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Attorneys for Plaintiff ALEJANDRO MONTIEL on
behalf of himself and others similarly situated

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE**

ALEJANDRO MONTIEL on behalf of
himself and all others similarly situated,

Plaintiff,

v.

RIVERSIDE IMPORTS, LLC, a Delaware
limited liability company; SHELLY
AUTOMOTIVE, LLC, a Delaware limited
liability company; and DOES 1 to 10,
inclusive,

Defendants.

CASE NO.

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

- 1. Civil Penalties Pursuant to the Private
Attorneys General Act (PAGA), California
Labor Code §§ 2698, et seq.**

1 Plaintiff, ALEJANDRO MONTIEL (hereinafter “Plaintiff”), on behalf of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Private
3 Attorneys General Act of 2004, California *Labor Code* §§ 2698, et seq., hereby submits his
4 Complaint against Defendant RIVERSIDE IMPORTS, LLC a Delaware limited liability company;
5 SHELLY AUTOMOTIVE, LLC, a Delaware limited liability company; and DOES 1 to 10
6 (hereinafter referred to as “Defendants”) on behalf of himself and other aggrieved employees of
7 Defendants as follows:

8 **NATURE OF THE CASE**

9 1. This is a law enforcement and representative action under the Private Attorneys
10 General Act (“PAGA”) of the California *Labor Code*, arising out of Defendants’ failure to provide
11 their non-exempt employees with all wages, meal and rest periods in compliance with the
12 applicable wage order and/or the California Labor Code, by failing to pay sick pay wages at the
13 regular rate, by failing to reimburse business expenses, and by failing to comply with the
14 applicable wage order and/or the Labor Code in regards to the payment of wages.

15 2. Riverside Imports, LLC does business as Lexus of Riverside and is a Lexus car
16 dealership. Riverside Imports, LLC is located in Riverside, California. Riverside Imports, LLC is
17 part of Shelly Automotive, LLC. Shelly Automotive LLC also encompasses Irvine BMW,
18 Mercedes-Benz of Long Beach, Rolls-Royce Motor Cars OC, Bill Wright Toyota and North
19 Bakersfield Toyota. At all relevant times, Defendants issued and maintained uniform, standardized
20 scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in
21 California, including Plaintiff and others similarly situated, regardless of their location and
22 position.

23 3. Defendants have maintained practices which have failed and continue to fail to pay
24 Plaintiff and other non-exempt employees all wages and overtime wages. Specifically, Defendants
25 have a company-wide policy of failing to provide compliant meal and rest breaks to Plaintiff and
26 other non-exempt employees. Rather, management would require Plaintiff and other non-exempt
27 employees to clock out and continue working. Further, on the occasion Plaintiff actually had an
28 opportunity to take a meal break, it would be taken at his desk and be frequently interrupted.

1 Specifically, Defendants would require Plaintiff to be “on-call” and be ready to assist customers
2 during meal breaks. As a result, meal breaks were interrupted. Defendants also failed to provide
3 any rest periods.

4 4. Defendants also failed to factor in commissions, customer service review bonus, and
5 other bonuses into Plaintiff’s regular rate of pay. As a result, Defendants failed to pay overtime,
6 sick pay wages, vacation wages, and holiday pay at the regular rate. Additionally, even when
7 Defendants paid overtime at the base rate of pay it was paid incorrectly. For example, on pay date
8 6/3/22, Defendants paid overtime at the base rate and paid Plaintiff \$43.03. Yet, the correct base
9 rate of pay would have been \$48.71.

10 5. Further, Defendants also required Plaintiff and other non-exempt employees to work
11 off-the-clock. Specifically, during Covid-19, Defendants would require all employees to undergo
12 an off-the-clock temperature check.

13 6. Defendants also failed to reimburse Plaintiff and other non-exempt employees for
14 business related expenses, including but not limited to the purchase of company shirts with the
15 company logo, and laundry expenses. Defendants only provided Plaintiff with two company shirts
16 when he was hired but was expected to always wear a company shirt while working. As a result,
17 he had to purchase additional company shirts from the company store and launder the shirts very
18 frequently. These expenses were not reimbursed by Defendants.

19 7. The wage statements Defendants provide Plaintiff and other non-exempt employees
20 are also incorrect. Specifically, wage statements fail to show total hours for overtime hours. As a
21 result, total hours on wage statements are incorrect.

22 8. In light of the foregoing, Defendants failed to timely pay Plaintiff and other non-
23 exempt employees all wages during employment and failed to timely pay final wages upon
24 termination or separation from employment.

25 9. Plaintiff, on behalf of himself and all other aggrieved employees, seeks civil
26 penalties under PAGA based on Defendants’ *Labor Code* violations.

27 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
28 engaged in, among other things a system of willful violations of the *Labor Code* and the applicable

IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

11. California *Labor Code* §§ 2698 *et seq.*, grants California employees the right to bring a civil action for violation of any provision of the *Labor Code* on behalf of themselves and other current and former employees to recover civil penalties. In passing PAGA, the California Legislature “declared that adequate financing of labor law enforcement was necessary to achieve maximum compliance with state labor law, that staffing levels for labor law enforcement agencies had declined and were unlikely to keep pace with future growth of the labor market, and that it was therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations.” (*Arias v. Super Ct.* (2009) 46 Cal. 4th 969, 980.)

