

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

TVJ SONS I, INC., a California Corporation; PORTER AND HOWARD, INC. (dba Toyota of Santa Maria), a California Corporation; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

LUIS ALBERTO LEDESMA; an individual, on behalf of himself and on behalf of other Aggrieved Employees and the State of California,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
10/29/2020 1:03 PM
By: Isabel Navarro, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Santa Barbara Superior Court, Santa Maria-Cook
312-C East Cook Street
Santa Maria, CA 93454

CASE NUMBER: 20CV03573
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 892-7095 Fax: (619) 599-8291

Zakay Law Group, APLC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE:
(Fecha) 10/29/2020

Clerk, by _____, Deputy
(Secretario) /s/ Isabel Navarro (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

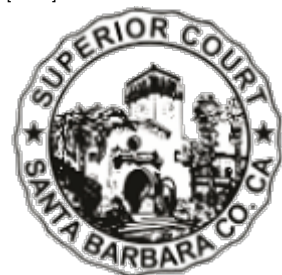
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

[SEAL]



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Shani O. Zakay (State Bar #277924)
3990 Old Town Avenue, Ste. C204
San Diego, CA 92110
Telephone: (619) 255-9047
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ATTORNEYS FOR PLAINTIFF LUIS ALBERTO LEDESMA

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
10/29/2020 1:03 PM
By: Isabel Navarro, Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA**

Case No. 20CV03573

LUIS ALBERTO LEDESMA; an individual, on
behalf of himself and on behalf of other
Aggrieved Employees and the State of
California,

Plaintiff,

v.

TVJ SONS I, INC., a California Corporation;
PORTER AND HOWARD, INC. (dba Toyota
of Santa Maria), a California Corporation; and
DOES 1-50, Inclusive,

Defendants.

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT PURSUANT
TO LABOR CODE SECTIONS 2698, et
seq.

1 Plaintiff Luis Alberto Ledesma (“PLAINTIFF”), on behalf of the people of the State of California
2 and “aggrieved employees” acting as a private attorney general under the Labor Code Private Attorney
3 General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and belief, except for
4 her own acts and knowledge which are based on personal knowledge, the following:

5 INTRODUCTION

6 1. PLAINTIFF brings this action against TVJ SONS I, INC. and PORTER AND
7 HOWARD, INC. (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil
8 penalties for himself, and on behalf of all current and former aggrieved employees that worked for
9 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
10 **California Labor Code § 2699.** To the extent that statutory violations are mentioned for wage
11 violations, PLAINTIFF does not seek underlying general and/or special damages for those violations in
12 this action, but simply the civil penalties permitted by California Labor Code § 2699. Notwithstanding,
13 PLAINTIFF is not abandoning his right to pursue his individual claims for, *inter alia*, Defendant’s
14 alleged wage violations, and/or general or special damages arising from those violations, and he fully
15 intends to, at a future date, pursue claims for those individual claims and damages.

16 2. California has enacted the PAGA to permit an individual to bring an action on behalf of
17 herself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this
18 action.

19 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT’S
20 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other
21 relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as
22 attempting to obtain any relief that would not be available in a PAGA-only action.

23 THE PARTIES

24 4. Defendant TVJ SONS I, INC. (“Defendant TVJ”) is a California corporation and at all
25 relevant times mentioned herein conducted and continues to conduct substantial and regular business
26 throughout the State of California. Defendant PORTER AND HOWARD, INC. (“Defendant P&H”) is a California corporation and at all relevant times mentioned herein conducted and continues to
27 conduct substantial and regular business throughout the State of California.
28

1 5. Defendant TVJ and Defendant P&H were the joint employers of PLAINTIFF as
2 evidenced by the contracts signed and by the company the PLAINTIFF performed work for
3 respectively, and are therefore jointly responsible as employers for the conduct alleged herein and
4 collectively referred to herein as “DEFENDANTS”.

5 6. DEFENDANTS retail automobile vehicles. DEFENDANT offers new and used cars as
6 well as financing, maintenance, and repair services.

7 7. PLAINTIFF was employed by DEFENDANT in California as a Sales Person from 2013
8 until November 2019 and was at all times during his employment with DEFENDANT entitled to be
9 paid minimum wages and entitled to the legally required off-duty meal and rest periods. PLAINTIFF
10 from time to time was unable to take off duty meal and rest periods as a result of DEFENDANT’s work
11 obligations. PLAINTIFF was also required to be paid for his rest periods as DEFENDANT paid
12 PLAINTIFF only commissions wages for certain pay periods. DEFENDANT did not separately and/or
13 properly compensate PLAINTIFF for his rest periods.

14 8. PLAINTIFF, and such persons that may be added from time to time who satisfy the
15 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
16 this Representative Action on behalf of the State of California with respect to himself and all individuals
17 who are or previously were employed by DEFENDANT in California (the "AGGRIEVED
18 EMPLOYEES") during the time period of April 6, 2019 until the present (the “PAGA PERIOD”).

19 9. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or
20 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action
21 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT’S violation of California
22 Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 512, 558, 1194, 1197, 1197.1, and 2802,
23 and the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED
24 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

25 10. The true names and capacities, whether individual, corporate, subsidiary, partnership,
26 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
27 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc.
28 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and

capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

11. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

12. During the PAGA PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other Aggrieved Employees as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and Aggrieved Employees did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. DEFENDANT'S meal period policies and practices were unlawful because PLAINTIFF and other Aggrieved Employees were far too over-booked and overworked to take a timely off-duty thirty (30) minute meal period. As a result of their rigorous work schedules, PLAINTIFF and other Aggrieved Employees were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the Aggrieved Employees with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the Aggrieved Employees forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

13. Further, DEFENDANT failed to provide PLAINTIFF and Aggrieved Employees with a second off-duty meal period on workdays in which these employees were required by DEFENDANT to work ten (10) hours of work from time to time. As a result, DEFENDANT'S failure to provide

1 PLAINTIFF and the Aggrieved Employees with legally required meal breaks is evidenced by
2 DEFENDANT's business records which contain no record of these breaks.

