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Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

KENNETH MURPHY, individually on
behalf of himself and all others similarly
situated,

Plaintiffs,

v.

STINSON ENTERPRISES, INC., a
California Corporation doing business as
MODESTO TOYOTA; KAMIL ESHO, an
individual; and DOES 1-10,

Defendants.

Case No. CV-23-002354

**CLASS ACTION AND PAGA FIRST
AMENDED COMPLAINT** (California Code of
Civil Procedure §382)

- (1) Failure to Reimburse For Business Expenses;
- (2) Failure to Provide Rest Breaks (Individual);
- (3) Failure to Provide Meal Periods (Individual);
- (4) Failure to Furnish Accurate Itemized Wage
Statements (Individual);
- (5) Failure to Timely Pay All Wages Due at
Termination – Waiting Time Penalties
(Individual);
- (6) Unfair Business Practices;
- (7) Sexual Harassment in Violation of FEHA
(Individual);
- (8) Sexual Battery (Individual);
- (9) Intentional Infliction of Emotional Distress
(Individual);
- (10) Negligent Infliction of Emotional Distress
(Individual); and
- (11) Private Attorneys' General Act.

DEMAND FOR JURY TRIAL

Plaintiff Kenneth Murphy ("Murphy" and "Plaintiff"), on behalf of himself and all
others similarly situated (hereinafter sometimes collectively referred to as ("Class Plaintiffs" or
"Class Members")), hereby files this Class Action and PAGA First Amended Complaint
("Complaint") against Defendants STINSON ENTERPRISES, INC., a California Corporation

1 doing business as MODESTO TOYOTA ("Defendant Employer"), KAMIL ESHO and DOES 1-
2 10 (collectively referred to as "Defendants"). Plaintiff further asserts a number of individual
3 claims. Plaintiff complains and alleges as follows:

4 **I. INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure §382, seeking
6 damages, restitution, injunctive relief, penalties, reasonable attorneys' fees and costs, under the
7 California Labor Code as set forth herein, on behalf of Plaintiff and all other individuals who are
8 or have been employed by Defendants in California who who were required to use their personal
9 cell phones for Defendants' business purposes without any reimbursement, restitution or
10 compensation in violation of Labor Code section 2802. Plaintiff further maintains a cause of
11 action pursuant to the Private Attorneys' General Act ("PAGA").

12 2. For the four (4) years immediately preceding the filing of this Complaint,
13 Defendants consistently, willfully, and deliberately required Plaintiff and other current and former
14 employees in California to use their personal cell phones for business purposes without providing
15 any type of reimbursement, restitution or other compensation in violation of Labor Code §2802.

16 3. The "Class Period" is designated from four years prior to the filing of the
17 instant Complaint through the time the Court certifies this case as a class action. Plaintiff is
18 informed and believes that the Labor Code violations asserted herein have been going on for at
19 least four years prior to the filing of this action, and are continuing and will continue unless and
20 until the Court enjoins this unlawful conduct.

21 **II. PARTIES**

22 4. At all relevant times, Plaintiff resides in California. Plaintiff is a former
23 employee of Defendant Employer. Defendant Employer employed Plaintiff in several different
24 sales positions, ending with the position of Used Car Manager's Assistant. Murphy worked for
25 Defendant Employer from approximately July 2021 to January 2023.

26 5. At all relevant times, Defendant Employer is a California corporation
27 which does business as Modesto Toyota. Defendant Employer is a new and used car dealership
28 located in Modesto, California.

1 6. During the relevant time period, Defendant Kamil Esho was a management
2 employee working for Defendant Employer and Murphy's direct supervisor while Murphy
3 worked as a sales representative.

4 7. The true names and capacities of Defendants Does 1 through 10, inclusive,
5 whether individual, corporate, associate, agent, employee, or otherwise, are unknown to Plaintiff
6 at the time of filing this Complaint; therefore, Plaintiff sues said Defendants by such fictitious
7 names and will ask leave of Court to amend this Complaint to show their true names or capacities
8 when the same have been ascertained. Plaintiff is informed and believes, and based thereon
9 alleges, that each of the Doe Defendants is, in some manner, responsible for the events and
10 violations of law herein set forth. Plaintiff alleges that Defendants proximately caused injury and
11 damages to Plaintiff as herein alleged.

12 8. At all times herein mentioned, each Defendant was acting as the principal,
13 parent, agent and/or subsidiary of each of the remaining Defendants, and were, at all times herein
14 mentioned, acting within the scope of said relationship. Plaintiff is informed and believes that
15 each Defendant carried out a joint scheme, conspiracy, business plan or policy in all respects
16 pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.
17 Defendants encouraged and solicited one another to perform the conduct alleged herein, and
18 ratified each other's conduct. Whenever and wherever reference is made in this Complaint to any
19 act by a Defendant or Defendants, inclusive of the Does, such allegations and references shall
20 also be deemed to mean the acts and failures to act legally attributable to each Defendant acting
21 individually, jointly, and/or severally.