12. PAGA permits aggrieved employees to collect the civil penalties authorized by law and normally collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments or division. (*See* Lab. Code § 2699(a).) However, because the action is brought on behalf of the state, 75% of the fees collected are distributed to the LWDA for the enforcement of labor laws and for the education of employers and employees. The remaining 25% is shared between aggrieved employees. (*See* Lab. Code § 2699(i).)

13. PAGA provides that any civil penalty assessed and collected by the LWDA for violation of applicable provisions of the California *Labor Code* may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself or himself and other current or former employees pursuant to procedure outlined in California *Labor Code* § 2699.3.

14. Pursuant to *Labor Code* § 2699.3(a)(1)(A), before commencing a civil action, an aggrieved employee must first give notice by online filing with the LWDA and by certified mail to the employer of the alleged violations, including facts and theories to support the allegations. If the LWDA fails to investigate the alleged violations within 65 calendar days of the date of the notice, the aggrieved employee may then file a civil action to seek penalties.

15. On April 5, 2023, Plaintiff provided written notice to the LWDA and by certified

1 mail to Defendants of the specific provisions of the California *Labor Code* alleged to have been
2 violated, including the facts and theories to support the alleged violations. More than 65 calendar
3 days have passed since the date notice was provided to the LWDA and Defendants. Accordingly,
4 Plaintiff has satisfied the administrative prerequisites under California *Labor Code* § 2699.3(a) to
5 recover civil penalties against Defendants for violations of California *Labor Code* identified in this
6 Complaint.

7 16. Plaintiff, on behalf of himself and all other aggrieved employees, also requests
8 reasonable attorneys' fees and costs pursuant to, inter alia, California *Labor Code* § 2699(g).

9 **PARTIES**

10 17. Plaintiff, Alejandro Montiel is an individual over the age of eighteen (18) and is
11 now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the
12 State of California. During the relevant time period, Plaintiff worked for Defendants at the Lexus
13 of Riverside, in Riverside, California from approximately May 19, 2019, through approximately
14 March 27, 2023. On December 1st, 2022, Plaintiff went on disability leave. Plaintiff worked as
15 sales consultant and earned approximately \$15 per hour plus commission.

16 18. Plaintiff is informed and believes, and based thereon alleges, that Defendant
17 Riverside Imports, LLC is a Delaware limited liability company. Plaintiff is further informed and
18 believes that at all times relevant hereto, Defendant has transacted, and continues to transact,
19 business throughout the State of California.

20 19. Plaintiff is informed and believes, and based thereon alleges, that Shelly
21 Automotive, LLC is a Delaware limited liability company. Plaintiff is further informed and
22 believes that at all times relevant hereto, Defendant has transacted, and continues to transact,
23 business throughout the State of California.

24 20. Plaintiff is informed and believes, and based upon such information and belief
25 alleges, that Defendants are, now and/or at all times mentioned in this Complaint were in some
26 manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

27 21. Plaintiff is further informed and believes, and based upon such information and
28 belief alleges, that at all times herein mentioned, Defendants proximately caused Plaintiff, all

1 others similarly situated, and the general public to be subjected to the unlawful practices, wrongs,
2 complaints, injuries and/or damages alleged in this Complaint.

3 22. Plaintiff is informed and believes and based thereon alleges that at all times herein
4 mentioned Defendant and DOES 1 through 10, are and were corporations, business entities,
5 individuals, and partnerships, licensed to do business and actually doing business in the State of
6 California.

7 23. Plaintiff does not know the true names or capacities, whether individual, partner or
8 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
9 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this First
10 Amended complaint when the true names and capacities are known. Plaintiff is informed and
11 believes and based thereon alleges that each of said fictitious Defendants were responsible in some
12 way for the matters alleged herein and proximately caused Plaintiff and members of the general
13 public to be subject to the illegal employment practices, wrongs and injuries complained of herein.

14 24. At all times herein mentioned, each of said Defendants participated in the doing of
15 the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
16 Defendants, and each of them, were the agents, servants and employees of each of the other
17 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
18 within the course and scope of said agency and employment.

19 25. Plaintiff is informed and believes and based thereon alleges that at all times material
20 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
21 venturer of, or working in concert with each of the other co-Defendants and were acting within the
22 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
23 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
24 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

25 26. At all times herein mentioned, Defendants, and each of them, were members of, and
26 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
27 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

28 27. At all times herein mentioned, the acts and omissions of various Defendants, and

1 each of them, concurred and contributed to the various acts and omissions of each and all of the
2 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
3 herein mentioned, Defendants, and each of them, ratified each and every act or omission
4 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
5 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
6 damages as herein alleged.

7 28. The Plaintiff and other aggrieved employees have been employed during the
8 relevant time period in California. The practices and policies which are complained of by way of
9 this Complaint are enforced throughout the State of California.

10 **JURISDICTION AND VENUE**

11 29. The Court has jurisdiction over this representative action pursuant to article 6,
12 section 10 of the California Constitution and *Code of Civil Procedure* § 410.10.

13 30. The Court has jurisdiction over Defendants because they are authorized to do
14 business in the State of California and are registered with the California Secretary of State.
15 Defendants do sufficient business with sufficient minimum contacts in California, and/or otherwise
16 intentionally avail themselves of the California market through the advertising, marketing and sale
17 of goods and services, to render the exercise of jurisdiction over Defendants by the California court
18 consistent with traditional notions of fair play and substantial justice.

19 31. Venue is proper in Riverside County because the acts which give rise to this
20 litigation occurred in this county and because Defendants have employed aggrieved employees in
21 this county and transact business in this county.