3 14. In addition, because of DEFENDANT's commission pay plan described herein,
4 DEFENDANT failed to compensate PLAINTIFF and Aggrieved Employees for their rest periods as
5 required by the applicable Wage Order and Labor Code. DEFENDANT did not have a policy or practice
6 which paid for off-duty rest periods to PLAINTIFF and the other Aggrieved Employees. As a result,
7 DEFENDANT's failure to provide PLAINTIFF and the Aggrieved Employees with all the legally
8 required paid rest periods is evidenced by DEFENDANT's business records.

9 15. On numerous occasions, PLAINTIFF and other CALIFORNIA CLASS Members were
10 required to work while not clocked in. DEFENDANT maintained a company-wide policy of refusing
11 to pay Aggrieved Employees, like PLAINTIFF, for all hours worked. Specifically, DEFENDANT
12 maintained a company-wide pattern and practice of altering employees' timecards to eliminate
13 numerous hours worked. As a result, DEFENDANT failed to compensate PLAINTIFF and the
14 Aggrieved Employees wages for all hours worked.

15 16. Under California law, every employer shall pay to each employee, on the established
16 payday for the period involved, not less than the applicable minimum wage for all hours worked in the
17 payroll period, whether the remuneration is measured by time, piece, commission, or otherwise. Hours
18 worked is defined in the applicable Wage Order as "the time during which an employee is subject to the
19 control of an employer, and includes all the time the employee is suffered or permitted to work, whether
20 or not required to do so. Here, PLAINTIFF and other AGGRIEVED EMPLOYEES were entitled to
21 separate hourly compensation for time spent performing all non-sales related tasks directed by
22 DEFENDANT during their work shifts, including, but not limited to, weekly sales meetings, and are
23 entitled to one hour of pay for their rest periods.

24 17. From time to time, when DEFENDANT did not accurately record PLAINTIFF's and
25 other Aggrieved Employees' missed meal and rest breaks and/or also failed to pay the proper minimum
26 wages and separate compensation for rest breaks, the wage statements issued to PLAINTIFF and other
27 Aggrieved Employees by DEFENDANT violated California law, and in particular, Labor Code Section
28 226(a). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to

1 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226
2 et seq.

3 18. DEFENDANT as a matter of corporate policy, practice and procedure, intentionally,
4 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the other Aggrieved
5 Employees for required business expenses incurred by the PLAINTIFF and other Aggrieved Employees
6 in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor
7 Code Section 2802, employers are required to indemnify employees for all expenses incurred in the
8 course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
9 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
10 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of
11 the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed
12 them to be unlawful."

13 19. In the course of their employment PLAINTIFF and other Aggrieved Employees as a
14 business expense, were required by DEFENDANT to use their own personal cellular phones as a result
15 of and in furtherance of their job duties as employees for DEFENDANT but were not reimbursed or
16 indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones for
17 DEFENDANT's benefit. Specifically, PLAINTIFF and other Aggrieved Employees were required by
18 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the course of
19 their employment with DEFENDANT the PLAINTIFF and other Aggrieved Employees incurred
20 unreimbursed business expenses which included, but were not limited to, costs related to the use of their
21 personal cellular phones all on behalf of and for the benefit of DEFENDANT.

22 20. In violation of the applicable sections of the California Labor Code and the requirements
23 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
24 policy, practice and procedure, intentionally, knowingly and systematically failed to compensate
25 PLAINTIFF and the other Aggrieved Employees for missed meal and rest periods. This uniform policy
26 and practice of DEFENDANT is intended to purposefully avoid the payment for all time worked as
27 required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
28 over competitors who complied with the law. To the extent equitable tolling operates to toll claims by

1 the Aggrieved Employees against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

2 21. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
3 DEFENDANT failed to properly calculate and/or pay all required compensation for work performed by
4 the members of the CALIFORNIA CLASS and violated the California Labor Code and regulations
5 promulgated thereunder as herein alleged.

6 22. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required
7 off-duty meal breaks to him and paid rest periods to him as required by the applicable Wage Order and
8 Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed meal and rest breaks.
9 The nature of the work performed by PLAINTIFF did not prevent him from being relieved of all of his
10 duties for the legally required off-duty meal periods. Further, DEFENDANT failed to provide
11 PLAINTIFF with a second off-duty meal period each workday in which PLAINTIFF was required by
12 DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT'S failure to provide
13 PLAINTIFFS with the legally required second off-duty meal period is evidenced by DEFENDANT's
14 business records. From time to time, and as a result of DEFENDANT not accurately recording all
15 missed meal and rest periods, and failing to pay minimum wages due for all time worked and separate
16 compensation for rest breaks, the wage statements issued to PLAINTIFF by DEFENDANT violated
17 California law, and in particular, Labor Code Section 226(a). To date, DEFENDANT has yet to pay
18 PLAINTIFF all of his wages due to him and all premiums due to him for missed meal and rest breaks
19 and DEFENDANT has failed to pay any penalty wages owed to him under California Labor Code
20 Section 203.

21 **JURISDICTION AND VENUE**

22 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
23 Procedure, Section 410.10.

24 24. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
25 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained
26 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
27 committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.
28

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **[Cal. Lab. Code §§ 2698 et seq.]**

4 **(Alleged by PLAINTIFF against all Defendants)**

5 25. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein,
6 the prior paragraphs of this Complaint.

7 26. PAGA is a mechanism by which the State of California itself can enforce state labor laws
8 through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law
9 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
10 enforcement action designed to protect the public and not to benefit private parties. The purpose of
11 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
12 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
13 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
14 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
15 PAGA claims cannot be subject to arbitration.

16 27. PLAINTIFF, and such persons that may be added from time to time who satisfy the
17 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
18 this Representative Action on behalf of the State of California with respect to herself and all individuals
19 who are or previously were employed by DEFENDANT in California during the time period of April 6,
20 2019 until the present (the "AGGRIEVED EMPLOYEES").