22 **III. JURISDICTION AND VENUE.**

23 9. This court has personal jurisdiction over Defendants because, at all relevant
24 times, Defendant Employer was doing business in the State of California and has its corporate
25 offices in Modesto, California. Further Defendants do business in Stanislaus County and had
26 Class Plaintiffs work for Defendants in Stanislaus County.

27 10. Venue is proper in the County of Stanislaus County in accordance with
28 Code of Civil Procedure §395.5 because this a county where the obligation or liability arises

1 under the California Labor Code and the Fair Employment and Housing Act.

2 **IV. FACTUAL ALLEGATIONS**

3 11. Defendant Employer owns and/or operates a Modesto, California based
4 new and used car dealership, and is doing business in California, including Stanislaus County. At
5 all relevant times, Defendants are and have been subject to the California Labor Code and the Fair
6 Employment and Housing Act.

7 12. Murphy began his employment with Defendant Employer in July 2021
8 working as a sales representative. Defendant Kamil Esho was Murphy's direct supervisor while
9 he worked as a sales representative. During his employment with Defendant Employer, Murphy
10 was sexually harassed and sexually assaulted at work, and subject to a sexually hostile work
11 environment. For example, in March 2022, Murphy's supervisor Kamil Esho "dry humped"
12 Murphy from behind. Murphy complained about this misconduct to Defendant Employer, but
13 Defendant Employer did nothing in response. Murphy does not believe that Defendant performed
14 any real or proper investigation on the incident, and Kamil Esho was never formally disciplined
15 as a result of the complaint.

16 13. In April 2022, Defendant Employer's management employee Allen
17 Gologhlan grabbed Murphy in a head lock and started choking Murphy. Murphy complained
18 about this misconduct to Defendant Employer, but Defendant Employer did nothing in response.
19 Murphy does not believe that Defendant Employer performed any real or proper investigation on
20 the incident, and Allen Gologhlan was never formally disciplined as a result of the complaint.

21 14. Further, in December 2022, several of Defendant Employer's managers
22 would inappropriately inspect Defendant Employer's female customers, making inappropriate
23 comments about them. Also in December 2022, Defendant's employees Octavio and Aaron were
24 showing videos of Octavio's bachelor party which included a stripper and who was shown being
25 dry humped by several men who attended the party.

26 15. Within the time provided by law, Plaintiff filed an administrative complaint
27 against Defendants with the California Department of Fair Employment and Housing, in full
28 compliance with FEHA, and obtained a "right to sue" letter. Plaintiff therefore has met all

1 jurisdictional requirements and prerequisites for maintaining this action under FEHA.

2 16. Throughout the course and scope of Plaintiff's employment with
3 Defendant Employer, Plaintiff, and on information and belief other sales employees such as sales
4 representatives, sales managers sales manager assistants and other sales related positions working
5 for Defendant Employer in California, were required to use their personal cell phones for
6 Defendant Employer's business purposes. This included downloading and using several different
7 apps on their phones. Defendants, however, failed to reimburse Plaintiff, and on information and
8 belief all other California sales employees for the use of their personal cell phones for business
9 purposes. Defendants required Plaintiff and on information and belief all other California sales
10 employees to incur business expenses without reimbursing them for said expenses in violation of
11 Labor Code §2802. Plaintiff and on information and belief all other all other California sales
12 employees were and are entitled to reimbursement, restitution or compensation for the use of their
13 personal cell phones for Defendant Employer's business purposes.

14 17. During the course and scope of Plaintiff's employment with Defendant
15 Employer, Plaintiff was denied compliant off-duty rest breaks in violation of Labor Code §226.7.
16 Further, Defendant Employer failed and refused to pay Plaintiff the rest period premium wages
17 owed pursuant to Labor Code §226.7, and is entitled to be paid one (1) hour of additional wages
18 at Plaintiff's regular rate of compensation for each occasion in which a timely duty-free rest break
19 was not provided by Defendant Employer, as required by Labor Code §§226.7.

20 18. During the course and scope of Plaintiff's employment with Defendant
21 Employer, Plaintiff was denied a reasonable opportunity to take a net thirty-minute, duty-free
22 meal period for each workday during which he was required to work more than five (5) hours, as
23 mandated by California law, or to pay Plaintiff one (1) hour of additional wages at Plaintiff's
24 regular rate of compensation for each workday in which a duty-free meal period was not
25 provided, as required by Labor Code §§ 226.7 and 512.

26 19. Plaintiff has not received compensation for all rest break and meal period
27 premium wages at the end of his employment with Defendants, subjecting Defendants to waiting
28 time penalties. Accordingly, Defendant Employer failed to pay Plaintiff all wages owing and due

1 at the end of his employment with Defendant Employer in violation of Labor Code §203. Further,
2 as a result of Defendant Employer not paying Plaintiff all rest break and meal period premium
3 wages owing and due, Defendant Employer did not provide Plaintiff with accurate itemized wage
4 statements in violation of Labor Code §226.