22 **FACTUAL ALLEGATIONS**

23 32. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

24 33. Defendants have engaged in, and continues to engage in, unfair business practices in
25 California by practicing, employing and utilizing the employment practices and policies outlined
26 above.

27 ***Defendant's Failure to Pay Overtime Wages***

28 34. During the relevant time period (one year prior to Plaintiff's notice to the LWDA

1 through the resolution of this action), upon information and belief, Defendants had, and continue to
2 have, a company-wide policy of failing to pay overtime wages at the base rate of pay. Specifically,
3 Plaintiff and other aggrieved employees earn various bonuses and commission that are not factored
4 into the regular rate of pay. Moreover, Defendants had a policy where Plaintiff and other
5 aggrieved employees were to clock out for their meal breaks but continue to work. Defendants
6 also required Plaintiff and other aggrieved employees to undergo mandatory off-the-clock
7 temperature checks. Because Plaintiff and other aggrieved employees frequently worked eight
8 hours a day and/or 40 hours per week, some of this time should have been compensated as
9 overtime. Additionally, even when Defendants paid overtime at the base rate of pay it was paid
10 incorrectly. For example, on pay date 6/3/22, Defendants paid overtime at the base rate and paid
11 Plaintiff \$43.03. Yet, the correct base rate of pay would have been \$48.71.

12 35. Therefore, Plaintiff and other aggrieved employees were not paid all overtime
13 wages.

14 ***Defendant's Failure to Pay all Wages***

15 36. During the relevant time period, Defendants failed to incorporate non-discretionary
16 bonuses and commissions into the rate of pay for overtime, sick pay wages, holiday pay and sick
17 pay wages. Defendants also required Plaintiff and other aggrieved employees to undergo
18 mandatory off-the-clock temperature checks and required employees to clock out and continue
19 working during meal periods.

20 37. Thus, Defendants did not pay Plaintiff and other aggrieved employees all wages.

21 ***Failure to Provide Compliant Meal Periods***

22 38. Defendants have a company-wide policy of failing to provide compliant meal
23 breaks to Plaintiff and other aggrieved employees. Rather, management would require Plaintiff
24 and other aggrieved employees to clock out and continue working. Further, on the occasion
25 Plaintiff actually had an opportunity to take a meal break, it would be taken at his desk and be
26 frequently interrupted. Specifically, Defendants would require Plaintiff to be "on-call" and be
27 ready to assist customers during meal breaks. This included answering phone calls as they came
28 in. As a result, Plaintiff and other aggrieved employees were forced to work in excess of five (5)

1 hours before taking a meal period.

2 39. Plaintiff and other aggrieved employees did not sign valid meal period waivers on
3 days that they were entitled to meal periods and were not relieved of all duties.

4 ***Defendant's Failure to Provide Compliant Rest Breaks***

5 40. During the relevant time period, Defendants regularly failed to authorize and permit
6 Plaintiff and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour
7 period worked or major fraction thereof.

8 41. Specifically, rest breaks were never provided.

9 ***Defendant's Failure to Provide Compliant Wage Statements***

10 42. During the relevant time period, Defendants have knowingly and intentionally
11 provided Plaintiff and other aggrieved employees with uniform, incomplete, and inaccurate wage
12 statements. For example, Defendants issued uniform wage statements to Plaintiff and other
13 aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages
14 earned; and all applicable hourly rates in effect during the pay period, including rates of pay for
15 overtime wages and/or meal and rest period premiums, and the corresponding number of hours
16 worked at each hourly rate.

17 43. Because Defendants did not record the correct regular rate of pay as described
18 above, Defendant did not list the correct amount of gross wages and net wages earned by Plaintiff
19 and other aggrieved employees in compliance with *Labor Code* §§ 226(a)(1) and 226(a)(5),
20 respectively.

21 44. For the same reason, Defendants failed to list the total number of hours worked by
22 Plaintiff and other aggrieved employees, and failed to list the applicable hourly rates of pay in
23 effect during the pay period and the corresponding accurate number of hours worked at each hourly
24 rate. Further, wage statements do not have hours for overtime worked, which also resulted in
25 incorrect total hours worked.

26 45. Because Defendants failed to provide the correct net and gross wages earned,
27 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and other
28 aggrieved employees have been prevented from verifying, solely from information on the wage

1 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and other
2 aggrieved employees have had to look to sources outside of the wage statements themselves and
3 reconstruct time records to determine whether in fact they were paid correctly and the extent of
4 underpayment, thereby causing them injury.

5 ***Defendant's Failure to Provide Sick Pay at the Regular Rate***

6 46. Plaintiff received compensation, including non-discretionary bonuses and
7 commissions as described above in addition to his hourly wages while employed by Defendants.
8 Those additional amounts should have been included when calculating his regular rate of pay and
9 used when paying sick leave wages, but were not. Instead, Plaintiff and other aggrieved employees
10 were paid sick wages at their base rate of pay.

11 ***Defendant's Failure to Timely Pay all Wages During Employment***

12 47. California *Labor Code* § 204 requires that all wages earned by any person in any
13 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
14 wages due upon termination of an employee, are due and payable between the 16th and the 26th
15 day of the month during which the labor was performed, and that all wages earned by any person in
16 any employment between the 16th and the last day, inclusive, of any calendar month, other than
17 those wages due upon termination of an employee, are due and payable between the 1st and the
18 10th day of the following month.

