved Employees regular rate(s) of pay and, as a result, paid them at incorrect and lower
14 rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiffs and/or other
15 non-party Aggrieved Employees 1.5 times their hourly rate(s) of pay instead of 1.5 times their
16 regular rate(s) of pay. Defendants’ failure to properly calculate the overtime rates of pay
17 based on all remuneration paid has resulted in an underpayment of overtime wages to
18 Plaintiffs and/or other non-party Aggrieved Employees.

19 73. Defendants’ failure to pay Plaintiffs and other non-party Aggrieved Employees
20 the balance of overtime compensation as required by California law, violates the provisions of
21 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
22 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
23 558 and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY MINIMUM WAGES**

25 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

26 74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
27 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
28 to be paid to employees, and the payment of a wage less than the minimum so fixed is

1 unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as “the time
2 during which an employee is subject to the control of an employer, and includes all the time
3 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code
4 Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

5 75. As stated above, due to their restrictions on overtime accrual, Defendants
6 systematically failed to pay Plaintiffs and other non-party Aggrieved Employees for actual
7 hours worked before and after their scheduled shifts, because these hours were not accurately
8 recorded. Because Defendants discouraged and impeded Plaintiffs and other non-party
9 Aggrieved Employees from recording hours worked that were outside of their scheduled
10 shifts, Plaintiffs and other non-party Aggrieved Employees were required to perform work
11 off-the-clock prior to the start of their shifts, after their shifts, and/or on their days off,
12 including donning and/or doffing their uniforms, completing online classes, undergoing
13 COVID-19 temperature checks and/or health screenings, and completing paperwork or
14 assisting customers. As stated, Defendants maintained a company-wide policy and/or practice of
15 altering, adjusting, and/or falsifying employee time records to reflect scheduled hours rather than
16 hours actually worked, thereby shorting Plaintiff Rosas and other non-party Aggrieved Employees
17 of wages for work performed outside of their scheduled shifts. Further, Defendants’ timekeeping
18 system locked out other non-party Aggrieved Employees once they clocked out at the end of their
19 shift, and would not permit them to clock back in until the next day.

20 76. Further, as also stated above, due to Defendants’ policies and/or practices of
21 understaffing and/or assigning heavy workloads/deadlines, as well as failing to schedule
22 and/or adhere to a schedule for meal periods, Plaintiffs and other non-party Aggrieved
23 Employees were impeded from taking all uninterrupted meal periods to which they were
24 entitled and were required to work off-the-clock during meal periods. Moreover, as stated, in
25 order to prevent employees from accruing meal period penalties, upon information and belief,
26 Defendants’ management adjusted employee time records to reflect compliant meals and/or
27 pressured employees to clock out for meal periods even when meal periods were missed,
28 short, and/or interrupted. Furthermore, as stated, Defendants systematically failed to pay

1 Plaintiff Rosas and other non-party Aggrieved Employees for actual hours worked during
2 unpaid meal periods, because Defendants' timekeeping system locked out Plaintiff Rosas and
3 other non-party Aggrieved Employees for 30 minutes when they clocked out for a meal
4 period. Thus, Defendants systematically failed to pay Plaintiffs and other non-party
5 Aggrieved Employees for actual hours worked during unpaid meal periods because these
6 hours were not always correctly recorded.

7 77. Thus, Defendants did not pay minimum wages for all hours worked by
8 Plaintiffs and other non-party Aggrieved Employees. To the extent that these off-the-clock
9 hours did not qualify for overtime premium payment, Defendants did not pay at least
10 minimum wages for those hours worked off-the-clock in violation of California Labor Code
11 sections 1182.12, 1194, 1197, and 1198.

12 78. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
13 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
14 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
15 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

16 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

17 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

18 79. At all relevant times herein set forth, the applicable IWC Wage Order and
19 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs' and
20 other non-party Aggrieved Employees' employment by Defendants.

21 80. At all relevant times herein set forth, California Labor Code section 512(a)
22 provides that an employer may not require, cause, or permit an employee to work for a period
23 of more than five (5) hours per day without providing the employee with a meal period of not
24 less than thirty (30) minutes, except that if the total work period per day of the employee is
25 not more than six (6) hours, the meal period may be waived by mutual consent of both the
26 employer and the employee. Under California law, first meal periods must start after no more
27 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

28 81. At all relevant times herein set forth, California Labor Code sections 226.7,

1 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
2 meal period mandated by an applicable order of the IWC.

3 82. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
4 the applicable IWC Wage Order also require employers to provide a second meal period of
5 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
6 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
7 hours worked is no more than twelve (12) hours, the second meal period may be waived by
8 mutual consent of the employer and the employee only if the first meal period was not waived.

9 83. First, during the relevant time period, as stated, Defendants had, and continue
10 to have a company-wide policy and/or practice of understaffing and/or assigning heavy
11 workloads, including pressure to meet deadlines and productivity requirements, which has
12 resulted in a lack of meal period coverage. Further, Defendants' company-wide practice of
13 failing to schedule and/or adhere to a schedule for meal periods exacerbated the lack of meal
14 period coverage and prevented Plaintiffs and other non-party Aggrieved Employees from
15 taking all timely, uninterrupted meal periods to which they were entitled.

16 84. As a result, Plaintiffs and other non-party Aggrieved Employees would be
17 forced to work in excess of five (5) hours before taking a meal period and, at times, had their
18 meal periods interrupted and/or had to forgo their meal periods altogether. For example,
19 because of Defendants' policy and/or practice of understaffing and/or assigning heavy
20 workloads and productivity requirements, Plaintiffs had to forgo their meal periods 2-3 times
21 per week, or they took their meal periods late, after the fifth hour of work. Moreover,
22 Plaintiffs' meal periods were occasionally interrupted by their supervisors asking them to
23 complete a repair or service or requesting information on vehicle repair status, after they had
24 already clocked out for their meal periods.

25 85. Second, as set forth above, because Defendants frowned upon employees
26 accruing meal period penalties, Defendants' management adjusted employee time records to
27 reflect compliant meals and/or pressured employees to clock out for meal periods to reflect
28 compliant meal periods, regardless of whether they had received a compliant meal period or

1 not, in order to strictly limit the meal penalties that would need to be paid by Defendants.
2 Also, as stated, on information and belief, Defendants' company-wide timekeeping system
3 prevented Plaintiff Rosas and other non-party Aggrieved Employees from recording all hours
4 worked when their meal periods were shortened or interrupted, because the system locked out
5 Plaintiff Rosas and other non-party Aggrieved Employees once they clocked out for a meal
6 period, and would not permit them to clock back in from a meal period before 30 minutes had
7 elapsed.