5 20. Defendants' foregoing wrongful acts constitute continuing and ongoing
6 unlawful activity in violation of the Labor Code and Business & Professions Code § 17200, et
7 seq. ("Unfair Competition Law"). Accordingly, Defendants should be enjoined from continuing
8 to violate the Labor Code and the Unfair Competition Law as set forth herein, including but not
9 limited to an injunction ordering Defendants to cease the unlawful business practices in violation
10 of Labor Code section 2802 and the Unfair Competition Law.

11 V. CLASS ACTION ALLEGATIONS

12 21. Plaintiffs bring this action on behalf of himself and all others similarly
13 situated as a Class Action pursuant to Code of Civil Procedure §382. The Class that Plaintiff
14 seeks to represent is the following: All persons who are or have been employed in California at
15 any time from four years prior to the filing of this action through the date of the Court's granting
16 of class certification in this matter by Defendant Employer and who used his or her personal cell
17 phones for business purposes while performing sales related duties such as sales representatives,
18 sales managers, sales manager assistants and other sales related positions.

19 22. This action has been brought and may be maintained as a class action under
20 Code of Civil Procedure §382 because there is a well-defined community of interest in the
21 litigation and the proposed class is easily ascertainable.

22 23. Numerosity: The potential members of the Class as defined herein are
23 numerous and therefore joinder of all of the members of the Class is impracticable, especially
24 when employee turnover during the Class Period is taken into account. Defendant Employer's
25 employment records applicable to the Class are required before an accurate number can be
26 determined, but Plaintiff is informed and believes that the potential members of the class are over
27 50 current and former employees of Defendant Employer.

28 24. Commonality: There are questions of law and fact that are common to

1 Plaintiff and the Class that predominate over any questions affecting only individual members of
2 the potential Class, including but not limited to the following: Whether Defendant Employer
3 improperly required Plaintiff or any Class members to use their personal cell phones for business
4 purposes without reimbursement, restitution or compensation.

5 25. Typicality: Plaintiff's claims are typical of the Class. Plaintiff and other
6 sales related employees sustained damages due to Defendant Employer's actions as described
7 herein. Thus, each member of the Class will have the same basis for restitution and
8 reimbursement under Labor Code §2802.

9 26. Adequacy of Representation: Plaintiff is a member of the Class and will
10 fairly and adequately represent and protect the interests of the Class. Plaintiff's interests do not
11 conflict with the interests of the Class. Plaintiff's counsel is competent and experienced in
12 litigating wage and hour class actions and will devote sufficient time and resources to the case
13 and adequately represent the interests of the Class.

14 27. Superiority: A class action is superior to other available means for the fair
15 and efficient adjudication of the instant controversy since individual joinder of all members of the
16 class is impracticable. Class action treatment will permit a larger number of similarly situated
17 persons to prosecute their common claims in a single forum simultaneously, efficiently, and
18 without the unnecessary duplication of effort and expense that numerous individual actions would
19 create. Further, as damages suffered by each individual member of the class may be relatively
20 small, the expenses and burden of the individual litigation would make it difficult or impossible
21 for individual members of the Class to redress the wrongs done to them, and an important public
22 interest will be served by addressing the matter as a Class Action. The cost to the court system of
23 adjudication of such individualized litigation would be substantial. Individualized litigation
24 would also present the potential for inconsistent or contradictory judgments.

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1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

4 **(BY PLAINTIFF, individually and on behalf of the Class Members,**
5 **AGAINST AGAINST DEFENDANT EMPLOYER and DOES 1 through 10)**

6 28. Plaintiff re-alleges and incorporates herein by reference the allegations
7 contained in Paragraphs 1 through 11, 16 and 20 through 27 of the Complaint as though fully set
8 forth herein.

9 29. Defendant Employer and Does 1 through 10 passed on and avoided their
10 own business operating expenses by requiring Plaintiff and Class Members to use their personal
11 cell phones for business purposes without reimbursement, restitution or compensation.
12 Defendants' actions as described herein violate Labor Code §2802.

13 30. Class Plaintiffs are entitled to compensation, restitution and/or
14 reimbursement of all such expenses and other relief, including recovery of interest, attorneys' fees
15 and costs of suit.

16 **SECOND CAUSE OF ACTION**
17 **FAILURE TO TO PROVIDE REST BREAKS**

18 **(BY PLAINTIFF, individually only, AGAINST AGAINST DEFENDANT EMPLOYER**
19 **and DOES 1 through 10)**

20 31. Plaintiff re-alleges and incorporates herein by reference the allegations
21 contained in Paragraphs 4 through 11 and 17 of the Complaint as though fully set forth herein.

22 32. Plaintiff was not provided by Defendant Employer and Does 1 through 10
23 all required rest breaks to which he was entitled under California law, including under Labor
24 Code §§ 226.7, and the pertinent Wage Order. Plaintiff also was not paid the required one hour
25 missed rest break wage premium at Plaintiff's regular rate of pay for each day Plaintiff missed a
26 required rest break, as required by law.