19 48. California *Labor Code* § 204 also requires that all wages earned for labor in excess
20 of the normal work period shall be paid no later than the payday for the next regular payroll period.
21 Alternatively, *Labor Code* § 204 provides that the requirements of this section are deemed satisfied
22 by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
23 more than seven (7) calendar days following the close of the payroll period.

24 49. During the relevant time period, Defendants willfully failed to pay Plaintiff and
25 other aggrieved employees all wages due including, but not limited to, all wages, and/or meal and
26 rest period premiums, within the time periods specified by *Labor Code* § 204.

27 ***Defendant's Failure to Timely Pay Final Wage Upon Termination***

28 50. Defendants willfully failed to pay Plaintiff and other aggrieved employees who are

1 no longer employed by Defendants the earned and unpaid wages set forth above, including but not
2 limited to, overtime wages, minimum wages, and/or meal/rest period premiums, either at the time
3 of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

4 ***Defendant's Failure to Reimburse Business Expenses***

5 51. Defendants also failed to reimburse Plaintiff and other aggrieved employees for
6 business related expenses, including but not limited to the purchase of company shirts with the
7 Lexus logo, and laundry expenses. Defendants only provided Plaintiff with two company shirts
8 when he was hired but was expected to wear a company shirt while working. As a result, he had to
9 purchase additional company shirts from the company store and launder the shirts very frequently.

10 52. Although Defendants required Plaintiff and other aggrieved employees to wear
11 company shirts to carry out their work-related duties, Defendants failed to reimburse them for this
12 cost. Defendants could have reimbursed Plaintiff and other aggrieved employees for the purchase
13 of shirts and provided a laundry allowance. Instead, Defendants passed these operating costs off
14 onto Plaintiff and other aggrieved employees.

15 ***Facts Regarding Willfulness***

16 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
17 and were advised by skilled lawyers, other professionals, employees with human resources
18 background and advisors with knowledge of the requirements of California wage and hour laws
19 and that at all relevant times, Defendants knew or should have known, that the aggrieved
20 employees, including Plaintiff, were entitled to receive one hour of pay at the employee's regular
21 rate of compensation for each day that a meal and/or rest period was not provided and were and are
22 entitled to receive pay for all hours worked, accurate itemized wage statements, and final pay in a
23 timely manner.

24 ***Plaintiff's Exhaustion of Administrative Remedies***

25 54. Plaintiff has complied with the procedures for bringing suit specified in California
26 *Labor Code* § 2699.3.

27 55. By letter dated April 4, 2023, required notice was provided to the Labor and
28 Workforce Development Agency ("LWDA") and Defendants, of the specific provisions of the

1 Labor Code alleged to have been violated, including the facts and theories to support the alleged
2 violations.

3 56. More than sixty-five (65) days have passed since the date the notice was mailed to
4 Defendants and the LWDA, and Plaintiff has received no response from the LWDA indicating that
5 it plans to investigate.

6 57. Accordingly, Plaintiff has satisfied the administrative prerequisites under California
7 *Labor Code* § 2699.3(a) to recover civil penalties against Defendants for violations of California
8 *Labor Code* identified in this Complaint.

9 **FIRST CAUSE OF ACTION**

10 **Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)**

11 **(On Behalf of All Aggrieved Employees Against Defendants)**

12 58. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
13 forth herein.

14 59. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,
15 California *Labor Code* §§ 2698-99) applied to Defendant's employment of Plaintiff and the
16 aggrieved employees.

17 60. Plaintiff asserts claims for civil penalties as representatives of the State of
18 California, as authorized by the Private Attorneys General Act ("PAGA"), *Labor Code* §§ 2698, *et*
19 *seq.*, and to the extent permitted by law, on behalf of himself and other aggrieved employees who
20 work or worked for Defendants in California at any time beginning April 4, 2022, through the
21 resolution of this action.

22 61. At all times set forth herein, California *Labor Code* § 2699(a) has provided that any
23 provision of law under the California *Labor Code* that provides for a civil penalty to be assessed
24 and collected by the LWDA for violations of the California *Labor Code* may, as an alternative, be
25 recovered through a civil action brought by an aggrieved employee on behalf of himself and other
26 current or former employees pursuant to procedures outlined in California *Labor Code* § 2699.3.

27 62. At all times set forth herein, the PAGA has also provided that for the violation of
28 any *Labor Code* provision that does not itself contain a civil penalty, there are established civil

1 penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
2 each aggrieved employee per pay period for each subsequent violation. (Cal. *Lab. C.* § 2699(f).)

3 63. A civil action under PAGA may be brought by an “aggrieved employee,” any
4 person that was employed by the alleged violator and against whom one or more of the alleged
5 violations was committed.

6 64. Plaintiff was employed by Defendants and the alleged violations have been
7 committed against him during his time of employment and he is, therefore, an aggrieved employee.
8 Plaintiff and other employees are “aggrieved employees” as defined by California *Labor Code*
9 §2699(c) in that they are all current or former employees of Defendant, and one or more of the
10 alleged violations were committed against them.

11 65. Pursuant to California *Labor Code* § 2699.3, aggrieved employees, including
12 Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have
13 been met:

- 14 a. The aggrieved employee shall give written notice (hereinafter “Employee’s
15 Notice”) to the LWDA and the employer of the specific provisions of the
16 California Labor Code alleged to have been violated, including the facts and
17 theories to support the alleged violations;
- 18 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer
19 and the aggrieved employee by certified mail that it does not intend to
20 investigate the alleged violations sixty (60) calendar days of the postmark date
21 of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA
22 Notice is not provided within sixty-five (65) calendar days of the postmark date
23 of the Employee’s Notice, the aggrieved employee may commence a civil action
24 pursuant to California Labor Code § 2699 to recover civil penalties in addition
25 to any other penalties to which the employee may be entitled.