21 28. On August 24, 2020, PLAINTIFF gave written notice by certified mail to the Labor and
22 Workforce Development Agency (the "Agency") and the employer of the specific provisions of
23 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
24 hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add
25 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF
26 may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
27 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

28 29. The policies, acts and practices heretofore described were and are an unlawful business

1 act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
2 minimum wages and separately compensated rest breaks, (b) failed to provide PLAINTIFF and other
3 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate
4 itemized wage statements, and (d) failed to timely pay wages, all in violation of the applicable Labor
5 Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203,
6 204, 210, 226(a), 226.3, 226.7, 512, 558, 1194, 1197, 1197.1, and 2802, and the applicable Industrial
7 Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF
8 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act
9 of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
10 and the other AGGRIEVED EMPLOYEES.

11 30. Some or all of the conduct and violations alleged herein occurred during the PAGA
12 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF
13 during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other
14 AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See
15 also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
16 “aggrieved employee”—a person affected by **at least one** Labor Code violation committed by an
17 employer—to pursue penalties for all the Labor Code violations committed by that employer.”],
18 Emphasis added, reh'g denied (June 13, 2018).)

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally,
3 as follows:

4 1. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

- 6 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
7 General Act of 2004; and
8 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the
9 law.

10
11 Dated: October 29, 2020

Respectfully Submitted,
ZAKAY LAW GROUP, A.P.C.

12
13 By: 
14 Shani O. Zakay
15 Attorneys for Plaintiff
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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #30401

August 24, 2020

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

TVJ SONS I, INC.

MICHAEL BOUQUET

4435 COUNTRYWOOD DRIVE

SANTA MARIA CA 93455

PORTER AND HOWARD, INC. dba

Toyota of Santa Maria

MICHAEL D BOUQUET

700 E BETTERAVIA RD

SANTA MARIA CA 93454

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Luis Alberto Ledesma (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against TVI Sons I, Inc., a California Corporation and Porter and Howard, Inc. (dba Toyota of Santa Maria), a California Corporation (“Defendants”). Plaintiff was employed by Defendants in California from 2013 to November 2019 as a salesperson, earning a draw vs. commission compensation, and entitled to the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks, and failed to separately compensate Plaintiff and other Aggrieved Employees for their rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep accurate time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, 1198.5 violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities,

dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,



Shani O. Zakay
Attorney for Luis Alberto Ledesma

JCL LAW FIRM, APC

JEAN-CLAUDE LAPUYADE (SBN 248676)

JLAPUYADE@JCL-LAWFIRM.COM

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Facsimile: (858) 404-9203

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA BARBARA**

LUIS ALBERTO LEDESMA; an individual,
on behalf of himself and on behalf of all
persons similarly situated and the State of
California,

Plaintiff,

v.

TVJ SONS I, INC., a California Corporation;
PORTER AND HOWARD, INC. (dba Toyota
of Santa Maria), a California Corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 3) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203; and
- 8) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff LUIS ALBERTO LEDESMA (“PLAINTIFF”), an individual, on behalf of himself
2 and all other similarly situated current and former employees, alleges on information
3 and belief, except for her own acts and knowledge which are based on personal
4 knowledge, the following:

5 **THE PARTIES**

6 1. Defendant TVJ SONS I, INC. (“Defendant TVJ”) is a California corporation and
7 at all relevant times mentioned herein conducted and continues to conduct substantial and
8 regular business throughout the State of California. Defendant PORTER AND HOWARD, INC.
9 (“Defendant P&H”) is a California corporation and at all relevant times mentioned herein
10 conducted and continues to conduct substantial and regular business throughout the State of
11 California.

12 2. Defendant TVJ and Defendant P&H were the joint employers of PLAINTIFF as
13 evidenced by the contracts signed and by the company the PLAINTIFF performed work for
14 respectively, and are therefore jointly responsible as employers for the conduct alleged herein
15 and collectively referred to herein as “DEFENDANTS”.

16 3. DEFENDANTS retail automobile vehicles. DEFENDANT offers new and used
17 cars as well as financing, maintenance, and repair services.

18 4. PLAINTIFF was employed by DEFENDANTS as a sales person in California
19 from 2013 until November 2019 and was at all times during his employment with
20 DEFENDANTS entitled to be paid minimum wages and entitled to the legally required off-duty
21 meal periods. PLAINTIFF was also required to be paid for his rest periods as DEFENDANT
22 paid PLAINTIFF only commissions wages for certain pay periods. DEFENDANT did not
23 separately compensate PLAINTIFF for his rest periods.

24 5. PLAINTIFF brings this Class Action on behalf of himself and a California class,
25 defined as all individuals who are or previously were employed by Defendant TVJ and/or
26 Defendant P&H in California and paid on a draw vs. commission compensation scheme or
27 another commission-based compensation scheme (the “CALIFORNIA CLASS”) at any time
28 during the period beginning April 6, 2016 and ending on the date as determined by the Court
(the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

1 6. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
4 which failed to lawfully compensate these employees for all their missed meal breaks and
5 unpaid rest periods. DEFENDANTS' uniform policy and practice alleged herein is an unlawful,
6 unfair and deceptive business practice whereby DEFENDANTS retained and continues to retain
7 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and
8 the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
9 DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the
10 CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and
current unlawful conduct, and all other appropriate legal and equitable relief.

11 7. The true names and capacities, whether individual, corporate, subsidiary,
12 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
13 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
14 to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege
15 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
16 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
17 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
18 responsible in some manner for one or more of the events and happenings that proximately
19 caused the injuries and damages hereinafter alleged

20 8. The agents, servants and/or employees of the Defendants and each of them acting
21 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
22 agent, servant and/or employee of the Defendants, and personally participated in the conduct
23 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
24 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
25 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
26 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
27 Defendants' agents, servants and/or employees.
28

THE CONDUCT

9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. DEFENDANTS' meal period policies and practices were unlawful because PLAINTIFF and other CALIFORNIA CLASS Members were far too over-booked and overworked to take a timely off-duty thirty (30) minute meal period. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

10. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period on workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work from time to time. As a result, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANT's business records which contain no record of these breaks.