27 33. Plaintiff requests restitution and payment of rest break premium wages,
28 together with interest thereon and all other applicable relief.

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1 **THIRD CAUSE OF ACTION**
2 **FAILURE TO TO PROVIDE MEAL PERIODS**

3 **(BY PLAINTIFF, individually only, AGAINST DEFENDANT EMPLOYER and DOES 1**
4 **through 10)**

5 34. Plaintiff re-alleges and incorporates herein by reference the allegations
6 contained in Paragraphs 4 through 11 and 18 of the Complaint as though fully set forth herein.

7 35. While working for Defendant Employer and Does 1 through 10, Plaintiff
8 systematically worked periods of more than five (5) hours in a workday without being provided a
9 mandated thirty (30) minute, duty free meal period in violation of Labor Code §§ 226.7 and 512,
10 the applicable Wage Order and California regulations, without limitation. California law requires
11 Plaintiff to be paid one (1) additional hour of pay per day at Plaintiff's regular rate of
12 compensation for each day that Plaintiff did not receive a meal period to which Plaintiff was
13 legally entitled. Plaintiff did not receive such pay. Therefore, Plaintiff had not been paid all the
14 wages due to Plaintiff.

15 36. Plaintiff requests restitution of meal period premium wages and all other
16 applicable relief allowed by law, including attorneys' fees under Labor Code §218.5.

17 **FOURTH CAUSE OF ACTION**
18 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

19 **(BY PLAINTIFF, individually only, AGAINST DEFENDANT EMPLOYER and DOES 1**
20 **through 10)**

21 37. Plaintiff re-alleges and incorporates herein by reference the allegations
22 contained in Paragraphs 4 through 11 and 17 through 19 of the Complaint as though fully set
23 forth herein.

24 38. Defendant Employer and Does 1 through 10 knowingly and intentionally
25 furnished Plaintiff with inaccurate and false itemized statements as described herein, as required
26 by Labor Code §226, and the applicable Wage Order and California Regulations.

27 39. Pursuant to Labor Code §226, Plaintiff and the Exempt Sales Class
28 Members are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the

1 initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for
2 each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand
3 dollars (\$4,000) each.

4 40. As a result of Defendants' unlawful actions, Plaintiff has been required to
5 retain an attorney and to incur attorney's fees and costs in pursuit of this cause of action. Plaintiff
6 is entitled to recover Plaintiff's reasonable attorney's fees and costs incurred herein pursuant to
7 Labor Code section 226.

8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO TIMELY PAY ALL WAGES DUE AT TERMINATION - WAITING TIME**
10 **PENALTIES**

11 **(BY PLAINTIFF, individually only, AGAINST DEFENDANT EMPLOYER and DOES 1**
12 **through 10))**

13 41. Plaintiff re-alleges and incorporates herein by reference the allegations
14 contained in Paragraphs 4 through 11 and 17 through 19 of the Complaint as though fully set
15 forth herein.

16 42. California Labor Code §201 requires an employer who discharges an
17 employee to pay compensation due and owing to said employee immediately upon discharge.
18 Labor Code §202 requires an employer to promptly pay compensation due and owing to said
19 employee within seventy-two (72) hours of that employee's termination of employment by
20 resignation. California Labor Code §203 provides that if an employer willfully fails to pay
21 compensation promptly upon discharge or resignation, as required under §§201 and 202, then the
22 employer is liable for waiting time penalties in the form of continued compensation for up to
23 thirty (30) work days.

24 43. Defendants willfully failed and refused, and continue to willfully fail and
25 refuse, to timely pay all compensation and wages due to Plaintiff upon the cessation of Plaintiff's
26 employment, as required by Labor Code §§201-202.

27 44. As a result of Defendant Employer and Does 1 through 10's unlawful acts,
28 Defendant Employer and Does 1 through 10 are liable to Plaintiff who is no longer employed by
Defendant Employer for waiting time penalties under Labor Code §203, together with interest

1 thereon pursuant to Labor Code section 218.6.

2 45. As a result of Defendant Employer and Does 1 through 10's unlawful
3 actions, Plaintiff has been required to retain an attorney and to incur attorney's fees and costs in
4 pursuit of this cause of action. Plaintiff is entitled to recover Plaintiff's reasonable attorney's fees
5 and costs incurred herein pursuant to Labor Code section 218.5.

6 **SIXTH CAUSE OF ACTION**
7 **UNFAIR BUSINESS PRACTICES**

8 **(BY PLAINTIFF, individually and on behalf of the Class Members, AGAINST**
9 **DEFENDANT EMPLOYER and DOES 1 through 10)**

10 46. Plaintiffs re-allege and incorporate herein by reference the allegations
11 contained in Paragraphs 1 through 11, 16, and 20 through 30 of the Complaint as though fully set
12 forth herein.