26 66. On April 4, 2023, Plaintiff provided written notice to the LWDA and by certified
27 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
28 violated, including the facts and theories to support the alleged violations.

1 67. More than 65 calendar days have passed since the date notice was provided to the
2 LWDA and Defendant. Accordingly, Plaintiff has satisfied the administrative prerequisites under
3 California *Labor Code* § 2699.3(a) to recover civil penalties against Defendant for violations of
4 California *Labor Code* identified in this Complaint.

5 68. Accordingly, Plaintiff and the other aggrieved employees are entitled to and seek to
6 recover civil penalties for Defendants' violations of the *Labor Code* during the applicable
7 limitations period.

8 69. Specifically, Plaintiff, on behalf of himself and all other aggrieved employees,
9 hereby seeks civil penalties for the *Labor Code* violations during the applicable limitations period
10 described herein, in the following amounts:

- 11 a. For violations of California *Labor Code* §§ 201-204, 221, 223, 246, 248, 510,
12 512, 516, 1182.12, 1194, 1197, 1198, and 2802, \$100 for each aggrieved
13 employee per pay period for the initial violation and \$200 for each aggrieved
14 employee per pay period for each subsequent violation. (Cal. *Labor Code* §
15 2699(f).)
- 16 b. For violation of California *Labor Code* § 226, \$250 per aggrieved employee for
17 the initial violation, and \$1,000 per aggrieved employee for each subsequent
18 violation. (Cal. *Labor Code* § 226.3.)
- 19 c. All other civil penalties authorized by law.

20 70. Pursuant to California *Labor Code* § 2699(g), Plaintiff, on behalf of himself and the
21 other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

22 71. Plaintiff asserts, on behalf of himself and all other aggrieved employees, that
23 Defendants have been committing, and continue to commit, violations of the California *Labor*
24 *Code*, including, but not limited to, the following:

25 **A. Unpaid Overtime**

26 72. Plaintiff incorporates herein by reference the allegations set forth above.

27 73. Throughout the relevant time period, Defendants were required to compensate their
28 hourly employees for all overtime hours worked.

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

10 75. Defendants willfully failed to pay all overtime wages owed to Plaintiff and other
11 aggrieved employees. During the relevant time period, Plaintiff and other aggrieved employees
12 were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a
13 day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because
14 Defendants have a company-wide policy of paying overtime wages at the base rate of pay.
15 Specifically, Plaintiff and other aggrieved employees earn various bonuses and commissions that
16 are not factored into the regular rate of pay. Moreover, Defendants had a policy where Plaintiff
17 and aggrieved employees were to clock out for their meal breaks but continue to work. Defendants
18 also required Plaintiff and other aggrieved employees to undergo mandatory off-the-clock
19 temperature checks. Because Plaintiff and other aggrieved employees frequently worked eight
20 hours a day and/or 40 hours per week, some of this time should have been compensated as
21 overtime. Additionally, even when Defendants paid overtime at the base rate of pay it was paid
22 incorrectly. For example, on pay date 6/3/22, Defendants paid overtime at the base rate and paid
23 Plaintiff \$43.03. Yet, the correct base rate of pay would have been \$48.71.

24 76. Defendants knew or should have known that as a result of company-wide practices
25 and/or policies, that prevents Plaintiff and other aggrieved employees from earning all overtime
26 wages.

27 77. Defendants’ failure to pay Plaintiff and other aggrieved employees the balance of
28 overtime compensation, as required by California law, violates the provisions of *Labor Code* §§

1 510 and 1198. Plaintiff, on behalf of himself and other aggrieved employees, is entitled to recover
2 civil penalties, and attorneys' fees and costs.

3 **B. Failure to Pay All Wages**

4 78. Plaintiff incorporates herein by reference the allegations set forth above.

5 79. Throughout the relevant time period, Defendants were required to compensate their
6 hourly employees for all hours worked, but failed to do so.

7 80. Defendants implemented policies that actively prevented employees from being
8 compensated for all time worked by paying overtime, meal and rest break premiums, and sick pay
9 wages at the base rate of pay as mentioned above.

10 81. The applicable IWC wage order section 2(G) defines "hours worked" to mean "the
11 time during which an employee is subject to the control of an employer and includes all the time
12 the employee is suffered or permitted to work, whether or not required to do so."

13 82. California *Labor Code* § 1197 provides: "The minimum wage for employees fixed
14 by the commission is the minimum wage to be paid to employees, and the payment of a less wage
15 than the minimum so fixed is unlawful."

16 83. Plaintiff is informed and believes, and therefore alleges, that Defendants'
17 compensation schemes do not fairly compensate Plaintiff and other aggrieved employees for all
18 hours spent performing their job duties.

19 84. The failure to pay at least minimum wages to Plaintiff and other aggrieved
20 employees for each and every hour worked violates *Labor Code* §§ 1182.11-1182.12, 1194,
21 1194.2, and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

22 85. The failure to pay designated wages to Plaintiff and other aggrieved employees for
23 each and every hour worked violates *Labor Code* §§ 221 and 223; the applicable IWC wage order
24 section 3; and Business & Professions Code.