8 86. Third, Defendants did not provide Plaintiffs and other non-party Aggrieved
9 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
10 hours in one day. During their employment, Plaintiffs worked shifts in excess of ten (10) or
11 more hours per day but were never provided a second 30-minute meal period. Plaintiffs and
12 other non-party Aggrieved Employees did not sign valid meal period waivers on days that
13 they were entitled to meal periods and were not relieved of all duties.

14 87. At all times mentioned herein, Defendants knew or should have known that as a
15 result of their policies, Plaintiffs and other non-party Aggrieved Employees were not actually
16 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
17 should have known that they did not pay Plaintiffs and other non-party Aggrieved Employees
18 meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

19 88. Furthermore, Defendants engaged in a company-wide practice and/or policy of
20 not paying all meal period premiums owed when compliant meal periods are not provided.
21 Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees
22 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
23 to the extent that Defendants did pay Plaintiffs and/or other non-party Aggrieved Employees
24 premium pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiffs
25 and/or other non-party Aggrieved Employees the correct rate of pay for premiums because
26 Defendant systematically failed to include all forms of compensation such as incentive pay,
27 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

28 89. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved

1 Employees compliant meal periods and failed to pay the full meal period premiums due.
2 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
3 sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
4 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
5 2699(a), (f), and (g).

6 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

7 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

8 90. At all relevant times herein set forth, the applicable IWC Wage Order and
9 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and other
10 non-party Aggrieved Employees' employment by Defendants.

11 91. At all relevant times, the applicable IWC Wage Order provides that "[e]very
12 employer shall authorize and permit all employees to take rest periods, which insofar as
13 practicable shall be in the middle of each work period" and that the "rest period time shall be
14 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
15 hours or major fraction thereof" unless the total daily work time is less than three and one-half
16 (3 ½) hours.

17 92. At all relevant times, California Labor Code section 226.7 provides that no
18 employer shall require an employee to work during any rest period mandated by an applicable
19 order of the California IWC. To comply with its obligation to authorize and permit rest
20 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
21 employer must "relinquish any control over how employees spend their break time, and
22 relieve their employees of all duties—including the obligation that an employee remain on
23 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
24 *Inc.*, 2 Cal. 5th 257, 273 (2016).

25 93. Pursuant to the applicable IWC Wage Order and California Labor Code section
26 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from
27 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
28 required rest period was not authorized and permitted.

1 94. During the relevant time period, Defendants regularly failed to authorize and
2 permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest
3 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
4 Defendants' company-wide practices, including understaffing and/or assigning heavy
5 workloads and pressure to meet deadlines and productivity requirements, prevented Plaintiffs
6 and other non-party Aggrieved Employees from being relieved of all duty in order to take
7 compliant rest periods. Additionally, Defendants wholly failed to schedule rest periods,
8 which further led to Plaintiffs and other non-party Aggrieved Employees not being authorized
9 and permitted to take rest periods.

10 95. Furthermore, Defendants maintained and implemented a company-wide on-
11 premises rest period policy, which mandated that Plaintiffs and other non-party Aggrieved
12 Employees remain on the work premises during their rest periods. Because Plaintiffs and
13 other non-party Aggrieved Employees were restricted from leaving the premises during rest
14 periods, they were denied the ability to use their rest periods freely for their own purposes,
15 such as running personal errands. Thus, Defendants effectively maintained control over
16 Plaintiffs and other non-party Aggrieved Employees during rest periods.

17 96. As a result of Defendants' practices and policies, Plaintiffs and other non-party
18 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
19 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
20 were entitled. For example, Plaintiff Rosas had to forego some of his rest periods altogether
21 because of the heavy workload and Defendants' failure to schedule rest periods for
22 employees. Plaintiff Rosas also had his rest periods interrupted or cut short due to
23 management asking employees to return to work and complete repairs or services for
24 customers. Plaintiff Barrientos also had to forego his rest periods altogether because of the
25 heavy workload and failure to schedule rest periods.

26 97. Defendants also have engaged in a company-wide practice and/or policy of not
27 paying all rest period premiums owed when compliant rest periods are not authorized and
28 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved

1 Employees have not received premium pay for all missed rest periods. Alternatively, to the
2 extent that Defendants did pay Plaintiffs and/or other non-party Aggrieved Employees one (1)
3 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiffs
4 and/or other non-party Aggrieved Employees at the correct rate of pay for premiums because
5 Defendants failed to include all forms of compensation, such as incentive pay,
6 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

7 98. Accordingly, Defendants failed to authorize and permit all compliant rest
8 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
9 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
10 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
11 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

12 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
13 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

14 99. At all relevant times herein set forth, California Labor Code section 226(a)
15 provides that every employer shall furnish each of his or her employees an accurate and
16 complete itemized wage statement in writing, including, but not limited to, the name and
17 address of the legal entity that is the employer, the inclusive dates of the pay period, total
18 hours worked, and all applicable rates of pay.

19 100. At all relevant times, Defendants have knowingly and intentionally provided
20 Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
21 wage statements. For example, Defendants issued uniform wage statements to Plaintiffs and
22 other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total
23 hours worked; net wages earned; and all applicable hourly rates in effect during the pay
24 period, including rates of pay for overtime wages and/or meal and rest period premiums, and
25 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
26 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

27 101. Because Defendants did not record the time Plaintiffs and other non-party
28 Aggrieved Employees spent working off-the-clock and deducted time from their records for

1 meal periods that were interrupted and/or missed (and therefore time for which they should
2 have been paid), Defendants did not list the correct amount of gross wages and net wages
3 earned by Plaintiffs and other non-party Aggrieved Employees in compliance with section
4 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to
5 accurately list the total number of hours worked by Plaintiffs and other non-party Aggrieved
6 Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of
7 pay in effect during the pay period and the corresponding accurate number of hours worked at
8 each hourly rate, in violation of section 226(a)(9).

9 102. Additionally, because Defendants did not calculate Plaintiffs' and/or other non-
10 party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime
11 wages and/or meal and rest period premiums, Defendants did not list the correct amount of
12 gross wages in compliance with section 226(a)(1) and did not list the correct amount of net
13 wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable
14 hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages
15 and/or meal and rest period premiums, in violation of section 226(a)(9).