13 47. Defendant Employer and Does 1 through 10's foregoing wrongful acts in
14 violation Labor Code §2802 constitute continuing and ongoing unlawful activity prohibited by
15 Business & Professions Code § 17200, *et seq.* ("the Unfair Competition Law") and justifies the
16 issuance of an injunction, restitution, and other equitable relief pursuant to Business &
17 Professions Code § 17203.

18 48. Defendant Employer and Does 1 through 10's conduct described herein
19 was directly in violation of California's wage and hour laws, and it constitutes and was intended
20 to constitute unfair competition and unlawful and unfair acts and practices within the meaning of
21 the Unfair Competition Law.

22 49. Through their wrongful and unlawful acts, as described herein, Defendant
23 Employer and Does 1 through 10 have acted contrary to the public policy of this State.

24 50. Defendant Employer and Does 1 through 10 have engaged in unlawful
25 business acts and practices by violating California law including, but not limited to, the Labor
26 Code §2802, the applicable IWC Wage Order, and other violation of law discussed herein.

27 51. As a result of their unlawful, unfair, and/or fraudulent acts, Defendant
28 Employer and Does 1 through 10's have reaped and continue to reap unfair benefits and illegal
profits at the expense of Plaintiff and Class Members.

1 52. Therefore, under the provisions of the Unfair Competition Law, the Labor
2 Code, and the applicable IWC Wage Order, Defendant Employer and Does 1 through 10 should
3 be enjoined from this activity and should provide restitution to Plaintiff and Class Members for
4 the wrongfully withheld reimbursement, restitution, compensation and other benefits pursuant to
5 Business and Professions Code §17203, in a sum according to proof for the 4-year period
6 preceding the filing of this Complaint up to and including the present, for violation of Labor Code
7 §2802.

8 **SEVENTH CAUSE OF ACTION**
9 **SEXUAL HARASSMENT IN VIOLATION OF FEHA**
 (PLAINTIFF individually only against ALL DEFENDANTS)

10 53. Plaintiff re-alleges and incorporates herein by reference the allegations
11 contained in Paragraphs 4 through 15 of the Complaint as though fully set forth herein.

12 54. At all times mentioned herein, the Fair Employment and Housing Act,
13 California Government Code sections 12940, et seq. ("FEHA"), was in full force and effect and
14 binding on Defendants. Plaintiff's employment with Defendant Employer was governed by the
15 FEHA. The FEHA prohibits harassment based on protected characteristics, including sex.
16 Defendants' misconduct as described herein violates FEHA and constitutes sexual harassment.
17 Defendant Employer is strictly liable for the sexual harassment of Plaintiff by Kamil Esho and
18 other management employees. Kamil Esho's harassing conduct was unlawful in violation of
19 FEHA. Kamil Esho was a "Supervisor" as defined by FEHA in Govt. Code §12926(t), and
20 Defendant Employer is thus strictly liable for Kamil Esho's sexually harassing conduct and
21 Plaintiff's damages.

22 55. The inappropriate conduct by Defendants constitute sex harassment in
23 violation of the FEHA. Such harassing conduct towards Plaintiff was sufficiently serious and
24 severe such that a reasonable person in Plaintiff's circumstances would have considered the work
25 environment to be hostile or abusive, and Plaintiff in fact perceived it to be so.

26 56. As a proximate result of Defendants' unlawful actions in violation of
27 FEHA, Plaintiff has suffered and will continue to suffer damages, the exact amount of which has
28 not yet been fully ascertained, within the jurisdiction of this Court. Plaintiff is entitled to

1 damages for his actual, compensatory, special, general, consequential and incidental financial
2 losses and due to Defendants' unlawful actions in an amount according to proof at trial.

3 57. As a proximate result of Defendants' unlawful actions in violation of
4 FEHA, as described herein, Plaintiff has suffered and will continue to suffer anxiety,
5 embarrassment, humiliation, mental anguish, emotional distress, and physical injury and sickness
6 all to his damage in an amount according to proof at trial.

7 58. Defendants' unlawful conduct in violation of FEHA against Plaintiff was
8 carried out by Defendants and/or ratified by Defendants and their officers, directors and/or
9 managing agents acting in a despicable, cold, callous, oppressive, malicious, deliberate and
10 inexcusable manner in order to injure and damage Plaintiff, thereby justifying an award of
11 punitive or exemplary damages against each Defendant for Plaintiff.

12 59. As a further proximate result of Defendants' unlawful actions in violation
13 of FEHA, Plaintiff has been forced to retain counsel to enforce his rights, and is entitled to
14 recover pursuant to FEHA the costs and attorneys' fees he has incurred and will incur in
15 connection with this legal action, in an amount to be determined after trial.

16 **EIGHTH CAUSE OF ACTION**
17 **SEXUAL BATTERY**
18 **(BY PLAINTIFF, individually only, AGAINST KAMIL ESHO)**

19 60. Plaintiff re-alleges and incorporates herein by reference the allegations
20 contained in Paragraphs 4 through 12 of the Complaint as though fully set forth herein.