25 86. During the applicable time period, Defendants have and continue to have a pattern
26 and practice of not providing its employees all wages. Specifically, Defendants had a policy where
27 Plaintiff and other aggrieved employees were to clock out for their meal breaks but continue to
28 work. Defendants also required Plaintiff and other aggrieved employees to undergo mandatory off-

1 the-clock temperature checks. Defendants also failed to pay holiday pay, vacation wages and sick
2 pay at the regular rate of pay.

3 87. Plaintiff, on behalf of himself and the other aggrieved employees, is entitled to
4 recover civil penalties, and attorney's fees and costs.

5 **C. Failure to Provide Compliant Meal Breaks or Premiums in Lieu Thereof**

6 88. Plaintiff hereby incorporates by reference each and every one of the allegations
7 contained in the preceding paragraphs as if the same were fully set forth herein.

8 89. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the other
9 aggrieved employees regularly worked more than five (5) hours per shift and were entitled to a
10 meal period of not less than thirty (30) minutes without duty.

11 90. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
12 Defendants routinely failed to provide Plaintiff and the other aggrieved employees with such meal
13 periods without duty, notwithstanding the fact that Plaintiff and the other aggrieved employees had
14 not waived their right to the same. Thus, Defendants failed to provide Plaintiff and the other
15 aggrieved employees with meal periods required by *Labor Code* § 226.7, 512, 516 and the
16 applicable IWC wage order section 10, and categorically failed to pay any and all meal period
17 wages due.

18 91. Under the foregoing, California employers must provide meal periods and authorize
19 and permit rest periods to all employees during their shifts. In *Augustus et al. v. ABM Security*
20 *Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal
21 and rest periods must be “off-duty,” which means that employees must be relieved of “all work-
22 related duties,” including the duty to remain “on call,” and they must be “free from employer
23 control” over how they “spend their time.” (*Id.* at 264, 269.) Employees must have the freedom to
24 use meal and rest periods for their own purposes. (*Id.* at 270; *Brinker Rest. Corp. v. Superior*
25 *Court* (2012) 53 Cal.4th 1004, 1038-39.)

26 92. When employees must either “remain at the ready and capable of being summoned
27 to action,” “respond when the employer seeks contact with [them],” “perform other work if the
28 employer so requests,” and/or remain “on call” during their meal and rest periods, the employees

1 have not been “relieve[d] ... of all work-related duties and employer control.” (*Augustus, supra*, 2
2 Cal.5th at 270.) Such a meal or rest period is not “off duty” and therefore is “impermissible.”
3 (*Ibid.*)

4 93. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
5 rest break cases that have affirmed California’s broad, protective standard for employees.¹

6 94. Moreover, as the mere existence of a facially lawful meal and rest break policy is
7 unavailing if there are practical constraints and pressures on employees to perform their duties in
8 ways that omit breaks. (See *Brinker, supra*, 53 Cal.4th at 1040.)

9 95. Yet Defendants did and do not provide Plaintiff and other aggrieved employees with
10 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by
11 the fifth hour of work and again by the tenth hour of work.

12 96. Specifically, Defendants have a company-wide policy of failing to provide
13 compliant meal breaks to Plaintiff and other aggrieved employees. Rather, management would
14 require Plaintiff and other aggrieved employees to clock out and continue working. Further, on the
15 occasion Plaintiff actually had an opportunity to take a meal break, it would be taken at his desk
16 and be frequently interrupted. Specifically, Defendants would require Plaintiff to be “on-call” and
17 be ready to assist customers during meal breaks. This includes answering phone calls as they came
18 in. Defendants did not pay meal premiums.

19 97. Thus, Defendants have failed to perform their obligations to provide Plaintiff and
20 the other aggrieved employees with off-duty meal periods by the end of the fifth hour of work and
21 a second meal period by the end of the tenth hour of work. Defendants have also failed to pay
22 Plaintiff and the other aggrieved employees one (1) hour of pay at the regular rate for each off-duty
23 meal period that they have been denied.

24
25 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v.*
26 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926 , *rehg. denied* (Dec. 14, 2016); *Faulkinbury v. Boyd &*
27 *Assocs., Inc.* (2013) 216 Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D.Cal., Aug.
28 31, 2017, No. 17-CV-00282-MMC) 2017 WL 3782245 at *3 (a policy requiring employees to
“remain in contact with supervisors and other employees working in their units throughout their
shifts... would appear to be unlawful under [*Augustus.*]”)

1 98. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
2 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers
3 must pay premium payments to employees for missed meal, rest, and recovery breaks at the
4 employee’s “regular rate of pay” instead of their base hourly rate.

5 99. Defendants knew or should have known that as a result of their policies and/or
6 practices, that Plaintiff and other aggrieved employees were not actually relieved of all duties to
7 take timely, uninterrupted meal periods. Defendants further knew or should have known that they
8 did not pay Plaintiff and other aggrieved employees all meal period premiums when meal periods
9 were missed, late, short, and/or interrupted. Furthermore, Defendants have engaged in a company-
10 wide practice and/or policy of not paying meal period premiums owed when compliant meal
11 periods are not provided. Because of this practice and/or policy, Plaintiff and other aggrieved
12 employees have not received all premium pay for missed, interrupted, or late meal periods.
13 Accordingly, Defendants failed to provide all meal periods in violation of *Labor Code* §§ 226.7,
14 512(a), 516, and 1198.