16 103. The wage statement deficiencies also include, without limitation, failing to list
17 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
18 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
19 for which employees were paid; failing to list the name of the employee and only the last four
20 digits of his or her social security number or an employee identification number other than a
21 social security number; failing to list the name and address of the legal entity that is the
22 employer; and/or failing to state all hours worked as a result of not recording or stating hours
23 worked off-the-clock.

24 104. California Labor Code section 1174(d) provides that "[e]very person employing
25 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
26 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
27 plants or establishments at which employees are employed, payroll records showing the hours
28 worked daily by and the wages paid to, and the number of piece-rate units earned by and any

1 applicable piece rate paid to, employees employed at the respective plants or
2 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
3 civil penalty if they fail to maintain accurate and complete records as required by section
4 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
5 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
6 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
7 as a result of failing to record the off-the-clock hours that they worked.

8 105. California Labor Code section 1198 provides that the maximum hours of work
9 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
10 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
11 employment of any employees for longer hours than those fixed by the order or under
12 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
13 Wage Order, employers are required to keep accurate time records showing when the
14 employee begins and ends each work period and meal period. During the relevant time
15 period, Defendants failed, on a company-wide basis, to record actual hours worked, and
16 thereby failed to keep accurate records of work and meal period start and stop times for
17 Plaintiffs and other non-party Aggrieved Employees, in violation of section 1198. As stated,
18 Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiffs’ and
19 other non-party Aggrieved Employees’ time records by recording that compliant meal periods
20 were taken regardless of if or when meal periods were actually taken, and thereby failed to
21 keep accurate records of meal start and end times for Plaintiffs and other non-party Aggrieved
22 Employees. Furthermore, in light of Defendants’ failure to provide Plaintiffs and other non-
23 party Aggrieved Employees with second 30-minute meal periods to which they were entitled,
24 Defendants kept no records of meal start and end times for second meal periods.

25 106. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
26 and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
27 recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and
28 (g).

1 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

2 **VIOLATION OF LABOR CODE SECTION 204**

3 107. At all relevant times herein set forth, California Labor Code section 204
4 requires that all wages earned by any person in any employment between the 1st and the 15th
5 days, inclusive, of any calendar month, other than those wages due upon termination of an
6 employee, are due and payable between the 16th and the 26th day of the month during which
7 the labor was performed. Labor Code section 204 further provides that all wages earned by
8 any person in any employment between the 16th and the last day, inclusive, of any calendar
9 month, other than those wages due upon termination of an employee, are due and payable
10 between the 1st and the 10th day of the following month.

11 108. At all relevant times herein, California Labor Code section 204 also requires
12 that all wages earned for labor in excess of the normal work period shall be paid no later than
13 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
14 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
15 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
16 more than seven (7) calendar days following the close of the payroll period.

17 109. During the relevant time period, Defendants willfully failed to pay Plaintiffs
18 and other non-party Aggrieved Employees all wages due including, but not limited to,
19 overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay,
20 within the time periods specified by California Labor Code section 204.

21 110. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
22 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY WAGES UPON TERMINATION**

24 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

25 111. At all times relevant herein set forth, California Labor Code sections 201 and
26 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
27 time of discharge are due and payable immediately, and that if an employee voluntarily leaves
28 his or her employment, his or her wages shall become due and payable not later than seventy-

1 two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous
2 notice of his or her intention to quit, in which case the employee is entitled to his or her wages
3 at the time of quitting.

4 112. During the relevant time period, on information and belief, Defendants had a
5 company-wide practice or policy of paying departing employees their final wages on the next
6 regular pay cycle, instead of adhering to the time requirements set forth in Labor Code
7 sections 201 and 202. For example, Plaintiff Barrientos was terminated on April 6, 2022;
8 however, he did not receive his final pay until on or about April 20, 2022. Thus, Defendants
9 failed to pay Plaintiff Barrientos his final wages immediately, in violation of California Labor
10 Code section 201.

11 113. Additionally, Defendants willfully failed to pay Plaintiffs and other non-party
12 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid
13 wages set forth above, including but not limited to, overtime wages, minimum wages, meal
14 and rest period premiums, and/or sick leave pay, either at the time of discharge, or within
15 seventy-two (72) hours of their leaving Defendants' employ.

16 114. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees
17 who are no longer employed by Defendants their wages earned and unpaid at the time of
18 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
19 California Labor Code sections 201 and 202. Plaintiffs and other non-party Aggrieved
20 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
21 256 and/or 2699(a), (f), and (g).

22 **FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY**
23 **VIOLATION OF LABOR CODE SECTION 246**

24 115. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
25 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
26 days from the commencement of employment with paid sick days, to be accrued at least one
27 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
28 employers must provide no less than 24 hours or three (3) days of paid sick leave (or

equivalent paid leave or paid time off) in each year of the employee’s employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]” or 2) “[p]aid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

116. During the relevant time period, Defendants did not pay Plaintiffs and/or other non-party Aggrieved Employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiffs and/or other non-party Aggrieved Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Plaintiffs and/or other non-party Aggrieved Employees took sick leave and received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, Defendants paid Plaintiffs and/or other non-party Aggrieved Employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

117. Defendants’ failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiffs and/or other non-party Aggrieved Employees on a company-wide basis, in violation of California Labor Code section 246(l).

118. Plaintiffs and/or other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

//

//

1 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

2 **VIOLATION OF LABOR CODE SECTION 2802**

3 119. At all times herein set forth, California Labor Code section 2802 provides that
4 an employer must reimburse employees for all necessary expenditures and losses incurred by
5 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
6 to prevent employers from passing off their cost of doing business and operating expenses on
7 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
8 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen
9 tools or equipment are required by the employer or are necessary to the performance of a job,
10 such tools and equipment shall be provided and maintained by the employer, except that an
11 employee whose wages are at least two (2) times the minimum wage provided herein may be
12 required to provide and maintain hand tools and equipment customarily required by the trade
13 or craft.” IWC Wage Order No. 7-2001 further provides that: “[w]hen uniforms are required
14 by the employer to be worn by the employee as a condition of employment, such uniforms
15 shall be provided and maintained by the employer.”