11. In addition, because of DEFENDANTS' commission pay plan described herein, DEFENDANTS failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. DEFENDANTS did not have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other CALIFORNIA CLASS Members. As a result, DEFENDANTS' failure to provide

1 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
2 periods is evidenced by DEFENDANTS' business records.

3 12. On numerous occasions, PLAINTIFF and other CALIFORNIA CLASS
4 Members were required to work while not clocked in. DEFENDANTS maintained a company-
5 wide policy of refusing to pay CALIFORNIA CLASS Members, like PLAINTIFF, for all hours
6 worked. Specifically, DEFENDANTS maintained a company-wide pattern and practice of
7 altering employees' timecards to eliminate numerous hours worked. As a result,
8 DEFENDANTS failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members
9 wages for all hours worked.

10 13. Under California law, every employer shall pay to each employee, on the
11 established payday for the period involved, not less than the applicable minimum wage for all
12 hours worked in the payroll period, whether the remuneration is measured by time, piece,
13 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
14 during which an employee is subject to the control of an employer, and includes all the time the
15 employee is suffered or permitted to work, whether or not required to do so. Here, PLAINTIFF
16 and CALIFORNIA CLASS Members were entitled to separate hourly compensation for time
17 spent performing all non-sales related tasks directed by DEFENDANTS during their work
18 shifts, including, but not limited to, weekly sales meetings, and are entitled to one hour of pay
19 for their rest periods.

20 14. From time to time, when DEFENDANTS did not accurately record
21 PLAINTIFF's and other CALIFORNIA CLASS Members' missed meal breaks, unpaid rest
22 breaks, and/or also unpaid minimum wages, the wage statements issued to PLAINTIFF and
23 other CALIFORNIA CLASS Members by DEFENDANTS violated California law, and in
24 particular, Labor Code Section 226(a). Aside, from the violations listed above in this paragraph,
25 DEFENDANTS failed to issue to PLAINTIFFS an itemized wage statement that lists all the
26 requirements under California Labor Code 226 *et seq.*, including the legal name of
27 PLAINTIFF's employer.
28

1 15. DEFENDANTS as a matter of corporate policy, practice and procedure,
2 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
3 the other CALIFORNIA CLASS Members for required business expenses incurred by the
4 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
5 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,
6 employers are required to indemnify employees for all expenses incurred in the course and
7 scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
8 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
9 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
10 directions of the employer, even though unlawful, unless the employee, at the time of obeying
11 the directions, believed them to be unlawful."

12 16. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
13 Members as a business expense, were required by DEFENDANTS to use their own personal
14 cellular phones as a result of and in furtherance of their job duties as employees for
15 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost
16 associated with the use of their personal cellular phones for DEFENDANTS' benefit.
17 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
18 DEFENDANTS to use their personal cell phones to for work related issues. As a result, in the
19 course of their employment with DEFENDANTS the PLAINTIFF and other members of the
20 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
21 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
22 benefit of DEFENDANTS.

23 17. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
25 matter of company policy, practice and procedure, intentionally, knowingly and systematically
26 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
27 missed meal and rest periods. This uniform policy and practice of DEFENDANTS is intended
28 to purposefully avoid the payment for all time worked as required by California law which

1 allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
2 complied with the law. To the extent equitable tolling operates to toll claims by the
3 CALIFORNIA CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be
4 adjusted accordingly.

5 18. By reason of this uniform conduct applicable to PLAINTIFF and all
6 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
7 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
8 (the “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
9 calculate and record all missed meal breaks and failed to pay PLAINTIFF and CALIFORNIA
10 CLASS Members for rest periods as required by California law. The proper recording of these
11 employees’ missed meal and rest breaks is the DEFENDANTS’ burden. As a result of
12 DEFENDANTS’ intentional disregard of the obligation to meet this burden, DEFENDANTS
13 failed to properly calculate and/or pay all required compensation for work performed by the
14 members of the CALIFORNIA CLASS and violated the California Labor Code and regulations
15 promulgated thereunder as herein alleged.

16 19. Specifically as to PLAINTIFF, DEFENDANTS failed to provide all the legally
17 required off-duty meal breaks to him and paid rest periods to him as required by the applicable
18 Wage Order and Labor Code. DEFENDANTS failed to compensate PLAINTIFF for his
19 missed meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent
20 him from being relieved of all of his duties for the legally required off-duty meal periods.
21 Further, DEFENDANTS failed to provide PLAINTIFF with a second off-duty meal period each
22 workday in which PLAINTIFF were required by DEFENDANTS to work ten (10) hours of
23 work. As a result, DEFENDANTS’ failure to provide PLAINTIFF with the legally required
24 second off-duty meal period is evidenced by DEFENDANTS’ business records. From time to
25 time, and as a result of DEFENDANTS not accurately recording all missed meal and paid rest
26 periods, and failing to pay minimum wages due for all time worked, the wage statements issued
27 to PLAINTIFFS by DEFENDANTS violated California law, and in particular, Labor Code
28 Section 226(a). To date, DEFENDANTS have yet to pay PLAINTIFF all of his wages due to

1 him and all premiums due to him for missed meal and paid rest breaks and DEFENDANTS
2 have failed to pay any penalty wages owed to him under California Labor Code Section 203.
3 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
4 \$75,000.

5 **JURISDICTION AND VENUE**

6 20. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
8 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
9 of DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

10 21. Venue is proper in this Court pursuant to California Code of Civil Procedure,
11 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
12 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities
13 in this County and/or conduct substantial business in this County, and (ii) committed the
14 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS
15 and CALIFORNIA LABOR SUB-CLASS.