15 100. Plaintiff, on behalf of himself and other aggrieved employees, is entitled to civil
16 penalties, and attorneys’ fees and costs.

17 **D. Failure to Provide Compliant Rest Periods or Premiums in Lieu Thereof**

18 101. Plaintiff hereby incorporates by reference each and every one of the allegations
19 contained in the preceding paragraphs as if the same were fully set forth herein.

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

1 103. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the other
2 aggrieved employees were entitled to a paid rest period of not less than ten (10) minutes without
3 duty for each and every four (4) hours or major fraction thereof worked during the workday.

4 104. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
5 Defendants routinely failed to provide Plaintiff and the other aggrieved employees with such paid
6 rest periods without duty, notwithstanding the fact that Plaintiff and the other aggrieved employees
7 had not waived their right to the same. Thus, Defendants failed to provide Plaintiff and other
8 aggrieved employees with rest periods required by *Labor Code* §§ 226.7, 512, and 516, the
9 applicable IWC wage order section 11 and categorically failed to pay any and all rest period wages
10 due.

11 105. Specifically, rest breaks were never provided.

12 106. Plaintiff, on behalf of himself and the other aggrieved employees, is entitled to
13 recover civil penalties, and attorneys' fees and costs.

14 **E. Failure to Furnish Accurate Itemized Wage Statements and Maintain Accurate**
15 **Records**

16 107. Plaintiff hereby incorporates by reference each and every one of the allegations
17 contained in the preceding paragraphs as if the same were fully set forth herein.

18 108. California *Labor Code* § 226(a) and the applicable IWC wage order section 6(B)
19 requires employers to furnish each employee with a statement itemizing, among other things, the
20 total hours worked by the employee, on a semi-monthly basis or at the time of each payment of
21 wages.

22 109. California *Labor Code* § 226.3 provides that any employer who violates section
23 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an
24 initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the
25 employer fails to provide the employee a wage statement or fails to keep the required records
26 pursuant to section 226(a).

27 110. Defendants knowingly and intentionally failed to furnish Plaintiff and the other
28 aggrieved employees with timely, itemized statements in compliance with *Labor Code* § 226(a)

1 and the applicable IWC Wage order section 6(B).

2 111. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly
3 and intentionally failed to furnish Plaintiff and other aggrieved employees with timely, itemized
4 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
5 applicable hourly rates in effect during each respective pay period and the corresponding number
6 of hours worked at each hourly rate by each respective individual.

7 112. Plaintiff is informed and believes, and thereon alleges, that Defendants did not
8 maintain accurate business records pertaining to the total hours worked for Defendants by Plaintiff
9 and the other aggrieved employees as required under *Labor Code* § 1174.5. This is a result of
10 missing pay, and missed meal and rest-break premiums, as illustrated above. Moreover, wage
11 statements fail to show the number of hours worked for overtime which also results in incorrect
12 total hours worked.

13 113. As a result of not having kept accurate records, Plaintiff and the other aggrieved
14 employees suffered injuries in the form of confusion over whether they received all wages owed to
15 them, and difficulty and expense in reconstructing pay records in addition to other injuries which
16 may come to light during the discovery process.

17 114. California *Labor Code* § 1198 provides that the maximum hours of work and the
18 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
19 applicable IWC wage order. Section 1198 further provides that “[t]he employment of any
20 employees for longer hours than those fixed by the order or under conditions of labor prohibited by
21 the order is unlawful.” Pursuant to the applicable IWC Wage order, employers are required to keep
22 accurate time records showing when the employee begins and ends each work period and meal
23 period.

24 115. During the relevant time period, Defendants failed, on a company-wide basis, to
25 keep accurate records of work and meal period start and stop times for Plaintiff and the other
26 aggrieved employees, in violation of *Labor Code* § 1198. Also, as stated, Defendants engaged in a
27 company-wide practice and/or policy of falsifying Plaintiff’s and other aggrieved employees’ time
28 records by recording that compliant meal periods were taken regardless of if or when meal periods

1 were actually taken, and thereby failed to keep accurate records of meal start and end times for
2 Plaintiff and other aggrieved employees.

3 116. Plaintiff, on behalf of himself and the other aggrieved employees, is entitled to
4 recover civil penalties, and attorney's fees and costs.

5 **F. Failure to Provide Sick Pay at the Regular Rate**

6 117. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
7 forth herein.

8 118. Sick pay must be compensated at the employee's regular rate of pay, for the
9 workweek in which the paid leave was taken, or at a rate determined by averaging over 90-days.
10 (*Lab. Code* § 246(1).)

11 119. Defendants failed to pay Plaintiff and other aggrieved employees sick pay at the
12 correct rate. Plaintiff received compensation in addition to hourly wages, but those additional
13 amounts were not included when calculating sick pay wages. Plaintiff received compensation,
14 including non-discretionary bonuses and commissions in addition to his hourly wages while
15 employed by Defendants, which was not factored into his sick pay wages. By failing to pay
16 Plaintiff and other aggrieved employees for sick pay at the correct rate, Defendants willfully
17 violated *Labor Code* § 246.

18 120. Defendant's unlawful acts deprived Plaintiff and the other aggrieved employees of
19 all wages. Plaintiff seeks to establish sick pay in amounts to be determined at trial.

20 121. Plaintiff, on behalf of himself and the other aggrieved employees, is entitled to
21 recover civil penalties, and attorneys' fees and costs.