16 120. First, during the relevant time period, Defendants, on a company-wide basis,
17 required that Plaintiffs and other non-party Aggrieved Employees use their own personal
18 mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out
19 their job duties, but failed to reimburse them for the costs of their work-related mobile device
20 and/or mobile data expenses. For example, Plaintiffs were required to download various
21 mobile applications on their personal mobile devices; Plaintiffs downloaded the “Paycom”
22 mobile application to clock in and out for their shifts, to record their meal periods, and/or to
23 respond to health screening questions; Plaintiffs also downloaded the “ELEAD Service
24 Mobile” mobile application to perform multi-point inspections on vehicles; finally, Plaintiffs
25 downloaded “Microsoft Outlook” to communicate with their supervisor(s) via electronic mail.
26 Plaintiffs regularly used their mobile data to utilize the aforementioned mobile applications.
27 However, Plaintiffs and other non-party Aggrieved Employees were not compensated for the
28 cost of the mobile data used to download and access the applications. Further, Defendants

1 contacted Plaintiffs on their personal mobile devices to discuss work-related issues and ask
2 questions pertaining to progress on ongoing repairs, updates on vehicle status, and estimated
3 time of completion. Although Defendants required Plaintiffs and other non-party Aggrieved
4 Employees to utilize their personal mobile devices and/or mobile data to carry out their work-
5 related responsibilities, Defendants failed to reimburse them for these costs.

6 121. Second, during the relevant time period, Defendants required Plaintiffs and
7 other non-party Aggrieved Employees to purchase supplies and equipment necessary for the
8 performance of their duties, but failed to reimburse them for their out-of-pocket costs. For
9 example, Plaintiff Rosas spent about \$1,300 on a Vehicle Communication Module (“VCM”)
10 and \$800 on a personal laptop computer, while Plaintiff Barrientos spent about \$180 on an air
11 hose, \$1,300 on a VCM, \$1,000 per year on an Integrated Diagnostic Software license key,
12 and \$1500 on a personal laptop computer. Defendants failed to provide service technicians
13 with sufficient equipment for the dealership’s service department to operate properly and/or
14 meet management’s expectations. As a result, Plaintiffs were required to purchase their own
15 equipment in order to complete their daily tasks. Although Defendants required Plaintiffs and
16 other non-party Aggrieved Employees to purchase supplies and equipment to carry out their
17 work-related responsibilities, Defendants failed to reimburse them for their out-of-pocket
18 costs to purchase necessary supplies and equipment.

19 122. Third, during the relevant time period, Defendants required Plaintiffs and other
20 non-party Aggrieved Employees to wear clean and presentable uniforms bearing the “Ford” or
21 “Caruso Ford” company logo, including a polo shirt and pants, on a daily basis. For example,
22 due to the nature of vehicle repair and maintenance work, Plaintiff Barrientos’s and other non-
23 party Aggrieved Employees’ uniform items would become stained with grease or oil, become
24 soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in
25 with other laundry. As a result, they had to wash their uniform items separately from their
26 regular clothing, thus incurring additional utility and laundry expenses for the upkeep of their
27 uniforms. Thus, Defendants failed to maintain the uniforms they required Plaintiff Barrientos
28 and other non-party Aggrieved Employees to wear during their shifts and forced them to incur

1 the cost of maintaining employee uniforms.

2 123. Fourth, during the relevant time period, Defendants, on a company-wide basis,
3 required Plaintiffs and other non-party Aggrieved Employees to wear special safety shoes
4 such as steel-toed boots and safety goggles, which they were required to wear while at work
5 and necessary for the completion of their work-related duties. Plaintiffs and other non-party
6 Aggrieved Employees spent around \$220-240 on steel-toed boots and \$10-15 on safety
7 goggles during their employment, but were not reimbursed for their costs.

8 124. Defendants could have provided Plaintiffs and other non-party Aggrieved
9 Employees with the actual equipment for use on the job, such as company mobile devices,
10 steel-toed boots, safety goggles, and supplies and equipment, as well as access to laundering
11 services. Or, Defendants could have reimbursed employees for the costs of their mobile
12 device usage, boot and goggle expenses, supply expenses, and laundering expenses or
13 provided a uniform maintenance allowance. Instead, Defendants passed these operating costs
14 off onto Plaintiffs and other non-party Aggrieved Employees.

15 125. Defendants' company-wide policy and/or practice of passing on their operating
16 costs to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code
17 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiffs and
18 other non-party Aggrieved Employees for necessary business-related expenses and costs.

19 126. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
20 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
22 **EMPLOYMENT**

23 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

24 127. California's Wage Theft Prevention Act was enacted to ensure that employers
25 provide employees with basic information material to their employment relationship at the
26 time of hiring, and to ensure that employees are given written and timely notice of any
27 changes to basic information material to their employment. Codified at California Labor
28 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an

1 employer must provide written notice to employees containing basic and material payroll
2 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
3 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
4 overtime, the regular payday designated by the employer, and any allowances claims as part
5 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
6 (C).

7 128. Defendants failed to provide Plaintiffs and other non-party Aggrieved
8 Employees written notice that lists all the requisite information set forth in Labor Code section
9 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiffs and other non-party Aggrieved
10 Employees with written notice of basic information regarding their employment with
11 Defendants is in violation of Labor Code section 2810.5.

12 129. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
13 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

14 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**
15 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

16 130. At all relevant times herein, California Labor Code section 6401 provides that
17 employers must furnish and use safety devices and safeguards, and adopt and use practices,
18 means, methods, operations, and processes which are reasonably adequate to render the
19 employment and place of employment safe and healthy. California Labor Code Section 6401
20 further provides that an employer must do everything reasonably necessary to protect the life,
21 safety and health of its employees.

22 131. During the relevant period, as stated above, Defendants failed to provide
23 Plaintiffs and other non-party Aggrieved Employees with personal protective equipment, such
24 as steel-toed boots and safety goggles, to keep them safe in the workplace. Despite the fact
25 that Defendants required Plaintiffs and other non-party Aggrieved Employees to wear certain
26 personal protective equipment, including steel-toed boots and safety goggles, while engaged
27 in their work-related duties, Defendants failed to provide such reasonably necessary
28 equipment to Plaintiffs and other non-party Aggrieved Employees to keep them safe.

132. Defendants' failure to provide Plaintiffs and other non-party Aggrieved Employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Plaintiffs and other non-party Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

Plaintiffs, on behalf of all other non-party Aggrieved Employees, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 246 (by failing to properly calculate sick leave pay); 2802 (by failing to reimburse business expenses); 2810.5 (by failing to provide written notice of information material to employment); and 6401 and 6403 (by failing to provide safety devices and safeguards);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3,

1 248.5, 256, 558, 1174.5, and 2699(a), (f), and (g), for violations of California Labor Code
2 sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
3 1198, 2802, 2810.5, 6401, and 6403;

4 4. For attorneys' fees and costs pursuant to California Labor Code section
5 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
6 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12,
7 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403;

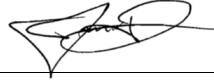
8 5. For pre-judgment and post-judgment interest as provided by law; and

9 6. For such other and further relief as the Court may deem equitable and
10 appropriate.