21 61. Kamil Esho acted against Plaintiff, intending to cause harmful or offensive
22 contact with Plaintiff's buttocks, and sexually offensive contact by Kamil Esho against Plaintiff
23 resulted.

24 62. As a result, Kamil Esho violated Civil Code section 1708.5.

25 63. Plaintiff did not consent to Kamil Esho's conduct. Plaintiff was harmed.

26 64. Kamil Esho's conduct was a substantial factor in causing Plaintiff's harm.

27 65. As a proximate result of Kamil Esho's sexual battery on Plaintiff, Plaintiff
28 has suffered and will continue to suffer damages, the exact amount of which has not yet been
fully ascertained, within the jurisdiction of this Court. Plaintiff is entitled to damages for his

1 actual, compensatory, special, general, consequential and incidental financial losses and due to
2 Kamil Esho's unlawful actions in an amount according to proof at trial.

3 66. As a proximate result of Kamil Esho's sexual battery on Plaintiff, Plaintiff
4 has suffered and will continue to suffer anxiety, embarrassment, humiliation, mental anguish,
5 emotional distress, and physical injury and sickness all to his damage in an amount according to
6 proof at trial.

7 67. Kamil Esho's sexual battery on Plaintiff was carried out by Kamil Esho
8 acting in a despicable, cold, callous, oppressive, malicious, deliberate and inexcusable manner in
9 order to injure and damage Plaintiff, thereby justifying an award of punitive or exemplary
10 damages against Kamil Esho for Plaintiff in a sum appropriate to punish and make an example of
11 Kamil Esho, in an amount to be determined at trial.

12 **NINTH CAUSE OF ACTION**
13 **INTENTIONAL INFLICTION OF EMOTIONAL DESTRESS**
14 **(BY PLAINTIFF, individually only, AGAINST KAMIL ESHO)**

15 68. Plaintiff re-alleges and incorporates herein by reference the allegations
16 contained in Paragraphs 4 through 12 of the Complaint as though fully set forth herein.

17 69. Kamil Esho's misconduct as detailed above constitutes intentional
18 infliction of emotional distress. Kamil Esho repeatedly engaged in outrageous misconduct
19 towards Plaintiff intending to (and/or reckless disregard of) and in fact causing Plaintiff to suffer
20 severe emotional distress. Kamil Esho's misconduct as detailed above was a substantial factor in
21 causing this severe emotional distress.

22 70. As a proximate result of Kamil Esho's unlawful intentional infliction of
23 emotional distress, Plaintiff has suffered and will continue to suffer damages, the exact amount of
24 which has not yet been fully ascertained, within the jurisdiction of this Court. Plaintiff is entitled
25 to damages for his actual, compensatory, special, general, consequential and incidental financial
26 losses due to Kamil Esho's unlawful actions, including but not limited to lost wages, employment
27 benefits, medical expenses, and certain other expenses and losses in an amount to be determined
28 at trial.

71. As a proximate result of Kamil Esho's unlawful intentional infliction of

1 emotional distress, Plaintiff has suffered and will continue to suffer anxiety, embarrassment,
2 humiliation, mental anguish, emotional distress, and physical injury and sickness, in an amount to
3 be determined at trial.

4 72. Kamil Esho's wrongful conduct was carried out by Kamil Esho acting in a
5 despicable, cold, callous, oppressive, malicious, deliberate and inexcusable manner in order to
6 injure and damage Plaintiff, thereby justifying an award of punitive or exemplary damages
7 against Kamil Esho for Plaintiff in a sum appropriate to punish and make an example of Kamil
8 Esho, in an amount to be determined at trial.

9 **TENTH CAUSE OF ACTION**
10 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
11 **(BY PLAINTIFF, individually only, AGAINST KAMIL ESHO)**

12 73. Plaintiff re-alleges and incorporates herein by reference the allegations
13 contained in Paragraphs 4 through 12 of the Complaint as though fully set forth herein.

14 74. Kamil Esho's misconduct as detailed above constitutes negligent infliction
15 of emotional distress. Kamil Esho negligently engaged in conduct towards Plaintiff causing
16 Plaintiff to suffer severe emotional distress. Kamil Esho's misconduct as detailed above was a
substantial factor in causing this severe emotional distress.

17 75. As a proximate result of Kamil Esho's unlawful negligent infliction of
18 emotional distress, Plaintiff has suffered and will continue to suffer damages, the exact amount of
19 which has not yet been fully ascertained, within the jurisdiction of this Court. Plaintiff is entitled
20 to damages for his actual, compensatory, special, general, consequential and incidental financial
21 losses due to Kamil Esho's unlawful actions, including but not limited to lost wages, employment
22 benefits, medical expenses, and certain other expenses and losses in an amount to be determined
23 at trial.

24 76. As a proximate result of Kamil Esho's unlawful negligent infliction of
25 emotional distress, Plaintiff has suffered and will continue to suffer anxiety, embarrassment,
26 humiliation, mental anguish, emotional distress, and physical injury and sickness, in an amount to
27 be determined at trial.