22 **G. Failure to Timely Pay Wages During Employment**

23 122. Plaintiff hereby incorporates by reference each and every one of the allegations
24 contained in the preceding paragraphs as if the same were fully set forth herein.

25 123. California *Labor Code* § 204 requires that all wages earned by any person in any
26 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
27 wages due upon termination of an employee, are due and payable between the 16th and the 26th
28 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.

124. California *Labor Code* § 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, *Labor Code* § 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.

125. During the relevant time period, Defendants willfully failed to pay Plaintiff and other aggrieved employees all wages due including, but not limited to, all wages, sick pay wages, and/or meal and rest period premiums, within the time periods specified by *Labor Code* § 204.

126. Plaintiff, on behalf of himself and the other aggrieved employees, is entitled to recover civil penalties, and attorneys' fees and costs.

H. Failure to Timely Pay Final Wages (Waiting Time Penalties)

127. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

128. At all relevant times herein, Defendants were required to pay their employees all wages owed in a timely fashion during and at the end of their employment, pursuant to *Labor Code* §§ 201-203.

129. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the other aggrieved employees their final wages pursuant to *Labor Code* §§ 201-203, and accordingly owe waiting time penalties pursuant to *Labor Code* § 203.

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

1 131. On information and belief, Defendants have a company-wide practice or policy of
2 paying departing employees their final wages late, instead of adhering to the time requirements set
3 forth in *Labor Code* §§ 201 and 202.

4 132. Specifically, Defendants willfully failed to pay Plaintiff and other aggrieved
5 employees the earned and unpaid wages set forth above, including but not limited to, overtime
6 wages, minimum wages, and/or meal rest period premiums, either at the time of discharge, or
7 within seventy-two (72) hours of their leaving Defendants' employ.

8 133. Plaintiff, on behalf of himself and the other aggrieved employees, is entitled to
9 recover civil penalties, and attorneys' fees and costs.

10 **I. Failure to Reimburse Business Expenses**

11 134. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
12 forth herein.

13 135. California *Labor Code* § 2802 requires employers to pay for all necessary
14 expenditures and losses incurred by the employee in the performance of his or her job. The
15 purpose of *Labor Code* § 2802 is to prevent employers from passing off their cost of doing
16 business and operating expenses on to their employees. (*Cochran v. Schwan's Home Service, Inc.*
17 (2014) 228 Cal.App.4th 1137, 1144.)

18 136. The applicable IWC wage order provides that: "[w]hen tools or equipment are
19 required by the employer or are necessary to the performance of a job, such tools and equipment
20 shall be provided and maintained by the employer, except that an employee whose wages are at
21 least two (2) times the minimum wage provided herein may be required to provide and maintain
22 hand tools and equipment customarily required by the trade or craft."

23 137. Defendants also failed to reimburse Plaintiff and other aggrieved employees for
24 business related expenses, including but not limited to the purchase of company shirts with the
25 company logo, and laundry expenses. Defendants only provided Plaintiff with two company shirts
26 when he was hired but was expected to wear a company shirt while working. As a result, he had to
27 purchase additional company shirts from the company store and launder the shirts very frequently.

28 138. Although Defendants required Plaintiff and other aggrieved employees to wear

1 company shirts to carry out their work-related duties, Defendants failed to reimburse them for this
2 cost. Defendant could have reimbursed Plaintiff and other aggrieved employees for the purchase of
3 shirts and provided a laundry allowance.

4 139. Instead, Defendants passed these operating costs off onto Plaintiff and other
5 aggrieved employees. Thus, Defendants had, and continue to have, a company-wide policy and/or
6 practice of not reimbursing employees for expenses necessarily incurred in violation of *Labor*
7 *Code* § 2802.

8 140. Plaintiff, on behalf of himself and the other aggrieved employees, is entitled to
9 recover civil penalties, and attorneys' fees and costs.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, on behalf of himself and the other aggrieved employees, prays for
12 judgment as follows:

- 13 1. For penalties pursuant to California *Labor Code* §§ 2699, 200, 226, 226.3, 226.7;
- 14 2. For costs of suit and expenses incurred herein pursuant to *Labor Code* §§ 226, 1194,
15 and 2699(g)(1);
- 16 3. For reasonable attorneys' fees pursuant to California *Labor Code* §§ 218.5, 226,
17 2699(g)(1), and *Code of Civil Procedure* § 1021.5, and/or other applicable law; and
- 18 4. A declaratory judgment that Defendants have knowingly and intentionally violated
19 the following provisions of law:
 - 20 a. California *Labor Code* §§ 510, 1198 for failing to pay overtime at the
21 regular rate;
 - 22 b. California *Labor Code* §§ 1182.11-1182.12, 1194, 1194.2, 1197, 1198, 221,
23 223, for failing to pay all wages;
 - 24 c. California *Labor Code* §§ 226.7, 512, 516, and 1198 for failing to provide
25 compliant meal and rest breaks;
 - 26 d. California *Labor Code* §§ 226, 1174 for failing to provide compliant wage
27 statements;
 - 28 e. California *Labor Code* §§ 204 for failing to pay wages timely during

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- employment;
- f. California *Labor Code* §§ 201 and 202 for failing to pay wages at termination;
- g. California *Labor Code* § 246 for failing to pay sick pay at the regular rate;
- h. California *Labor Code* § 2802 for failing to reimburse business expenses;
5. For all such other and further relief that the Court may deem just and proper.

DATED: September 28, 2023

BRADLEY/GROMBACHER, LLP
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