11
12 Dated: April 20, 2023

Respectfully submitted,

13 Capstone Law APC

14
15 By: 

16 Robert Drexler
17 Molly DeSario
18 Jonathan Lee

19 Attorneys for Aram Rosas and David Barrientos
20
21
22
23
24
25
26
27
28

EXHIBIT “1”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

September 12, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *David Barrientos v. Long Beach Lincoln Mercury, Inc., et al.*

Dear PAGA Administrator:

This office represents David Barrientos in connection with his claims under the California Labor Code. Mr. Barrientos was an employee of LONG BEACH LINCOLN MERCURY, INC. and/or PACIFIC FORD, INC. For the purpose of this letter, Mr. Barrientos collectively refers to these entities as "CARUSO FORD LINCOLN."

The employers may be contacted directly at the addresses below:

LONG BEACH LINCOLN MERCURY, INC.	PACIFIC FORD, INC.
3500 CHERRY AVENUE	3600 CHERRY AVE
LONG BEACH, CA 90807	LONG BEACH, CA 90807

Mr. Barrientos intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Barrientos seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CARUSO FORD LINCOLN as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CARUSO FORD LINCOLN employed Mr. Barrientos as an hourly paid, non-exempt employee from approximately November 2021 to April 2022. Mr. Barrientos worked for CARUSO FORD LINCOLN as a Service Technician at its auto dealership in Long Beach, California. During his employment, Mr. Barrientos typically worked nine (9) to ten (10) hours per day and five (5) days per week. At the time his employment ended, Mr. Barrientos was compensated approximately \$30.00 per hour. Mr. Barrientos's primary job duties included, without limitation, performing warranty and customer repairs, recalls, routine maintenance, and diagnostics.

CARUSO FORD LINCOLN committed one or more of the following Labor Code violations against Mr. Barrientos, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

CARUSO FORD LINCOLN’s Company-Wide and Uniform Payroll and HR Practices

LONG BEACH LINCOLN MERCURY, INC. and PACIFIC FORD, INC. are Delaware corporations and operate automobile dealerships under the names “Caruso Ford” and “Caruso Lincoln” serving the Long Beach, California area. Upon information and belief, CARUSO FORD LINCOLN maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Long Beach, California, for all non-exempt, hourly paid employees working for CARUSO FORD LINCOLN in California, including Mr. Barrientos and other aggrieved employees. At all relevant times, CARUSO FORD LINCOLN issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Barrientos and other aggrieved employees, regardless of their location or position.

Upon information and belief, CARUSO FORD LINCOLN maintains a centralized Payroll department at its corporate headquarters in Long Beach, California, which processes payroll for all non-exempt, hourly paid employees working for CARUSO FORD LINCOLN in California, including Mr. Barrientos and other aggrieved employees. Further, CARUSO FORD LINCOLN issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Barrientos and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, CARUSO FORD LINCOLN utilized the same methods and formulas when calculating wages due to Mr. Barrientos and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

CARUSO FORD LINCOLN willfully failed to pay all overtime wages owed to Mr. Barrientos and other aggrieved employees. During the relevant time period, Mr. Barrientos and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8)

¹ These facts, theories, and claims are based on Mr. Barrientos’s experience and counsel’s review of those records currently available relating to Mr. Barrientos’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Barrientos reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, CARUSO FORD LINCOLN had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Barrientos and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with CARUSO FORD LINCOLN's practice of assigning heavy workloads and productivity expectations (*see infra*), led Mr. Barrientos and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. Because CARUSO FORD LINCOLN discouraged overtime accrual by, among other things, requiring employees to obtain approval of overtime hours from CARUSO FORD LINCOLN's supervisors, Mr. Barrientos and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for the time they worked.

For example, Mr. Barrientos was required to complete online classes, but he was not permitted to complete them during his shifts. As a result, he was forced to review materials and complete classes before or after his scheduled shifts and/or on days off. Mr. Barrientos spent approximately 120 hours completing online classes over the course of his employment, time for which he was not paid. As another example, about once a week, when Mr. Barrientos clocked out at the end of his scheduled shift, CARUSO FORD LINCOLN's management would ask him stay and assist a customer with a diagnostic test, such as checking their tire pressure or battery, which would take him about 20 minutes each occurrence. As a further example, for about a two-week period, CARUSO FORD LINCOLN implemented, on a company-wide basis, an employer-imposed requirement that Mr. Barrientos and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to his shift, Mr. Barrientos was required to spend up to ten (10) minutes per instance waiting and then undergoing a mandatory temperature check and signing a health screening form, before being permitted to clock in for his shift. Even though CARUSO FORD LINCOLN required these health screenings, CARUSO FORD LINCOLN did not provide Mr. Barrientos and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Further, Mr. Barrientos and other aggrieved employees were required to change into their uniforms, which consisted of a logoed polo shirt and cargo pants, at CARUSO FORD LINCOLN's facility; however, CARUSO FORD LINCOLN did not allow Mr. Barrientos and other aggrieved employees to report the time spent donning their uniform at the beginning of their shifts as hours worked, despite being on CARUSO FORD LINCOLN's premises and under CARUSO FORD LINCOLN's control, due to company policy requiring that employees be in their uniforms when clocking in for their shifts. As a result, Mr. Barrientos and other aggrieved employees were required to spend time donning their uniforms before clocking in prior to a shift. This off-the-clock work could have been recorded by CARUSO FORD LINCOLN, but it refused to do so to avoid the payment of additional wages to Mr. Barrientos and other aggrieved employees.

Second, CARUSO FORD LINCOLN's company-wide timekeeping system prevented Mr. Barrientos and other aggrieved employees from recording all hours worked when Mr. Barrientos was required to stay after his scheduled shift to assist a customer, because, on information and belief, the system locked out Mr. Barrientos and other aggrieved employees once they clocked out at the end of their shift, and would not permit them to clock back in until the next day. Thus, Mr. Barrientos and other

aggrieved employees were prevented from recording time worked after clocking out for their scheduled shifts and were forced to work off-the-clock.