1 **ELEVENTH CAUSE OF ACTION**
2 **CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT**
3 **(BY PLAINTIFF, individually and on behalf of all others similarly situated and the State of**
4 **California, AGAINST DEFENDANT EMPLOYER and DOES 1 through 10)**

5 77. Plaintiff re-alleges and incorporates herein by reference the allegations
6 contained in Paragraphs 1 through through 11, 16, and 29 through 30 of the Complaint as though
7 fully set forth herein.

8 78. The Court has jurisdiction of this cause of action pursuant to Labor Code
9 §§2699, et seq.

10 79. Plaintiff is an "aggrieved employee" as defined under Labor Code
11 §2699(c), and thus has standing to bring this action on behalf of all California Employees who (2)
12 were required to use their personal cell phones for Defendant's business purposes without
13 reimbursement, restitution or compensation, pursuant to Labor Code §§2699 and 2699.3.

14 80. Labor Code §2699(a) provides: "Notwithstanding any other provision of
15 law, any provision of this code that provides for a civil penalty to be assessed and collected by the
16 Labor and Workforce Development Agency or any of its departments, divisions, commissions,
17 boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered
18 through a civil action brought by an aggrieved employee on behalf of herself or herself and other
19 current or former employees pursuant to the procedures specified in Section 2699.3."

20 81. Labor Code §2699(f) provides: "For all provisions of this code except
21 those for which a civil penalty is specifically provided, there is established a civil penalty for a
22 violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person
23 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
24 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
25 each aggrieved employee per pay period for each subsequent violation."

26 82. Defendants violated numerous provisions of the California Labor Code and
27 Wage Orders, including without limitation: Labor Code § 2802. As a result of these violations,
28 Plaintiff, on behalf of himself, other aggrieved employees, and the State, will seek penalties
against Defendant under Labor Code § 2699(f).

1 83. Plaintiff will seek the following civil penalties against Defendants for
2 himself, the State, and aggrieved employees:

3 a. Plaintiff seeks civil penalties under Labor Code §2699(f) for
4 Defendants' failure to reimburse business expenses, in violation of
5 Labor Code §2802;

6 84. As a result, Plaintiff seeks civil penalties as provided under applicable
7 Labor Code sections for violations of the Labor Code alleged herein pursuant to Labor
8 Code§2699(a). To the extent that any violation alleged herein does not carry a penalty, Plaintiff
9 seeks civil penalties pursuant to Labor Code §2699(f) for Plaintiff and PAGA Aggrieved
10 Employees for violations of those sections.

11 85. Plaintiff seeks penalties on behalf of himself, the PAGA Aggrieved
12 Employees, and the State, as provided by Labor Code §2699(i). Affected employees are
13 numerous, and it would be impracticable to bring all the affected co-employees before the Court.

14 86. Plaintiff's PAGA claim does not require Class Certification. Plaintiff does
15 not need a Court Order authorizing the representation of the class for this cause of action.

16 87. As a result of their violations of the Labor Code, and the injuries suffered
17 by Plaintiff and the PAGA Aggrieved Employees, Defendants are liable to Plaintiff, the PAGA
18 Aggrieved Employees and the State for the civil penalties sought herein.

19 88. Plaintiff also is entitled to an award of attorneys' fees and costs pursuant to
20 Labor Code section 2699(g).

21 89. On May 8, 2023, Plaintiff provided timely notice of his intention to bring
22 an action pursuant to the PAGA, Labor Code §§2699, *et seq.*, to the California Labor and
23 Workforce Development Agency ("LWDA") and Defendants. No response was received within
24 the following sixty-five (65) calendar days. Therefore, Plaintiff has satisfied the requirements to
25 assert a PAGA claim under Labor Code §2699.3.

26
27 **IV. PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff Kenneth Murphy, on behalf of himself and the above-

1 described Class, prays for the following relief against Defendants, and each of them where
2 applicable, as follows:

3 1. Certification of the First Cause of Action as a class action on behalf of the
4 Class described herein and designation of Plaintiff as the representatives and Basham Law Group,
5 Inc., as counsel for the Class described herein;

6 2. As to the First Cause of Action, a declaratory judgment that Defendant
7 Employer and Does 1 through 10 violated Labor Code § 2802 as alleged herein;

8 3. As to the First Cause of Action, for an award against Defendants and in
9 favor of Plaintiff and the Class Members in an amount according to proof for restitution,
10 reimbursement and/or compensation to Plaintiff and the Class Members for Defendants having
11 required Plaintiff and the Class Members to use their personal cell phones for business purposes
12 in violation of Labor Code §2802;

13 4. As to the Second Cause of Action, for an award against Defendants and in
14 favor of Plaintiff for compensatory damages in an amount according to proof for unpaid rest
15 break premium wages and with interest thereon pursuant to Labor Code §226.7;