16 **THE CALIFORNIA CLASS**

17
18 22. PLAINTIFF bring the First Cause of Action for Unfair, Unlawful and Deceptive
19 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
20 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
21 individuals who are or previously were employed by DEFENDANT in California and paid on a
22 draw vs. commission compensation scheme (the "CALIFORNIA CLASS") at any time during
23 the period beginning on the date four (4) years prior to the filing of this Complaint and ending
24 on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
25 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
26 dollars (\$5,000,000.00).
27
28

1 23. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

4 24. DEFENDANTS, as a matter of company policy, practice and procedure, and in
5 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
6 requirements, and the applicable provisions of California law, intentionally, knowingly, and
7 willfully, engaged in a practice whereby DEFENDANTS systematically failed to correctly
8 record missed meal and rest breaks and all time worked by PLAINTIFF and the other members
9 of the CALIFORNIA CLASS, even though DEFENDANTS enjoyed the benefit of this work,
10 required employees to perform this work and permitted or suffered to permit this work.

11 25. DEFENDANTS have the legal burden to establish that each and every
12 CALIFORNIA CLASS Member was paid the correct wages for all time worked. The
13 DEFENDANTS, however, as a matter of uniform and systematic policy and procedure failed to
14 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
15 or practice to ensure that each and every CALIFORNIA CLASS Member is paid for all missed
16 meal and rest breaks, so as to satisfy their burden. This common business practice applicable to
17 each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
18 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
19 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

20 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
21 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
22 employee for all missed meal breaks, as required by California Labor Code.

23 27. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
24 CLASS Members is impracticable.

25 28. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS
26 under California law by:

- 27 a. Committing an act of unfair competition in violation of the California Unfair
28 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to

1 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
2 all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the
3 legally required paid rest breaks,

4 b. Committing an act of unfair competition in violation of the California Unfair
5 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
6 unfairly and deceptively having in place company policies, practices and
7 procedures that uniformly denied PLAINTIFF and the members of the
8 CALIFORNIA CLASS the correct minimum wages and otherwise violated
9 applicable law; and,

10 c. Committing an act of unfair competition in violation of the California Unfair
11 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
12 Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA
13 CLASS members with necessary expenses incurred in the discharge of their job
14 duties

15 29. The Class Action meets the statutory prerequisites for the maintenance of a Class
16 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

17 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
18 joinder of all such persons is impracticable and the disposition of their claims as
19 a class will benefit the parties and the Court;

20 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
21 raised in this Complaint are common to the CALIFORNIA CLASS will apply
22 uniformly to every member of the CALIFORNIA CLASS;

23 c. The claims of the representative PLAINTIFF are typical of the claims of each
24 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
25 of the CALIFORNIA CLASS, was paid on a draw vs. commission compensation
26 scheme who was subjected to the DEFENDANTS' deceptive practice and policy
27 which failed to provide the legally required meal and rest periods to the
28 CALIFORNIA CLASS and thereby systematically underpaid compensation to

1 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic
2 injury as a result of DEFENDANTS' employment practices. PLAINTIFF and
3 the members of the CALIFORNIA CLASS were and are similarly or identically
4 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
5 misconduct engaged in by DEFENDANTS; and,

- 6 d. The representative PLAINTIFF will fairly and adequately represent and protect
7 the interest of the CALIFORNIA CLASS, and have retained counsel who are
8 competent and experienced in Class Action litigation. There are no material
9 conflicts between the claims of the representative PLAINTIFF and the members
10 of the CALIFORNIA CLASS that would make class certification inappropriate.
11 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
12 CALIFORNIA CLASS Members.

13 30. In addition to meeting the statutory prerequisites to a Class Action, this action is
14 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 15 a. Without class certification and determination of declaratory, injunctive, statutory
16 and other legal questions within the class format, prosecution of separate actions
17 by individual members of the CALIFORNIA CLASS will create the risk of:
- 18 i. Inconsistent or varying adjudications with respect to individual members
19 of the CALIFORNIA CLASS which would establish incompatible
20 standards of conduct for the parties opposing the CALIFORNIA CLASS;
21 and/or;
- 22 ii. Adjudication with respect to individual members of the CALIFORNIA
23 CLASS which would as a practical matter be dispositive of interests of
24 the other members not party to the adjudication or substantially impair or
25 impede their ability to protect their interests.
- 26 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
27 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
28 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that

1 DEFENDANTS uniformly failed to pay all wages due to members of the
2 CALIFORNIA CLASS as required by law;

3 i. With respect to the First Cause of Action, the final relief on behalf of the
4 CALIFORNIA CLASS sought does not relate exclusively to restitution
5 because through this claim PLAINTIFF seek declaratory relief holding
6 that the DEFENDANTS' policy and practices constitute unfair
7 competition, along with declaratory relief, injunctive relief, and incidental
8 equitable relief as may be necessary to prevent and remedy the conduct
9 declared to constitute unfair competition;

10 c. Common questions of law and fact exist as to the members of the CALIFORNIA
11 CLASS, with respect to the practices and violations of California law as listed
12 above, and predominate over any question affecting only individual
13 CALIFORNIA CLASS Members, and a Class Action is superior to other
14 available methods for the fair and efficient adjudication of the controversy,
15 including consideration of:

16 i. The interests of the members of the CALIFORNIA CLASS in
17 individually controlling the prosecution or defense of separate actions in
18 that the substantial expense of individual actions will be avoided to
19 recover the relatively small amount of economic losses sustained by the
20 individual CALIFORNIA CLASS Members when compared to the
21 substantial expense and burden of individual prosecution of this
22 litigation;

23 ii. Class certification will obviate the need for unduly duplicative litigation
24 that would create the risk of:

25 1. Inconsistent or varying adjudications with respect to individual
26 members of the CALIFORNIA CLASS, which would establish
27 incompatible standards of conduct for the DEFENDANTS;
28 and/or;

2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and

iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

31. The Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANTS' employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS.

b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- 1 c. The members of the CALIFORNIA CLASS are so numerous that it is
2 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 3 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
4 obtain effective and economic legal redress unless the action is maintained as a
5 Class Action;
- 6 e. There is a community of interest in obtaining appropriate legal and equitable
7 relief for the acts of unfair competition, statutory violations and other
8 improprieties, and in obtaining adequate compensation for the damages and
9 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
10 CLASS;
- 11 f. There is a community of interest in ensuring that the combined assets of
12 DEFENDANTS are sufficient to adequately compensate the members of the
13 CALIFORNIA CLASS for the injuries sustained;
- 14 g. DEFENDANTS has acted or refused to act on grounds generally applicable to
15 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
16 with respect to the CALIFORNIA CLASS as a whole;
- 17 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
18 business records of DEFENDANTS; and
- 19 i. Class treatment provides manageable judicial treatment calculated to bring an
20 efficient and rapid conclusion to all litigation of all wage and hour related claims
21 arising out of the conduct of DEFENDANTS as to the members of the
22 CALIFORNIA CLASS.