Third, as stated, CARUSO FORD LINCOLN had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads, including pressuring employees to meet deadlines and productivity requirements. Further, CARUSO FORD LINCOLN had a company-wide practice of failing to adhere to a schedule for meal periods, which exacerbated the lack of meal period coverage and prevented Mr. Barrientos and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Thus, CARUSO FORD LINCOLN's policies and/or practices resulted in a failure to provide Mr. Barrientos and other aggrieved employees with adequate meal period coverage, and thus, Mr. Barrientos and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Barrientos's meal periods were interrupted by his supervisors inquiring about ongoing repairs and status of vehicles either in person or over the phone. On other occasions, Mr. Barrientos missed his meal periods entirely due to the heavy workload. Thus, Mr. Barrientos and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to complete their assigned workloads and meet productivity expectations. CARUSO FORD LINCOLN did not compensate Mr. Barrientos and other aggrieved employees for the time they spent working off the clock during meal periods.

Furthermore, on information and belief, because CARUSO FORD LINCOLN frowned upon employees accruing meal period penalties, CARUSO FORD LINCOLN's management pressured Mr. Barrientos and other aggrieved employees to clock out for meal periods regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by CARUSO FORD LINCOLN. Thus, CARUSO FORD LINCOLN did not record all hours worked during meal periods, and Mr. Barrientos and other aggrieved employees performed work during meal periods for which they were not paid.

CARUSO FORD LINCOLN knew or should have known that as a result of these company-wide practices and/or policies, Mr. Barrientos and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Barrientos and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Barrientos and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, CARUSO FORD LINCOLN did not pay Mr. Barrientos and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. For example, for the pay period ending January 15, 2022, CARUSO FORD LINCOLN paid Mr. Barrientos overtime wages at the rate of \$42 per hour, which was less than 1.5 times Mr. Barrientos's regular hourly rate of pay of \$30 per hour.

Moreover, in addition to an hourly wage, CARUSO FORD LINCOLN paid Mr. Barrientos and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CARUSO FORD LINCOLN failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Barrientos and other aggrieved employees

worked overtime and received these other forms of pay, CARUSO FORD LINCOLN failed to pay all overtime wages by paying a lower overtime rate than required.

For example, CARUSO FORD LINCOLN paid Mr. Barrientos and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Barrientos's and other aggrieved employees' wage statements as "Tech Production Bonus." During pay periods that Mr. Barrientos and other aggrieved employees were paid overtime wages, CARUSO FORD LINCOLN did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Barrientos's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, CARUSO FORD LINCOLN paid Mr. Barrientos and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. CARUSO FORD LINCOLN's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Barrientos and other aggrieved employees on a company-wide basis.

CARUSO FORD LINCOLN's failure to pay Mr. Barrientos and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7-2001 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." Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

As set forth above, due to its restrictions on overtime accrual, CARUSO FORD LINCOLN systematically failed to pay Mr. Barrientos and other aggrieved employees for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. Because CARUSO FORD LINCOLN discouraged and impeded Mr. Barrientos and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Barrientos and other aggrieved employees were required to perform work off-the-clock prior to the start of their shifts, after their shifts, and/or on their days off, including donning their uniforms, completing online classes and COVID-19 health screenings, and assisting customers.

Further, as also stated above, due to CARUSO FORD LINCOLN's policies and/or practices of assigning heavy workloads/deadlines and failing to adhere to a schedule for meal periods, Mr. Barrientos and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, CARUSO FORD LINCOLN's management pressured employees to clock out for meal periods even when meal periods were missed, short, and/or interrupted. Thus, CARUSO FORD LINCOLN systematically failed to pay Mr. Barrientos and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, CARUSO FORD LINCOLN did not pay at least minimum wages for all hours worked by Mr. Barrientos and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CARUSO FORD LINCOLN did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, CARUSO FORD LINCOLN regularly failed to pay at least minimum wages to Mr. Barrientos and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated, CARUSO FORD LINCOLN had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads, including pressure to meet deadlines and productivity requirements, which has resulted in a lack of meal period coverage. Further, CARUSO FORD LINCOLN's company-wide practice of failing to adhere to a schedule for meal periods exacerbated the lack of meal period coverage and prevented Mr. Barrientos and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled.

As a result, Mr. Barrientos and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, because of CARUSO FORD LINCOLN's policy and/or practice of assigning heavy workloads and productivity requirements, Mr. Barrientos had to forgo his meal periods at least two (2) times per week, or he took his meal periods late, after the end of his fifth hour of work. Moreover, Mr. Barrientos's meal periods were occasionally interrupted by his supervisors asking him to complete a task or requesting information on vehicle repair status after he had already clocked out for his meal period.

Second, as set forth above, because CARUSO FORD LINCOLN frowned upon employees accruing meal period penalties, CARUSO FORD LINCOLN's management pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by CARUSO FORD LINCOLN.

Third, CARUSO FORD LINCOLN did not provide Mr. Barrientos and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Barrientos worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Barrientos and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, CARUSO FORD LINCOLN knew or should have known that, as a result of these policies, Mr. Barrientos and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. CARUSO FORD LINCOLN further knew or should have known that it did not pay Mr. Barrientos and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, CARUSO FORD LINCOLN engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Barrientos and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that CARUSO FORD LINCOLN did pay Mr. Barrientos and other aggrieved employees premium pay for missed, late, and interrupted meal periods, CARUSO FORD LINCOLN did not pay Mr. Barrientos and other aggrieved employees at the correct rate of pay for premiums because CARUSO FORD LINCOLN systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CARUSO FORD LINCOLN failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Barrientos and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, CARUSO FORD LINCOLN regularly failed to authorize and permit Mr. Barrientos and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, CARUSO FORD LINCOLN’s company-wide practices, including assigning heavy workloads and pressure to meet deadlines and productivity requirements, prevented Mr. Barrientos and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, CARUSO FORD LINCOLN wholly failed to schedule rest periods, which further led to Mr. Barrientos and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, CARUSO FORD LINCOLN maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Barrientos and other aggrieved employees remain on the premises during their rest periods. Because Mr. Barrientos and other aggrieved employees were restricted from leaving CARUSO FORD LINCOLN’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, CARUSO FORD LINCOLN effectively maintained control over Mr. Barrientos and other aggrieved employees during rest periods.

As a result of CARUSO FORD LINCOLN’s practices and policies, Mr. Barrientos and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Barrientos had to forego his rest periods altogether because of the heavy workload and CARUSO FORD LINCOLN’s failure to schedule rest periods for employees.