16 5. As to the Third Cause of Action, for an award against Defendants and in
17 favor of Plaintiff for compensatory damages in an amount according to proof for unpaid meal
18 period premium wages and with interest thereon pursuant to Labor Code §226.7;

19 6. As to the Fourth Cause of Action, for an award against Defendants and in
20 favor of Plaintiff for payment of all applicable penalties for failure to provide accurate itemized
21 wage statements to Plaintiff pursuant to Labor Code §226;

22 7. As to the Fifth Cause of Action, for an award against Defendants and in
23 favor of Plaintiff for payment of all applicable penalties for non-payment of wages to Plaintiff in
24 accordance with Labor Code §203;

25 8. As to the Sixth Cause of Action, a declaratory judgment that Defendant
26 Employer and Does 1 through 10 violated Business and Professions Code §17200 *et seq.* as a
27 result of Defendants' violations of Labor Code § 2802 as alleged herein;

28 9. As to the Sixth Cause of Action, that Defendant Employer and Does 1

1 through 10 be ordered to make restitution to Plaintiff due to their unfair competition, including
2 disgorgement of their wrongfully obtained revenue, earnings, profits, compensation and benefits
3 in violation of the California Business and Professions Code in an amount according to proof at
4 trial;

5 10. As to the Sixth Cause of Action, that Defendant Employer and Does 1
6 through 10 be enjoined from continuing to engage in unfair competition in violation of the
7 Business and Professions Code, including but not limited to an injunction ordering Defendants to
8 cease the unlawful and unfair business practices which violate Labor Code § 2802 as alleged
9 herein;

10 11. As to the Seventh through Tenth Causes of Action, for a money judgment
11 against Defendants representing compensatory, special, and general damages for all consequential
12 and incidental financial losses due to Defendants' unlawful actions, including but not limited to
13 lost wages, employment benefits, and certain other expenses and losses, according to proof at
14 trial;

15 12. As to the Seventh through Tenth Causes of Action, for a money judgment
16 against Defendants to compensate Plaintiff for her anxiety, embarrassment, humiliation, mental
17 anguish, emotional distress, and physical injury and sickness, according to proof at trial;

18 13. As to the Seventh through Ninth Causes of Action, for an award of punitive
19 damages against Defendants in an amount to punish and deter Defendants from continuing to
20 engage in similar misconduct according to proof at trial;

21 14. As to the Eleventh Cause of Action, for an award of all applicable civil
22 penalties referenced herein, including but not limited to civil penalties pursuant to Labor Code
23 §2699(f) on behalf of Plaintiff, the PAGA Aggrieved Employees, and the State of California,
24 against Defendants, according to proof at trial;

25 15. As to all Causes of Action, for prejudgment and post judgment interest,
26 attorney's fees (except for the Sixth and Eighth through Tenth Causes of Action) and costs of suit
27 pursuant to Labor Code §§218.5, 218.6, 226, 1194, 2699(g) and/or 2802, Government Code
28 §12965(b) and/or any other applicable statute; and

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16. As to all Causes of Action, for all other relief that is just and proper.

Date: July 12, 2023

BASHAM LAW GROUP

By: 
GARY R. BASHAM

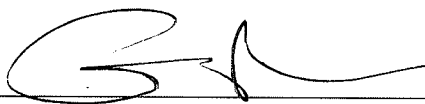
Attorneys for Plaintiffs KENNETH MURPHY and
the Proposed Class

1
2 **DEMAND FOR JURY TRIAL**

3 Plaintiff KENNETH MURPHY hereby demands a trial by jury as provided by
4 California Code of Civil Procedure section 631 and any other applicable law or statute.

5
6 Date: July 12, 2023

BASHAM LAW GROUP

7
8 By: 
9 GARY R. BASHAM

10 Attorneys for Plaintiffs KENNETH MURPHY and
11 the Proposed Class
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PROOF OF SERVICE

I, the undersigned declare:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8801 Folsom Blvd., Suite 280, Sacramento, CA 95826. On July 12, 2023, I caused the following to be served:

CLASS ACTION AND PAGA FIRST AMENDED COMPLAINT

_____ by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid for deposit in the United States Post Office mail box, at my business address shown above, following Basham Law Group's ordinary business practices for the collection and processing of mail, of which I am readily familiar, and addressed as set forth below.

_____ by depositing a true copy thereof enclosed in a sealed envelope with delivery fees thereon fully prepaid in a box or other facility regularly maintained by FedEx or delivering to an authorized courier or driver authorized by FedEx to receive documents on the same date that it is placed at Basham Law Group for collection, addressed as set forth below.

_____ by sending a copy by facsimile to the person(s) at the address(s) and facsimile number(s) set forth below.

X

_____ by email service to the person(s) at the address(s) set forth below.

Laura A. Wolfe (Laura.Wolfe@mccormickbarstow.com)
McCormick Barstow LLP
7647 North Fresno Street
Fresno, CA 93720
Attorneys for Defendant Stinson Enterprises, Inc.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 12, 2023, at Sacramento, California.



Gary R. Basham