23 32. DEFENDANTS maintain records from which the Court can ascertain and
24 identify by job title each of DEFENDANTS' employees who as have been systematically,
25 intentionally and uniformly subjected to DEFENDANTS' company policy, practices and
26 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
27 any additional job titles of similarly situated employees when they have been identified.

28 //

THE CALIFORNIA LABOR SUB-CLASS

33. PLAINTIFF further bring the Second, Third, Fourth Fifth, Sixth, and Seventh, causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by Defendant TVJ and/or Defendant P&H in California and paid on a draw vs. commission compensation scheme or another commission-based compensation scheme in California (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period beginning April 6, 2017 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

34. DEFENDANTS, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANTS failed to correctly calculate compensation for the time worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

35. DEFENDANTS maintain records from which the Court can ascertain and identify by name and job title, each of DEFENDANTS’ employees who have been systematically, intentionally and uniformly subjected to DEFENDANTS’ company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

1 36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
2 CALIFORNIA LABOR SUB-CLASS Members is impracticable

3 37. Common questions of law and fact exist as to members of the CALIFORNIA
4 LABOR SUB-CLASS, including, but not limited, to the following:

- 5 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
6 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
7 missed meal and rest breaks in violation of the California Labor Code and
8 California regulations and the applicable California Wage Order;
- 9 b. Whether DEFENDANTS unlawfully failed to pay compensation due to members
10 of the CALIFORNIA LABOR SUB-CLASS for rest breaks in violation of the
11 California Labor Code and California regulations and the applicable California
12 Wage Order;
- 13 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members
14 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
15 statements;
- 16 d. Whether DEFENDANTS have engaged in unfair competition by the above-listed
17 conduct;
- 18 e. The proper measure of damages and penalties owed to the members of the
19 CALIFORNIA LABOR SUB-CLASS; and,
- 20 f. Whether DEFENDANTS' conduct was willful.

21 38. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
22 under California law by:

- 23 a. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
24 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
25 statement in writing showing the corresponding correct amount of wages earned
26 by the employee, the total amount of hours worked, and the correct legal entity
27 that was their employer;

- b. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment,
- c. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- d. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties;
- e. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and paying them separately for legally required paid rest breaks.

39. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;

- 1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
3 other members of the CALIFORNIA LABOR SUB-CLASS, was a
4 commissioned employee paid on a draw vs. commission basis who was subjected
5 to the DEFENDANTS' practice and policy which failed to pay the correct
6 amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF
7 sustained economic injury as a result of DEFENDANTS' employment practices.
8 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were
9 and are similarly or identically harmed by the same unlawful, deceptive, unfair
10 and pervasive pattern of misconduct engaged in by DEFENDANTS; and
- 11 d. The representative PLAINTIFF will fairly and adequately represent and protect
12 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
13 counsel who are competent and experienced in Class Action litigation. There are
14 no material conflicts between the claims of the representative PLAINTIFF and
15 the members of the CALIFORNIALABOR SUB-CLASS that would make class
16 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
17 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
18 Members.

19 40. In addition to meeting the statutory prerequisites to a Class Action, this action is
20 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 21 a. Without class certification and determination of declaratory, injunctive, statutory
22 and other legal questions within the class format, prosecution of separate actions
23 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
24 the risk of:
- 25 i. Inconsistent or varying adjudications with respect to individual members
26 of the CALIFORNIA LABOR SUB-CLASS which would establish
27 incompatible standards of conduct for the parties opposing the
28 CALIFORNIA LABOR SUB-CLASS; or

1 ii. Adjudication with respect to individual members of the CALIFORNIA
2 LABOR SUB-CLASS which would as a practical matter be dispositive of
3 interests of the other members not party to the adjudication or
4 substantially impair or impede their ability to protect their interests.

5 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
6 refused to act on grounds generally applicable to the CALIFORNIA LABOR
7 SUB-CLASS, making appropriate class-wide relief with respect to the
8 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS
9 uniformly fail to pay all wages due. Including the correct wages for all time
10 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required
11 by law;

12 c. Common questions of law and fact predominate as to the members of the
13 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
14 violations of California Law as listed above, and predominate over any question
15 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
16 Class Action is superior to other available methods for the fair and efficient
17 adjudication of the controversy, including consideration of:

18 i. The interests of the members of the CALIFORNIA LABOR SUB-
19 CLASS in individually controlling the prosecution or defense of separate
20 actions in that the substantial expense of individual actions will be
21 avoided to recover the relatively small amount of economic losses
22 sustained by the individual CALIFORNIA LABOR SUB-CLASS
23 Members when compared to the substantial expense and burden of
24 individual prosecution of this litigation;

25 ii. Class certification will obviate the need for unduly duplicative litigation
26 that would create the risk of:

27 1. Inconsistent or varying adjudications with respect to individual
28 members of the CALIFORNIA LABOR SUB-CLASS, which

1 would establish incompatible standards of conduct for the
2 DEFENDANT; and/or,

3 2. Adjudications with respect to individual members of the
4 CALIFORNIA LABOR SUB-CLASS would as a practical matter
5 be dispositive of the interests of the other members not parties to
6 the adjudication or substantially impair or impede their ability to
7 protect their interests;

8 iii. In the context of wage litigation because a substantial number of
9 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
10 asserting their legal rights out of fear of retaliation by DEFENDANTS,
11 which may adversely affect an individual's job with DEFENDANTS or
12 with a subsequent employer, the Class Action is the only means to assert
13 their claims through a representative; and,

14 iv. A class action is superior to other available methods for the fair and
15 efficient adjudication of this litigation because class treatment will
16 obviate the need for unduly and unnecessary duplicative litigation that is
17 likely to result in the absence of certification of this action pursuant to
18 Cal. Code of Civ. Proc. § 382.

19 41. This Court should permit this action to be maintained as a Class Action pursuant
20 to Cal. Code of Civ. Proc. § 382 because:

- 21 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
22 CLASS predominate over any question affecting only individual CALIFORNIA
23 LABOR SUB-CLASS Members;
- 24 b. A Class Action is superior to any other available method for the fair and efficient
25 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
26 CLASS because in the context of employment litigation a substantial number of
27 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
28

1 their rights individually out of fear of retaliation or adverse impact on their
2 employment;

3 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
4 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
5 CLASS before the Court;

6 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
7 not be able to obtain effective and economic legal redress unless the action is
8 maintained as a Class Action;

9 e. There is a community of interest in obtaining appropriate legal and equitable
10 relief for the acts of unfair competition, statutory violations and other
11 improprieties, and in obtaining adequate compensation for the damages and
12 injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA
13 LABOR SUB-CLASS;

14 f. There is a community of interest in ensuring that the combined assets of
15 DEFENDANTS are sufficient to adequately compensate the members of the
16 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

17 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
18 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
19 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

20 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
21 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
22 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
23 employed by DEFENDANTS in California during the CALIFORNIA LABOR
24 SUB-CLASS PERIOD; and

25 i. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims
27 arising out of the conduct of DEFENDANTS as to the members of the
28 CALIFORNIA LABOR SUB-CLASS.

1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

3 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 42. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 43. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

10 44. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
12 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair competition may
15 be enjoined in any court of competent jurisdiction. The court may make such orders or
16 judgments, including the appointment of a receiver, as may be necessary to prevent the
17 use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition. (Cal. Bus. & Prof. Code § 17203).

18 45. By the conduct alleged herein, DEFENDANTS have engaged and continue to
19 engage in a business practice which violates California law, including but not limited to, the
20 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
21 including Sections 204, 206.5, 210, 226.7, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, for
22 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
23 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
24 unfair competition, including restitution of wages wrongfully withheld.

25 46. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
26 unfair in that these practices violated public policy, were immoral, unethical, oppressive
27 unscrupulous or substantially injurious to employees, and were without valid justification or
28 utility for which this Court should issue equitable and injunctive relief pursuant to Section

1 17203 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 47. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
4 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
5 mandated meal and rest periods and the required amount of compensation for missed meal and
6 rest periods and minimum wages due to a systematic business practice that cannot be justified,
7 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
8 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
9 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
10 wrongfully withheld.

11 48. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
12 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFFS and
13 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
14 DEFENDANTS.

15 49. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
16 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
17 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
18 members as required by Cal. Lab. Code §§ 226.7 and 512.

19 50. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
20 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
21 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
22 for each workday in which a second off-duty meal period was not timely provided for each ten
23 (10) hours of work.

24 51. PLAINTIFF further demands on behalf of themselves and on behalf of each
25 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
26 was not timely provided as required by law.

27 52. By and through the unlawful and unfair business practices described herein,
28 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
2 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANTS so as to allow
4 DEFENDANTS to unfairly compete against competitors who comply with the law.

5 53. All the acts described herein as violations of, among other things, the Industrial
6 Welfare Commission Wage Orders, the California Code of Regulations, and the California
7 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
8 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
9 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

10 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
11 and do, seek such relief as may be necessary to restore to them the money and property which
12 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
14 unfair business practices, including earned but unpaid wages for all time worked.

15 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
16 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
18 engaging in any unlawful and unfair business practices in the future.

19 56. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
20 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
21 of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated.
22 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
23 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
24 irreparable legal and economic harm unless DEFENDANTS are restrained from continuing to
25 engage in these unlawful and unfair business practices.

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SECOND CAUSE OF ACTION

**FAILURE TO PROVIDE REQUIRED MEAL PERIODS
(Cal. Lab. Code §§ 226.7 & 512)**

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

57. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

58. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

59. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

60. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

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THIRD CAUSE OF ACTION

**FAILURE TO PROVIDE REQUIRED REST PERIODS
(Cal. Lab. Code §§ 226.7 & 512)**

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

61. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

62. In addition, because of DEFENDANTS' compensation pay plan described herein, DEFENDANTS failed to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. DEFENDANTS did not have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members. As a result, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANTS' business records.

63. Additionally, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

1 64. DEFENDANTS further violated California Labor Code §§ 226.7 and the
2 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
3 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
4 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
5 each workday that rest period was not provided.

6 65. As a proximate result of the aforementioned violations, PLAINTIFF and
7 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
8 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

12 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all
Defendants)**

13 66. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
14 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
15 paragraphs of this Complaint.

16 67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
17 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor
18 Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to
19 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
20 Members.

21 68. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
22 public policy, an employer must timely pay its employees for all hours worked.

23 69. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
25 than the minimum so fixed is unlawful.

26 70. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage compensation and interest thereon, together with the costs of suit.
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1 71. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
3 amount of time they worked, including time spent engaging in non-sales related work tasks
4 while off the clock. As set forth herein, DEFENDANT's uniform policy and practice was to
5 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS.

7 72. DEFENDANTS' uniform pattern of unlawful wage and hour practices
8 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
9 whole, as a result of implementing a uniform policy and practice that denied accurate
10 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
11 CLASS in regards to minimum wage pay.

12 73. In committing these violations of the California Labor Code, DEFENDANTS
13 inaccurately calculated the correct time worked and consequently underpaid the actual time
14 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
15 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other
16 benefits in violation of the California Labor Code, the Industrial Welfare Commission
17 requirements and other applicable laws and regulations.

18 74. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
20 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

21 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
22 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
23 than they were entitled to, constituting a failure to pay all earned wages.

24 76. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
25 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS for the true time they worked, PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
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1 injury in amounts which are presently unknown to them and which will be ascertained
2 according to proof at trial.

3 77. DEFENDANT knew or should have known that PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS are under-compensated for their time
5 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
6 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy,
7 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
8 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
9 correct minimum wages for their time worked.

10 78. In performing the acts and practices herein alleged in violation of California
11 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
12 CLASS for all time worked and provide them with the requisite compensation, DEFENDANT
13 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
14 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
15 disregard for their legal rights, or the consequences to them, and with the despicable intent of
16 depriving them of their property and legal rights, and otherwise causing them injury in order to
17 increase company profits at the expense of these employees.

18 79. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
19 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
20 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
21 the California Labor Code and/or other applicable statutes. To the extent minimum wage
22 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
23 who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§
24 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
25 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA
26 LABOR SUB-CLASS Members. DEFENDANTS' conduct as alleged herein was willful,
27 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
28 CLASS Members are entitled to seek and recover statutory costs.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code § 226)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

80. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

81. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized” statement in writing showing:

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

82. When DEFENDANTS did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' missed meal breaks and unpaid rest breaks and/or minimum wages owed, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide an accurate wage statement in writing that properly and accurately itemizes all missed meal periods incurred by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees. Aside, from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

83. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

SIXTH CAUSE OF ACTION

FOR FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES

(Cal. Lab. Code §§ 2802)

(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all Defendants)

84. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

1 85. Cal. Lab. Code § 2802 provides, in relevant part, that:

2 An employer shall indemnify his or her employee for all necessary expenditures or
3 losses incurred by the employee in direct consequence of the discharge of his or her
4 duties, or of his or her obedience to the directions of the employer, even though
5 unlawful, unless the employee, at the time of obeying the directions, believed them
6 to be unlawful.

7 86. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
8 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
9 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
10 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
11 CLASS members for expenses which included, but were not limited to, costs related to using
12 their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.
13 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
14 DEFENDANTS to use their personal cell phones to respond to work related issues.
15 DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and
16 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their
17 personal cellular phones for DEFENDANTS within the course and scope of their employment
18 for DEFENDANTS. These expenses were necessary to complete their principal job duties.
19 DEFENDANTS is estopped by DEFENDANTS's conduct to assert any waiver of this
20 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and
21 the CALIFORNIA LABOR SUB-CLASS members, DEFENDANTS failed to indemnify and
22 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
23 expenses as an employer is required to do under the laws and regulations of California.

24 87. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
25 by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
26 duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest
27 at the statutory rate and costs under Cal. Lab. Code § 2802.

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SEVENTH CAUSE OF ACTION
FOR FAILURE TO TIMELY PAY WAGES WHEN DUE
(Cal. Lab. Code §§ 201, 202, 203)
(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all Defendants)

88. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-LASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

89. Cal. Lab. Code § 200 provides, in relevant part, that:

As used in this article:(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

90. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

91. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting

1 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
2 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
3 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
4 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
5 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
6 subject to arbitration.

7 98. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, bring this Representative Action on behalf of the State of California with respect to
10 themselves and all individuals who are or previously were employed by Defendant TVJ and/or
11 Defendant P&H and in California and compensated on a draw vs. commission compensation
12 plan or another commission-based compensation plan during the time period of _____ until
13 the present (the "AGGRIEVED EMPLOYEES").

14 99. On _____, PLAINTIFF gave written notice by certified mail to the Labor and
15 Workforce Development Agency (the "Agency") and the employer of the specific
16 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
17 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
18 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
19 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
20 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
21 AGGRIEVED EMPLOYEES as herein defined.

22 100. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
24 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
25 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
26 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
27 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
28 including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 558,

1 1194, 1197, 1197.1, 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to
2 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
3 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
4 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
5 the other AGGRIEVED EMPLOYEES.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

- 11 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
12 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
13 b. An order temporarily, preliminarily and permanently enjoining and restraining
14 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
15 c. An order requiring DEFENDANT to pay all overtime wages and all sums
16 unlawfully withheld from compensation due to PLAINTIFFS and the other
17 members of the CALIFORNIA CLASS; and
18 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
19 for restitution of the sums incidental to DEFENDANT's violations due to
20 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

21 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 22 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
23 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
24 pursuant to Cal. Code of Civ. Proc. § 382;
25 b. Compensatory damages, according to proof at trial, including compensatory
26 damages for minimum wage compensation and rest break compensation due to
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
28 during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest

thereon at the statutory rate;

c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and

e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit;

f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and

g. The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

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1 4. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
- 5 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or §
- 6 1194.

7

8 DATED: _____, 2020

9 **ZAKAY LAW GROUP, APLC**

10

11 By: _____

12 Shani O. Zakay

13 Attorney for PLAINTIFF

14

15 **DEMAND FOR A JURY TRIAL**

16 PLAINTIFFS demand a jury trial on issues triable to a jury.

17

18 DATED: _____, 2020

19 **ZAKAY LAW GROUP, APLC**

20

21 By: _____

22 Shani O. Zakay

23 Attorney for PLAINTIFF

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EXHIBIT 1

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to: *Peter Howard Inc.*

Michael Borgst
700 E. Betteravia Rd.
Santa Maria CA 93454



9590 9402 5466 9249 9960 49

2. Article Number (Transfer from service label)

7019 2280 0002 0097 5101

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]* ☒ Agent
☒ Addressee
B. Received by (Printed Name) *[Signature]* C. Date of Delivery *AUG 27 2020*

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

3. Service Type
- | | |
|---|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Registered Mail | |
| ☐ Registered Mail Restricted Delivery (over \$500) | |