CARUSO FORD LINCOLN has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Barrientos and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CARUSO FORD LINCOLN did pay Mr. Barrientos and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CARUSO FORD LINCOLN did not pay Mr. Barrientos and other aggrieved employees at the correct rate of pay for premiums because CARUSO FORD LINCOLN failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CARUSO FORD LINCOLN failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Barrientos and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. CARUSO FORD LINCOLN has not provided Mr. Barrientos

and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, CARUSO FORD LINCOLN has knowingly and intentionally provided Mr. Barrientos and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CARUSO FORD LINCOLN issued uniform wage statements to Mr. Barrientos and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, CARUSO FORD LINCOLN violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because CARUSO FORD LINCOLN did not record the time Mr. Barrientos and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), CARUSO FORD LINCOLN did not list the correct amount of gross wages and net wages earned by Mr. Barrientos and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CARUSO FORD LINCOLN failed to accurately list the total number of hours worked by Mr. Barrientos and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because CARUSO FORD LINCOLN did not calculate Mr. Barrientos's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, CARUSO FORD LINCOLN did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). CARUSO FORD LINCOLN also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which

employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), CARUSO FORD LINCOLN willfully failed to maintain accurate payroll records for Mr. Barrientos and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, CARUSO FORD LINCOLN failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Barrientos and other aggrieved employees, in violation of section 1198. As stated, CARUSO FORD LINCOLN engaged in a company-wide practice and/or policy of falsifying Mr. Barrientos’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Barrientos and other aggrieved employees. Also, in light of CARUSO FORD LINCOLN’s failure to provide Mr. Barrientos and other aggrieved employees with second 30-minute meal periods to which they were entitled, CARUSO FORD LINCOLN kept no records of meal start and end times for second meal periods.

Because CARUSO FORD LINCOLN failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Barrientos and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Barrientos and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are

deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, CARUSO FORD LINCOLN failed to pay Mr. Barrientos and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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

On information and belief, CARUSO FORD LINCOLN has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Barrientos was terminated on April 6, 2022; however, he did not receive his final pay until on or about April 20, 2022. Thus, CARUSO FORD LINCOLN failed to pay Mr. Barrientos and other aggrieved employees their final wages immediately, in violation of California Labor Code section 201.

In addition, CARUSO FORD LINCOLN willfully failed to pay Mr. Barrientos and other aggrieved employees who are no longer employed by CARUSO FORD LINCOLN all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving CARUSO FORD LINCOLN's employ.

Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No.73-2001, provides that: "[w]hen 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 the 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." IWC Wage Order No. 7-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the

employee as a condition of employment, such uniforms shall be provided and maintained by the employer.”

First, during the relevant time period, CARUSO FORD LINCOLN, on a company-wide basis, required Mr. Barrientos and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Barrientos was required to download various mobile applications on his personal mobile device; Mr. Barrientos downloaded the “Paycom” mobile application to clock in and out for his shifts and to record his meal periods; Mr. Barrientos also downloaded the “ELEAD Service Mobile” mobile application to perform multi-point inspections on vehicles; finally, Mr. Barrientos downloaded “Microsoft Outlook” to communicate with his supervisor via electronic mail. Mr. Barrientos regularly used his mobile data to utilize the aforementioned mobile applications. Mr. Barrientos and other aggrieved employees were not compensated for the cost of the mobile data used to download and access the applications. Further, CARUSO FORD LINCOLN contacted Mr. Barrientos on his personal mobile device to discuss work-related issues and ask questions pertaining to progress on ongoing repairs, updates on vehicle status, and estimated time of completion. Although CARUSO FORD LINCOLN required Mr. Barrientos and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, CARUSO FORD LINCOLN failed to reimburse them for their costs incurred.

Second, during the relevant time period, CARUSO FORD LINCOLN required Mr. Barrientos and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Barrientos spent about \$180 on an air hose, \$1,300 on a Vehicle Communication Module, \$1,000 per year on an Integrated Diagnostic Software license key, and \$1500 on a personal laptop computer because CARUSO FORD LINCOLN failed to provide service technicians with sufficient equipment for the dealership’s service department to operate properly and/or meet management’s expectations. As a result, Mr. Barrientos was required to purchase his own equipment in order to complete his daily tasks. Although CARUSO FORD LINCOLN required Mr. Barrientos and other aggrieved employees to purchase supplies and equipment to carry out their work-related responsibilities, CARUSO FORD LINCOLN failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

Third, during the relevant time period, CARUSO FORD LINCOLN required Mr. Barrientos and other aggrieved employees to wear uniforms bearing the “Ford” company logo, including a polo shirt and pants. Due to the nature of vehicle repair and maintenance work, Mr. Barrientos’s uniform items would become stained with grease, oil, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a result, he had to wash his uniform items separately from his regular clothing, thus incurring additional utility and laundry expenses for the upkeep of his uniforms. Thus, CARUSO FORD LINCOLN failed to maintain uniforms they required Mr. Barrientos and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Fourth, during the relevant time period, CARUSO FORD LINCOLN, on a company-wide basis, required Mr. Barrientos and other aggrieved employees to wear special safety shoes such as steel-toed boots and safety goggles, which they were required to wear while at work and necessary for the completion of their work-related duties. Mr. Barrientos spent around \$220 on a pair of steel-toed boots and \$15 on safety goggles during his employment, but was not reimbursed for his costs.

CARUSO FORD LINCOLN could have provided Mr. Barrientos and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, steel-toed boots, safety goggles, and supplies and equipment, as well as access to laundering services; or CARUSO FORD LINCOLN could have reimbursed employees for the costs of their mobile device usage, boot and goggle expenses, supply expenses, and laundering expenses or provided a uniform maintenance allowance. Instead, CARUSO FORD LINCOLN passed these operating costs off onto Mr. Barrientos and other aggrieved employees.

Thus, CARUSO FORD LINCOLN had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, CARUSO FORD LINCOLN failed, on a company-wide basis, to provide written notice to Mr. Barrientos and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). CARUSO FORD LINCOLN's failure to provide Mr. Barrientos and other aggrieved employees with written notice of basic information regarding their employment with CARUSO FORD LINCOLN is in violation of California Labor Code section 2810.5.

Mr. Barrientos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the

employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” CARUSO FORD LINCOLN, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Barrientos’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Barrientos seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and 558, Mr. Barrientos, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CARUSO FORD LINCOLN for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Barrientos seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: LONG BEACH LINCOLN MERCURY, INC. (via U.S. Certified Mail); PACIFIC FORD, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7021 1970 0001 8870 3761

CERTIFIED MAIL

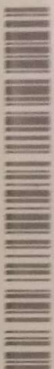
LONG BEACH LINCOLN MERCURY, INC.
3500 CHERRY AVENUE
LONG BEACH, CA 90807

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

LONG BEACH LINCOLN MERCURY, INC.
3500 CHERRY AVENUE
LONG BEACH, CA 90807

9590 9402 7420 2055 3561 22



COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

3. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

4. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Registered Mail®
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery
- ☐ Restricted Delivery

7021 1970 0001 8870 3761

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

OFFICIAL USE

For delivery information, visit our website at www.usps.com®

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
☐ Insured (over \$500) \$
☐ Registered Mail (over \$500) \$
☐ Signature Confirmation (over \$500) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$

Signature
LA LINCOLN
Postmark
Date

LONG BEACH LINCOLN MERCURY, INC.
3500 CHERRY AVENUE
LONG BEACH, CA 90807

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL®



7021 1970 0001 8870 3778

PACIFIC FORD, INC.
3600 CHERRY AVE
LONG BEACH, CA 90807

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Address Addressed to:

PACIFIC FORD, INC.
3600 CHERRY AVE
LONG BEACH, CA 90807

COMPLETE THIS SECTION ON DELIVERY

A. Signature

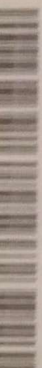
X

B. Received by (Printed Name)

☐ Agent
☐ Addressee

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No



9590 9402 7420 2065 3561 60

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

7021 1970 0001 8870 3778

PS Form 3811, July 2020 PSN 7530-02-000-9088

Domestic Return Receipt

7021 1970 0001 8870 3778

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee

(\$1.30/ounce)

- Extra Services & Fees (check box, and fee as appropriate)
- ☐ Return Receipt (hardcopy) \$
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$

U.S. POSTAL SERVICE
Postmark
Date

PACIFIC FORD, INC.
3600 CHERRY AVE
LONG BEACH, CA 90807

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

September 13, 2022

VIA ONLINE SUBMISSION

Division of Occupational Safety and Health
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/310>)

Subject: *David Barrientos v. Long Beach Lincoln Mercury, Inc., et al.*
LWDA Case No. LWDA-CM-907381-22 - AMENDED NOTICE

Dear PAGA Administrator:

This office represents David Barrientos in connection with his claims under the California Labor Code. Mr. Barrientos was an employee of LONG BEACH LINCOLN MERCURY, INC. and/or PACIFIC FORD, INC. For the purpose of this letter, Mr. Barrientos collectively refers to these entities as "CARUSO FORD LINCOLN." We previously provided notice of Mr. Barrientos's claims to the California Labor and Workforce Development Agency ("LWDA") on September 12, 2022, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Mr. Barrientos's prior LWDA notice and adds an additional claim.

The employers may be contacted directly at the addresses below:

LONG BEACH LINCOLN MERCURY, INC.	PACIFIC FORD, INC.
3500 CHERRY AVENUE	3600 CHERRY AVE
LONG BEACH, CA 90807	LONG BEACH, CA 90807

Mr. Barrientos intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Barrientos seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CARUSO FORD LINCOLN in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CARUSO FORD LINCOLN employed Mr. Barrientos as an hourly paid, non-exempt employee from approximately November 2021 to April 2022. Mr. Barrientos worked for CARUSO FORD LINCOLN as a Service Technician at its auto dealership in Long Beach, California. During his employment, Mr. Barrientos typically worked nine (9) to ten (10) hours per day and five (5) days per week. At the time his employment ended, Mr. Barrientos was compensated approximately \$30.00

per hour. Mr. Barrientos's primary job duties included, without limitation, performing warranty and customer repairs, recalls, routine maintenance, and diagnostics.

CARUSO FORD LINCOLN has committed one or more of the following Labor Code violations against Mr. Barrientos, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant period, CARUSO FORD LINCOLN failed to provide Mr. Barrientos and other aggrieved employees with personal protective equipment, such as steel-toed boots and safety goggles, to keep them safe in the workplace. Despite the fact that CARUSO FORD LINCOLN required Mr. Barrientos and other aggrieved employees to wear certain personal protective equipment, including steel-toed boots and safety goggles, while engaged in their work-related duties, CARUSO FORD LINCOLN failed to provide such reasonably necessary equipment to Mr. Barrientos and other aggrieved employees to keep them safe.

CARUSO FORD LINCOLN's failure to provide Mr. Barrientos and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Barrientos and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Accordingly, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a)-(c), and 2699.5, Mr. Barrientos, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CARUSO FORD LINCOLN for violations of California Labor Code sections 6401 and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Barrientos seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

¹ These facts, theories, and claims are based on Mr. Barrientos's experience and counsel's review of those records currently available relating to Mr. Barrientos's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Barrientos reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: LONG BEACH LINCOLN MERCURY, INC. (via U.S. Certified Mail); PACIFIC FORD, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2406 3195

CERTIFIED MAIL

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Certified Mail Fee

Express Services & Fees (check box, and fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$

Postmark

Postmark

LONG BEACH LINCOLN MERCURY, INC.
3500 CHERRY AVENUE
LONG BEACH, CA 90807

7022 2410 0000 2406 3195

PS Form 3811, July 2020 PSN 7530-02-000-9053

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

LONG BEACH LINCOLN MERCURY, INC.
3500 CHERRY AVENUE
LONG BEACH, CA 90807

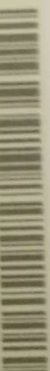
COMPLETE THIS SECTION ON DELIVERY

- A. Signature
☒ X
- B. Received by (Printed Name)
- C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type
Adult Signature Restricted Delivery
☐ Certified Mail
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Mail Restricted Delivery

☐ Priority Mail Express
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

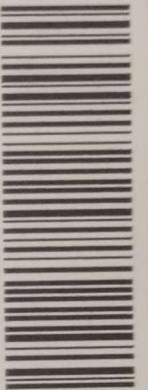


7022 2410 0000 2406 3195

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2406 3201

CERTIFIED MAIL

PACIFIC FORD, INC.
3600 CHERRY AVE
LONG BEACH, CA 90807

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

PACIFIC FORD, INC.
3600 CHERRY AVE
LONG BEACH, CA 90807

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Mail
- ☐ Mail Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

7022 2410 0000 2406 3201

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

7022 2410 0000 2406 3201

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
(Platinum Receipt (handcopy))

Handwritten: 1376-14 NPS
USPS

PACIFIC FORD, INC.
3600 CHERRY AVE
LONG BEACH, CA 90807

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions