

Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
Helga Hakimi (SBN 257381)
Helga.Hakimi@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1860
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Antonio Frelix

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

ANTONIO FRELIX, individually, and on
behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

OAKLAND MOTOR CARS, INC., a
California corporation; AUBURN
MOTORS, a California corporation; BEF
MANAGEMENT COMPANY, a Delaware
corporation; MCHENRY MOTORS, a
California corporation; PERFECTION
MOTOR CARS, INC., a Delaware
corporation; VALLEY BMW, a
Washington corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: CV-25-012491

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Antonio Frelix, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt
9 employees and received at least one wage statement and against whom one or more violations
10 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
11 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
12 Order were committed, as set forth in this complaint. The monetary damages, penalties, and
13 restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and
14 will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants AUBURN MOTORS; BEF
5 MANAGEMENT COMPANY; MCHENRY MOTORS; PERFECTION MOTOR CARS,
6 INC.; and VALLEY BMW filed Statement of Information forms with the California Secretary
7 of State designating a principal place of business in Modesto, County of Stanislaus, in
8 accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5.
9 Venue is also proper in this Court because Defendants employ persons in this county, and thus
10 a substantial portion of the transactions and occurrences related to this action occurred in this
11 county.

12 **THE PARTIES**

13 4. Plaintiff Antonio Frelix is a resident of Alameda, in Alameda County,
14 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
15 approximately October 2024 to March 20, 2025. Plaintiff worked for Defendants as a
16 Salesperson at their dealership location in Oakland, California. During his employment,
17 Plaintiff typically worked eight (8) hours or more per day and five (5) days per week.
18 Plaintiff's primary job duties included, without limitation, making vehicle sales, providing
19 customer service, and preparing paperwork, such as sales contracts.

20 5. OAKLAND MOTOR CARS, INC. was and is, upon information and belief, a
21 California corporation, and at all times hereinafter mentioned, an employer whose employees
22 are engaged throughout this county and the State of California.

23 6. AUBURN MOTORS was and is, upon information and belief, a California
24 corporation, and at all times hereinafter mentioned, an employer whose employees are
25 engaged throughout this county and the State of California.

26 7. BEF MANAGEMENT COMPANY was and is, upon information and belief, a
27 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
28 are engaged throughout this county and the State of California.

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

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

7 10. VALLEY BMW was and is, upon information and belief, a Washington
8 corporation, and at all times hereinafter mentioned, an employer whose employees are
9 engaged throughout this county and the State of California.

10 11. Plaintiff is unaware of the true names or capacities of the Defendants sued
11 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
12 amend the complaint and serve such fictitiously named Defendants once their names and
13 capacities become known.

14 12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
15 were the partners, agents, owners, or managers of OAKLAND MOTOR CARS, INC.;
16 AUBURN MOTORS; BEF MANAGEMENT COMPANY; MCHENRY MOTORS;
17 PERFECTION MOTOR CARS, INC.; and VALLEY BMW at all relevant times.

18 13. Plaintiff is informed and believes, and thereon alleges, that each and all of the
19 acts and omissions alleged herein was performed by, or is attributable to OAKLAND
20 MOTOR CARS, INC.; AUBURN MOTORS; BEF MANAGEMENT COMPANY;
21 MCHENRY MOTORS; PERFECTION MOTOR CARS, INC.; VALLEY BMW; and/or
22 DOES 1 through 10 (collectively, "Defendants" or "OAKLAND MOTOR CARS"), each
23 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
24 each of the other co-Defendants and was acting within the course and scope of such agency,
25 employment, joint venture, or concerted activity with legal authority to act on the others'
26 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
27 policy of Defendants.

28 14. At all relevant times, Defendants, and each of them, ratified each and every act

1 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
2 and abetted the acts and omissions of each and all the other Defendants in proximately causing
3 the damages herein alleged.

4 15. Plaintiff is informed and believes, and thereon alleges, that each of said
5 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
6 omissions, occurrences, and transactions alleged herein.

7 16. Under California law, Defendants are jointly and severally liable as employers
8 for the violations alleged herein because they have each exercised sufficient control over the
9 wages, hours, working conditions, and employment status of Plaintiff and class members.
10 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
11 controlled their work schedule and/or conditions of employment, determined their rate of pay,
12 and maintained their employment records. Defendants suffered or permitted Plaintiff and
13 class members to work and/or “engaged” Plaintiff and class members so as to create a
14 common-law employment relationship. As joint employers of Plaintiff and class members,
15 Defendants are jointly and severally liable for the civil penalties and all other relief available
16 to Plaintiff and class members under the law.

17 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
18 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
19 members because Defendants have:

- 20 (a) jointly exercised meaningful control over the work performed by
21 Plaintiff and class members;
- 22 (b) jointly exercised meaningful control over Plaintiff’s and class members’
23 wages, hours, and working conditions, including the quantity, quality
24 standards, speed, scheduling, and operative details of the tasks
25 performed by Plaintiff and class members;
- 26 (c) jointly required that Plaintiff and class members perform work which is
27 an integral part of Defendants’ businesses; and
- 28 (d) jointly exercised control over Plaintiff and class members as a matter of

1 economic reality in that Plaintiff and class members were dependent on
2 Defendants, who shared the power to set the wages of Plaintiff and class
3 members and determined their working conditions, and who jointly
4 reaped the benefits from the underpayment of their wages and
5 noncompliance with other statutory provisions governing their
6 employment.

7 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
8 there has existed a unity of interest and ownership between Defendants such that any
9 individuality and separateness between the entities has ceased.

10 19. OAKLAND MOTOR CARS, INC.; AUBURN MOTORS; BEF
11 MANAGEMENT COMPANY; MCHENRY MOTORS; PERFECTION MOTOR CARS,
12 INC.; VALLEY BMW; and DOES 1 through 10 are therefore alter egos of each other.

13 20. Adherence to the fiction of the separate existence of Defendants would permit
14 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
15 from liability for the wrongful acts committed by them under the name "OAKLAND MOTOR
16 CARS."

17 21. OAKLAND MOTOR CARS, INC.; AUBURN MOTORS; BEF
18 MANAGEMENT COMPANY; MCHENRY MOTORS; PERFECTION MOTOR CARS,
19 INC.; and VALLEY BMW are alter egos of each other for the following reasons:

20 (a) According to their most recent "Statement of Information" forms filed
21 with the California Secretary of State, OAKLAND MOTOR CARS,
22 INC.; AUBURN MOTORS; BEF MANAGEMENT COMPANY;
23 MCHENRY MOTORS; PERFECTION MOTOR CARS, INC.; and
24 VALLEY BMW share the same officers and directors including, but not
25 limited to:

26 (i) Ryan A. Fitzpatrick, who serves as Chief Executive Officer,
27 Chief Financial Officer, and Secretary for OAKLAND
28 MOTOR CARS, INC.; AUBURN MOTORS; BEF

MANAGEMENT COMPANY; MCHENRY MOTORS;
PERFECTION MOTOR CARS, INC.; and VALLEY BMW;
and

(ii) Bertha Fitzpatrick, who serves as Vice President for
OAKLAND MOTOR CARS, INC.; MCHENRY MOTORS;
PERFECTION MOTOR CARS, INC.; and VALLEY BMW;

(b) On the California Secretary of State’s website, OAKLAND MOTOR
CARS, INC.; AUBURN MOTORS; BEF MANAGEMENT
COMPANY; MCHENRY MOTORS; PERFECTION MOTOR CARS,
INC.; and VALLEY BMW share the same agent for service of process,
“WALTER J. SCHMIDT”;

(c) On the California Secretary of State’s website
(<https://bizfileonline.sos.ca.gov/>), AUBURN MOTORS; BEF
MANAGEMENT COMPANY; and PERFECTION MOTOR CARS,
INC. share the same principal address and mailing address of “4701
MCHENRY AVENUE, MODESTO, CA 95356”; and

(d) On information and belief, OAKLAND MOTOR CARS, INC.;
AUBURN MOTORS; BEF MANAGEMENT COMPANY; MCHENRY
MOTORS; PERFECTION MOTOR CARS, INC.; and VALLEY BMW
utilize the same standardized employment forms and issue the same
employment policies.

GENERAL ALLEGATIONS

22. Defendants are a local car dealership chain based in Northern California. Upon
information and belief, Defendants maintain a single, centralized Human Resources (“HR”)
department at their company headquarters in Oakland, California, and/or Modesto, California,
which is responsible for the recruiting and hiring of new employees, and communicating and
implementing Defendants’ company-wide policies, including timekeeping policies and meal
and rest period policies, to employees throughout California.

1 23. In particular, Plaintiff and class members, on information and belief, received
2 the same standardized documents and/or written policies. Upon information and belief, the
3 usage of standardized documents and/or written policies, including new-hire documents,
4 indicate that Defendants dictated policies at the corporate level and implemented them
5 company-wide, regardless of their employees' assigned locations or positions. Upon
6 information and belief, Defendants set forth uniform policies and procedures in several
7 documents provided at an employee's time of hire.

8 24. Upon information and belief, Defendants maintain a centralized Payroll
9 department at their company headquarters in Oakland, California, and/or Modesto, California,
10 which processes payroll for all non-exempt, hourly paid employees working for Defendants at
11 their various locations in California, including Plaintiff and class members. Based upon
12 information and belief, Defendants issue the same formatted wage statements to all non-
13 exempt, hourly paid employees in California, irrespective of their work locations. Upon
14 information and belief, Defendants process payroll for departing employees in the same
15 manner throughout the State of California, regardless of the manner in which each employee's
16 employment ends.

17 25. Defendants continue to employ non-exempt or hourly paid employees in
18 California.

19 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
21 and advisors knowledgeable about California labor and wage law, employment and personnel
22 practices, and about the requirements of California law.

23 27. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
24 members were not paid for all hours worked because all hours worked were not recorded.

25 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to receive certain wages for
27 overtime compensation and that they were not receiving certain wages for overtime
28 compensation.

1 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive at least minimum
3 wages for compensation and that they were not receiving at least minimum wages for work
4 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
5 and class members were not paid at least minimum wages for work done off-the-clock.

6 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to meal periods in
8 accordance with the California Labor Code and applicable IWC Wage Order or payment of
9 one (1) additional hour of pay at their regular rates of pay when they were not provided with
10 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
11 were not provided with all meal periods or payment of one (1) additional hour of pay at their
12 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
13 period.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to rest periods in
16 accordance with the California Labor Code and applicable IWC Wage Order or payment of
17 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
18 permitted to take a compliant rest period and that Plaintiff and class members were not
19 authorized and permitted to take compliant rest periods or provided with payment of one (1)
20 additional hour of pay at their regular rates of pay when they were not authorized and
21 permitted to take a compliant rest period.

22 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive complete and
24 accurate wage statements in accordance with California law. In violation of the California
25 Labor Code, Plaintiff and class members were not provided complete and accurate wage
26 statements.

27 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that they had a duty to maintain accurate and complete payroll records in

1 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
2 knowingly, and intentionally failed to do so.

3 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to timely payment of all
5 wages earned upon termination of employment. In violation of the California Labor Code,
6 Plaintiff and class members did not receive payment of all wages due, including, but not
7 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
8 permissible time periods.

9 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to timely payment of wages
11 during their employment. In violation of the California Labor Code, Plaintiff and class
12 members did not receive payment of all wages, including, but not limited to, overtime wages,
13 minimum wages, and/or meal and rest period premiums, within permissible time periods.

14 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to receive full
16 reimbursement for all business-related expenses and costs they incurred during the course and
17 scope of their employment and that they did not receive full reimbursement of applicable
18 business-related expenses and costs incurred.

19 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that Defendants had a duty to provide
21 Plaintiff and class members with written notice of the material terms of their employment with
22 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

23 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew or should have known that they had a duty to compensate
25 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
26 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
27 falsely represented to Plaintiff and class members that they were properly denied wages, all in
28 order to increase Defendants' profits.

1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 39. At all times herein set forth, PAGA provides that any provision of law under
3 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
4 assessed and collected by the Labor and Workforce Development Agency (“LWDA”) for
5 violations of the California Labor Code and applicable IWC Wage Order may, as an
6 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
7 themselves and other current or former employees pursuant to procedures outlined in
8 California Labor Code section 2699.3.

9 40. PAGA defines an “aggrieved employee” in Labor Code section 2699(c)(1) as
10 “any person who was employed by the alleged violator and personally suffered each of the
11 violations alleged.”

12 41. Plaintiff and other current and former employees of Defendants are “aggrieved
13 employees” as defined by Labor Code section 2699(c)(1) in that they are all Defendants’
14 current or former employees and each of the alleged violations were committed against them.

15 42. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
16 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
17 following requirements have been met:

- 18 (a) The aggrieved employee or representative shall give written notice by
19 online filing with the LWDA and by certified mail to the employer of
20 the specific provisions of the California Labor Code alleged to have
21 been violated, including the facts and theories to support the alleged
22 violation.
- 23 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
24 2699.3(a) and any employer response to that notice shall be
25 accompanied by a filing fee of seventy-five dollars (\$75).
- 26 (c) The LWDA shall notify the employer and the aggrieved employee or
27 representative by certified mail that it does not intend to investigate the
28 alleged violation (“LWDA Notice”) within sixty (60) calendar days of

1 the postmark date of the aggrieved employee's notice. Upon receipt of
2 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
3 (65) calendar days of the postmark date of the aggrieved employee's
4 notice, the aggrieved employee may commence a civil action pursuant
5 to California Labor Code section 2699 to recover civil penalties.

6 43. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
7 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
8 provision other than those listed in Section 2699.5 after the following requirements have been
9 met:

- 10 (a) The aggrieved employee or representative shall give written notice by
11 online filing with the LWDA and by certified mail to the employer of
12 the specific provisions of the California Labor Code alleged to have
13 been violated (other than those listed in Section 2699.5), including the
14 facts and theories to support the alleged violation.
- 15 (b) An aggrieved employee's notice filed with the LWDA pursuant to
16 2699.3(c) and any employer response to that notice shall be
17 accompanied by a filing fee of seventy-five dollars (\$75).
- 18 (c) The employer may cure the alleged violation within thirty-three (33)
19 calendar days of the postmark date of the notice sent by the aggrieved
20 employee or representative. The employer shall give written notice
21 within that period of time by certified mail to the aggrieved employee or
22 representative and by online filing with the LWDA if the alleged
23 violation is cured, including a description of actions taken, and no civil
24 action pursuant to Section 2699 may commence. If the alleged violation
25 is not cured within the 33-day period, the aggrieved employee may
26 commence a civil action pursuant to Section 2699.

27 44. On January 5, 2026, Plaintiff provided written notice by online filing to the
28 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor

1 Code alleged to have been violated, including facts and theories to support the alleged
2 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
3 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
4 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
5 Plaintiff PAGA Case Number LWDA-CM-1147784-26. A true and correct copy of Plaintiff's
6 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

7 45. As of the filing date of this amended complaint, over 65 days have passed since
8 Plaintiff sent the notice described above to the LWDA, and the LWDA has not responded that
9 it intends to investigate Plaintiff's claims and Defendants have not cured the violations.

10 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
11 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
12 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
13 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

14 47. Labor Code section 558(a) provides "[a]ny employer or other person acting on
15 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
16 provision regulating hours and days of work in any order of the Industrial Welfare
17 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
18 dollars (\$50) for each underpaid employee for each pay period for which the employee was
19 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
20 underpaid employee for each pay period for which the employee was underpaid" Labor
21 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
22 to any other civil or criminal penalty provided by law."

23 48. Defendants, at all times relevant to this complaint, were employers or persons
24 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
25 rights by violating various sections of the California Labor Code as set forth above.

26 49. As set forth below, Defendants have violated numerous provisions of both the
27 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
28 Order.

1 50. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5,
2 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public
3 interest as a private attorney general, seeks assessment and collection of civil penalties and
4 injunctive relief for himself, all other aggrieved employees, and the State of California against
5 Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
6 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

7 **CLASS ACTION ALLEGATIONS**

8 51. Plaintiff brings this action on his own behalf, as well as on behalf of each and
9 all other persons similarly situated, and thus seeks class certification under California Code of
10 Civil Procedure section 382.

11 52. All claims alleged herein arise under California law for which Plaintiff seeks
12 relief authorized by California law.

13 53. Plaintiff's proposed class consists of and is defined as follows:

14 All persons who worked for Defendants as non-exempt, hourly
15 paid employees in California, within four years prior to the filing
 of the initial complaint until the date of trial ("Class").

16 54. Plaintiff's proposed subclass consists of and is defined as follows:

17 All persons who worked for Defendants as non-exempt, hourly
18 paid employees in California and who received at least one wage
19 statement within one (1) year prior to the filing of the initial
 complaint until the date of trial ("Subclass").

20 55. Members of the Class and Subclass are referred to herein as "class members."

21 56. Plaintiff reserves the right to redefine the Class and Subclass and to add
22 additional subclasses as appropriate based on further investigation, discovery, and specific
23 theories of liability.

24 57. There are common questions of law and fact as to class members that
25 predominate over questions affecting only individual members, including, but not limited to:

- 26 (a) Whether Defendants required Plaintiff and class members to work over
27 eight (8) hours per day, over twelve (12) hours per day, or over forty
28 (40) hours per week and failed to pay all legally required overtime

- 1 compensation to Plaintiff and class members;
- 2 (b) Whether Defendants failed to pay Plaintiff and class members at least
- 3 minimum wages for all hours worked;
- 4 (c) Whether Defendants failed to provide Plaintiff and class members with
- 5 meal periods;
- 6 (d) Whether Defendants failed to authorize and permit Plaintiff and class
- 7 members to take rest periods;
- 8 (e) Whether Defendants provided Plaintiff and class members with
- 9 complete and accurate wage statements as required by California Labor
- 10 Code section 226(a);
- 11 (f) Whether Defendants maintained accurate payroll records as required by
- 12 California Labor Code section 1174(d);
- 13 (g) Whether Defendants failed to pay earned overtime wages, minimum
- 14 wages, and/or meal and rest period premiums due to Plaintiff and class
- 15 members upon their discharge;
- 16 (h) Whether Defendants failed timely to pay overtime wages, minimum
- 17 wages, and/or meal and rest period premiums due to Plaintiff and class
- 18 members during their employment;
- 19 (i) Whether Defendants failed to reimburse Plaintiff and class members for
- 20 necessary and required business-related expenditures and/or losses
- 21 incurred by them in the scope of their employment;
- 22 (j) Whether Defendants failed to provide written notice of information
- 23 material to Plaintiff's and class members' employment with Defendants;
- 24 (k) Whether Defendants engaged in unlawful and unfair business practices
- 25 in violation of California Business & Professions Code sections 17200,
- 26 *et seq.*; and
- 27 (l) The appropriate amount of damages, restitution, or monetary penalties
- 28 resulting from Defendants' violations of California law.

1 58. There is a well-defined community of interest in the litigation and the class
2 members are readily ascertainable:

- 3 (a) Numerosity: The class members are so numerous that joinder of all
4 members would be unfeasible and impractical. The membership of the
5 entire class is unknown to Plaintiff at this time; however, the class is
6 estimated to be greater than one hundred (100) individuals and the
7 identity of such membership is readily ascertainable by inspection of
8 Defendants' employment records.
- 9 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
10 protect the interests of each class member with whom he has a well-
11 defined community of interest, and Plaintiff's claims (or defenses, if
12 any) are typical of all class members as demonstrated herein.
- 13 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
14 protect the interests of each class member with whom he has a well-
15 defined community of interest and typicality of claims, as demonstrated
16 herein. Plaintiff acknowledges that he has an obligation to make known
17 to the Court any relationship, conflicts or differences with any class
18 member. Plaintiff's attorneys, the proposed class counsel, are versed in
19 the rules governing class action discovery, certification, and settlement.
20 Plaintiff has incurred, and throughout the duration of this action, will
21 continue to incur costs and attorneys' fees that have been, are, and will
22 be necessarily expended for the prosecution of this action for the
23 substantial benefit of each class member.
- 24 (d) Superiority: The nature of this action makes the use of class action
25 adjudication superior to other methods. A class action will achieve
26 economies of time, effort, and expense as compared with separate
27 lawsuits, and will avoid inconsistent outcomes because the same issues
28 can be adjudicated in the same manner and at the same time for the

entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)

59. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

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

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

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

workweek.

63. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

65. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class members were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded.

66. First, during the relevant time period, Defendants had, and continue to have, company-wide practices and/or policies of understaffing and assigning heavy workloads, including imposing sales quotas. For example, Plaintiff and other salesperson employees were required to meet a minimum sales volume, which required that "[employees] must maintain an average of 8 (eight) closed sales per month on a rolling three-month average to maintain full-time employment. However, if at any time, the Sales Representative does not maintain an acceptable rolling three-month average, the Sales Representative will be subject to termination." (Emphasis in original). These policies and/or practices led Plaintiff and class members to continue to work off-the-clock outside of their scheduled shifts in order to handle their workloads and complete their assigned tasks. For example, Plaintiff sometimes worked before clocking in for his shifts assisting customers at the dealership or over the phone, which

1 he felt pressured to do, so that he could meet his monthly sales quota. As another example, at
2 Defendants' direction, Plaintiff spent time completing online training modules focusing on
3 dealership procedures at home and after his shifts, time for which he was not paid.

4 67. Moreover, during the relevant time period, Defendants had, and continue to
5 have, a company-wide policy and/or practice of requiring Plaintiff and class members to
6 perform work off-the-clock outside of their scheduled shifts. For example, after clocking out
7 from his shifts, approximately twice per week and for 10 minutes each time, Plaintiff was
8 required to walk through the dealership lot and ensure that all vehicles were locked, time for
9 which he was not paid. Thus, Defendants failed to track all of the time that employees spent
10 performing work-related tasks after their shifts, and Plaintiff and class members received no
11 compensation for this time.

12 68. Second, as stated, Defendants had, and continue to have, company-wide
13 policies and/or practices of understaffing and assigning heavy workloads, while also
14 pressuring employees to meet sales quotas. Defendants' policies and/or practices resulted in a
15 failure to provide Plaintiff and class members with adequate meal period coverage, and thus,
16 Plaintiff and class members were not always afforded uninterrupted 30-minute meal periods
17 during shifts when they were entitled to receive a meal period. Defendants also had a practice
18 of failing to schedule meal periods, which further caused Plaintiff and class members to not be
19 relieved of their duties for compliant meal periods. For example, Plaintiff would clock out
20 and work through his meal periods twice a week because he was busy assisting customers in
21 person. As a further example, Plaintiff's meal periods were interrupted approximately once
22 per week by Defendants' management assigning him a customer, coworkers needing
23 assistance with a customer, or customers approaching Plaintiff themselves, whom he felt
24 pressured to assist in the hopes of making a sale and meeting his monthly quota.
25 Consequently, Plaintiff and class members were required to work through meal periods and/or
26 had their meal periods interrupted in order to complete their assigned duties, time for which
27 they were not paid.

28 69. Moreover, Defendants had, and continue to have, a policy and/or practice of

1 requiring that Plaintiff and class members monitor their personal cellular phones and respond
2 to Defendants' management's requests, including during meal periods. As a result,
3 Defendants' management contacted Plaintiff and class members on their cellular phones
4 during unpaid meal periods to discuss work-related matters. Defendants knew or should have
5 known that Plaintiff and class members were performing work while off-the-clock in order to
6 meet Defendants' expectations, but failed to compensate them for this time.

7 70. Third, during the relevant time period, on information and belief, Defendants'
8 management pressured Plaintiff and class members to record compliant meal periods, even
9 when they did not receive a compliant meal period. Thus, Defendants did not record all hours
10 worked during meal periods, and Plaintiff and class members performed work during meal
11 periods for which they were not paid.

12 71. Defendants knew or should have known that as a result of these company-wide
13 practices and/or policies, Plaintiff and class members were performing their assigned duties
14 off-the-clock outside of their shifts, and were suffered or permitted to perform work for which
15 they were not paid. Because Plaintiff and class members worked shifts of eight (8) hours or
16 more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for
17 overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages
18 for all of the overtime hours they actually worked.

19 72. Defendants' failure to pay Plaintiff and class members the balance of overtime
20 compensation as required by California law, violates the provisions of California Labor Code
21 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
22 members are therefore entitled to recover from Defendants their unpaid overtime
23 compensation, as well as interest, costs, and attorneys' fees.

24 **SECOND CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 26 **Minimum Wages** 27 **(Against all Defendants)**

28 73. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
3 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
4 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
5 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as “the
6 time during which an employee is subject to the control of an employer, and includes all the
7 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
8 Code Regs. Tit. 8, § 11070(2)(H) (defining “Hours Worked”).

9 75. As set forth above, due to Defendants’ policies and/or practices of
10 understaffing and assigning heavy workloads, including pressure to meet sales quotas,
11 Plaintiff and class members performed work off-the-clock outside of their scheduled shifts,
12 including assisting customers, completing training modules, and walking through the
13 dealership lot to ensure all vehicles were locked. Defendants failed to track this time that
14 Plaintiff and class members spent working off-the-clock, and Plaintiff and class members
15 received no compensation for this time.

16 76. Further, as also stated, due to Defendants’ policies and/or practices of
17 understaffing, assigning heavy workloads, including pressure to meet sales quotas, failing to
18 schedule meal periods, and requiring employees to respond to phone communications,
19 Plaintiff and class members were impeded from taking all uninterrupted meal periods to which
20 they were entitled and were required to work off-the-clock during meal periods, have their
21 meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal
22 periods. Additionally, as stated, Defendants pressured Plaintiff and class members to clock
23 out for meal periods to reflect compliant meal periods, even when meal periods were missed,
24 short, and/or interrupted. Thus, Defendants systematically failed to pay Plaintiff and class
25 members for actual hours worked during unpaid meal periods because these hours were not
26 always correctly recorded.

27 77. Defendants did not pay minimum wages for all hours worked by Plaintiff and
28 class members. To the extent that these off-the-clock hours did not qualify for overtime

1 premium payment, Defendants did not pay at least minimum wages for those hours worked
2 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
3 1198.

4 78. Defendants' failure to pay Plaintiff and class members minimum wages violates
5 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
6 California Labor Code section 1194.2, Plaintiff and class members are therefore entitled to
7 recover from Defendants liquidated damages in an amount equal to the wages unlawfully
8 unpaid and interest thereon.

9 **THIRD CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period** 11 **Violations** 12 **(Against all Defendants)**

13 79. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

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

22 81. At all relevant times herein set forth, California Labor Code sections 226.7,
23 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
24 meal period mandated by an applicable order of the IWC.

25 82. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
26 and the applicable IWC Wage Order also require employers to provide a second meal period
27 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
28 an employee one (1) additional hour of pay at the employee's regular rate, except that if the

1 total hours worked is no more than twelve (12) hours, the second meal period may be waived
2 by mutual consent of the employer and the employee only if the first meal period was not
3 waived.

4 83. First, during the relevant time period, as stated above, Defendants had, and
5 continue to have, a company-wide policy and/or practice of understaffing and assigning heavy
6 workloads, including imposing sales quotas, which has resulted in a lack of meal period
7 coverage and prevented Plaintiff and class members from taking all timely, uninterrupted meal
8 periods to which they were entitled. Further, as stated, Defendants had a company-wide
9 practice and/or policy of failing to schedule meal periods, which further caused Plaintiff and
10 class members to not be relieved of their duties for compliant meal periods. Furthermore, as
11 also stated, Defendants had, and continue to have, a company-wide policy and/or practice of
12 requiring that Plaintiff and class members respond to work-related communications on their
13 personal cellular phones, including during meal periods.

14 84. Further, as stated above, on information and belief, because Defendants
15 frowned upon employees accruing meal period premiums, Defendants' management pressured
16 Plaintiff and class members to record that they took meal periods regardless of whether they
17 had received a compliant meal period or not, in order to strictly limit meal period premiums
18 that would need to be paid by Defendants.

19 85. As a result, Plaintiff and class members had to work through all or part of their
20 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
21 before taking meal periods. For example, as stated, Plaintiff missed his meal periods
22 approximately twice per week to continue assisting customers. As a further example, Plaintiff
23 had his meal periods interrupted once per week because Defendants' management assigned
24 him a customer, coworkers needed assistance with a customer, or customers requested his
25 assistance. Additionally, Plaintiff took his meal periods late, after the fifth hour of work,
26 approximately twice per week due to the heavy workload.

27 86. Second, Plaintiff and class members worked shifts in excess of ten (10) hours
28 without receiving an uninterrupted second 30-minute meal period. For example, during his

1 employment, Plaintiff worked shifts in excess of ten (10) or more hours per day, but was not
2 provided a second 30-minute meal period. Plaintiff and class members did not sign valid meal
3 period waivers on days that they were entitled to meal periods and were not relieved of all
4 duties.

5 87. At all times herein mentioned, Defendants knew or should have known that, as
6 a result of these policies, Plaintiff and class members were prevented from being relieved of
7 all duties and were required to perform some of their assigned duties during meal periods.
8 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
9 members all meal period premiums when meal periods were late, interrupted, shortened,
10 and/or missed.

11 88. Furthermore, Defendants engaged in a company-wide practice and/or policy of
12 not paying meal period premiums owed when compliant meal periods are not provided.
13 Because of this practice and/or policy, Plaintiff and class members have not received premium
14 pay for all missed, late, and interrupted meal periods. As a result, Defendants failed to
15 provide Plaintiff and class members compliant meal periods in violation of California Labor
16 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

17 89. Defendants' conduct violates the applicable IWC Wage Order, and California
18 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
19 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
20 rate of compensation for each work day that the meal period was not provided.

21 **FOURTH CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 23 **(Against all Defendants)**

24 90. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 91. At all relevant times herein set forth, the applicable IWC Wage Order and
27 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
28 members' employment by Defendants.

1 92. At all relevant times, the applicable IWC Wage Order provides that “[e]very
2 employer shall authorize and permit all employees to take rest periods, which insofar as
3 practicable shall be in the middle of each work period” and that the “rest period time shall be
4 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
5 hours or major fraction thereof” unless the total daily work time is less than three and one-half
6 (3 ½) hours.

7 93. At all relevant times, California Labor Code section 226.7 provides that no
8 employer shall require an employee to work during any rest period mandated by an applicable
9 order of the California IWC. To comply with its obligation to authorize and permit rest
10 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
11 employer must “relinquish any control over how employees spend their break time, and
12 relieve their employees of all duties—including the obligation that an employee remain on
13 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
14 *Inc.*, 2 Cal. 5th 257, 273 (2016).

15 94. During the relevant time period, Defendants regularly failed to authorize and
16 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
17 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
18 practices of understaffing, assigning heavy workloads, and their requirement that Plaintiff and
19 class members respond to phone communications at all times, including during rest periods,
20 prevented Plaintiff and class members from being relieved of all duty to take rest periods.
21 Additionally, Defendants also failed to schedule rest periods, which, coupled with
22 Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and class
23 members not being authorized and permitted to take rest periods.

24 95. Furthermore, during the relevant time period, on information and belief,
25 Defendants maintained a company-wide on-premises rest period policy, which effectively
26 required that Plaintiff and class members remain on the work premises during their rest
27 periods. Because Plaintiff and class members were restricted from leaving the premises
28 during rest periods, they were denied the ability to use their rest periods freely for their own

1 purposes, such as running personal errands. Thus, Defendants effectively maintained control
2 over Plaintiff and class members during rest periods.

3 96. As a result of Defendants' practices and policies, Plaintiff and class members
4 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
5 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff had
6 to forgo approximately two (2) rest periods per week due to the lack of coverage and heavy
7 workload. As a further example, Defendants' management sometimes interrupted Plaintiff's
8 rest periods and asked that he return to work.

9 97. Defendants have also engaged in a company-wide practice and/or policy of not
10 paying rest period premiums owed when compliant rest periods are not authorized and
11 permitted. Because of this practice and/or policy, Plaintiff and class members have not
12 received premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and
13 class members rest periods and failed to pay them rest period premiums due, in violation of
14 Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

15 98. Defendants' conduct violates the applicable IWC Wage Order and California
16 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
17 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
18 compensation for each work day that a compliant rest period was not authorized and
19 permitted.

20 **FIFTH CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 22 **Statements and Failure to Maintain Accurate Payroll Records** 23 **(Against all Defendants)**

24 99. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 100. At all relevant times herein set forth, California Labor Code section 226(a)
27 provides that every employer shall furnish each of his or her employees an accurate and
28 complete itemized wage statement in writing, including, but not limited to, the name and

1 address of the legal entity that is the employer, the inclusive dates of the pay period, total
2 hours worked, and all applicable rates of pay.

3 101. At all relevant times, Defendants have knowingly and intentionally provided
4 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
5 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
6 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
7 applicable hourly rates in effect during the pay period, including rates of pay for overtime
8 wages, and the corresponding number of hours worked at each hourly rate. Specifically,
9 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

10 102. Because Defendants did not accurately record the time Plaintiff and Subclass
11 members spent working off-the-clock and deducted time from their records for meal periods
12 that were interrupted and/or missed (and therefore time for which they should have been paid),
13 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
14 and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same
15 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
16 Subclass members, in violation of section 226(a)(2), and failed to list the applicable hourly
17 rates of pay in effect during the pay period and the corresponding accurate number of hours
18 worked at each hourly rate, in violation of section 226(a)(9).

19 103. The wage statement deficiencies also include, among other things, failing to list
20 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
21 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
22 for which employees were paid; failing to list the name of the employee and only the last four
23 digits of his or her social security number or an employee identification number other than a
24 social security number; failing to list the name and address of the legal entity that is the
25 employer; and/or failing to state all hours worked as a result of not recording or stating hours
26 worked off-the-clock.

27 104. California Labor Code section 1174(d) provides that “[e]very person employing
28 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees

1 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
2 plants or establishments at which employees are employed, payroll records showing the hours
3 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
4 applicable piece rate paid to, employees employed at the respective plants or
5 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
6 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
7 members showing the daily hours they worked and the wages paid thereto as a result of failing
8 to record the off-the-clock hours that they worked.

9 105. California Labor Code section 1198 provides that the maximum hours of work
10 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
11 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
12 employment of any employees for longer hours than those fixed by the order or under
13 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
14 Wage Order, employers are required to keep accurate time records showing when the
15 employee begins and ends each work period and meal period. During the relevant time
16 period, Defendants engaged in company-wide practices and/or policies of failing to record
17 actual hours worked, and thereby failed to keep accurate records of work period and meal
18 period start and end times for Plaintiff and Subclass members, in violation of section 1198.
19 Also, in light of Defendants’ failure to provide Plaintiff and Subclass members with second
20 30-minute meal periods to which they were entitled, Defendants kept no records of meal start
21 and end times for second meal periods.

22 106. Plaintiff and Subclass members are therefore entitled to recover from
23 Defendants the greater of their actual damages caused by Defendants’ failure to comply with
24 California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand
25 dollars (\$4,000) per employee.

26 //

27 //

28 //

SIXTH CAUSE OF ACTION
Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon
Termination
(Against all Defendants)

107. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

108. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums, that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

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

110. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

111. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

//

//

SEVENTH CAUSE OF ACTION
Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)

112. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

113. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiff and class members during their employment.

114. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

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

116. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums within the time periods specified by California Labor Code section 204.

117. Defendants’ failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

118. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

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

120. During the relevant time period, Defendants, on a company-wide basis, required that Plaintiff and class members use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to fully reimburse them for all of the costs of their work-related mobile device expenses. For example, Plaintiff and class members were required to use their personal mobile devices for work-related tasks, including communicating with management regarding work-related issues and potential clients via phone calls and text messages to make sales. Further, Plaintiff and class members were required to download a mobile application, “Paycom,” which they used to clock in and out for their shifts and meal periods. Although Defendants required Plaintiff and

1 class members to utilize their personal mobile devices and/or mobile data to carry out their
2 work-related responsibilities, Defendants failed to fully reimburse them for these costs.

3 121. Defendants could have provided Plaintiff and class members with actual
4 equipment for use on the job, such as company mobile devices; or, Defendants could have
5 reimbursed employees for the costs of their mobile device usage. Instead, Defendants passed
6 these operating costs onto Plaintiff and class members. At all relevant times, Plaintiff did not
7 earn at least two (2) times the minimum wage.

8 122. Defendants' company-wide policy and/or practice of not reimbursing
9 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
10 and class members violates California Labor Code section 2802. Defendants have
11 intentionally and willfully failed to reimburse Plaintiff and class members for necessary
12 business-related expenses and costs.

13 123. Pursuant to California Labor Code section 2802, Plaintiff and class members
14 are therefore entitled to recover from Defendants their business-related expenses incurred
15 during the course and scope of their employment, plus interest, costs, and attorneys' fees.

16 **NINTH CAUSE OF ACTION**

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

18 **(Against all Defendants)**

19 124. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 125. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover civil
22 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
23 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and 1198.
24 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover
25 civil penalties for violations of those Labor Code sections not found in section 2699.5,
26 including sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, 1197.1, 2802, and
27 2810.5.

28 126. Defendants' conduct, as alleged herein, violates numerous sections of the

1 California Labor Code, including, but not limited to, the following:

- 2 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
3 Wage Order for Defendants' failure to compensate Plaintiff and other
4 aggrieved employees with all required overtime pay, as alleged herein;
- 5 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
6 1198, and the applicable IWC Wage Order for Defendants' failure to
7 compensate Plaintiff and other aggrieved employees with at least
8 minimum wages for all hours worked, as alleged herein;
- 9 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
10 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
11 and other aggrieved employees with meal periods, as alleged herein;
- 12 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
13 applicable IWC Wage Order for Defendants' failure to authorize and
14 permit Plaintiff and other aggrieved employees to take rest periods, as
15 alleged herein;
- 16 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
17 IWC Wage Order for failure to provide accurate and complete wage
18 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 19 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
20 IWC Wage Order for failure to maintain payroll records, as alleged
21 herein;
- 22 (g) Violation of Labor Code sections 201 and 202 for failure to pay all
23 earned wages upon termination, as alleged herein;
- 24 (h) Violation of Labor Code section 204 for failure to pay all earned wages
25 during employment, as alleged herein;
- 26 (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
27 and other aggrieved employees for all business expenses necessarily
28 incurred, as alleged herein; and

(j) Violation of Labor Code section 2810.5(a)(1)(A)-(C), for failure to provide notice of material terms of employment, as set forth below.

127. At all relevant times herein, California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

128. At all relevant times, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

129. Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

130. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

131. Defendants are "persons" as defined by California Business & Professions

Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

132. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

133. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

134. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law in at least the following respects:

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;
- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Failing to provide all meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take all rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage

1 statements and failing to maintain accurate payroll records in violation
2 of California Labor Code sections 226(a), 1174(d), and 1198, and the
3 applicable IWC Wage Order, as alleged herein;

4 (f) Failing timely to pay all earned wages to Plaintiff and class members in
5 violation of California Labor Code section 204, as alleged herein;

6 (g) Failing to reimburse Plaintiff and class members for all business
7 expenses necessarily incurred in violation of California Labor Code
8 section 2802, as alleged herein; and

9 (h) Failing to provide written notice of information material to Plaintiff's
10 and class members' employment with Defendants in violation of
11 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

12 135. At all relevant times herein, California's Wage Theft Prevention Act was
13 enacted to ensure that employers provide employees with basic information material to their
14 employment relationship at the time of hiring, and to ensure that employees are given written
15 and timely notice of any changes to basic information material to their employment. Codified
16 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
17 time of hiring, an employer must provide written notice to employees containing basic and
18 material payroll information, including, among other things, the rate(s) of pay and basis
19 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
20 including any rates for overtime, the regular payday designated by the employer, and any
21 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
22 Code § 2810.5(a)(1)(A)-(C).

23 136. During the relevant time period, Defendants failed to provide Plaintiff and class
24 members with written notice that lists all the requisite information set forth in Labor Code
25 section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiff and class
26 members with the overtime rate(s) of pay in violation of section 2810.5(a)(1)(A). Instead, the
27 wage theft form that Defendants provided to Plaintiff is blank where the aforementioned wage
28 information should be filled in. Defendants' failure to provide Plaintiff and class members

1 with written notice of basic information regarding their employment with Defendants is in
2 violation of California Labor Code section 2810.5.

3 137. As a result of the violations of California law herein described, Defendants
4 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
5 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
6 herein.

7 138. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
8 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
9 Defendants during a period that commences four years prior to the filing of the initial
10 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
11 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of
12 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

13 **ELEVENTH CAUSE OF ACTION**

14 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

15 **Unfair Business Practices**

16 **(Against all Defendants)**

17 139. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 140. Defendants are "persons" as defined by California Business & Professions
20 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
21 and/or associations.

22 141. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
23 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
24 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
25 seeks to enforce important rights affecting the public interest within the meaning of Code of
26 Civil Procedure section 1021.5.

27 142. Defendants' activities, namely Defendants' company-wide practice and/or
28 policy of not paying Plaintiff and class members all meal and rest period premiums due to

1 them under Labor Code section 226.7, deprived Plaintiff and class members of the
2 compensation guarantee and enhanced enforcement implemented by section 226.7. The
3 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
4 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
5 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
6 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
7 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
8 unfair business practice in violation of California Business & Professions Code sections
9 17200, *et seq.* (*Id.*)

10 143. A violation of California Business & Professions Code sections 17200, *et seq.*
11 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
12 and practices have violated the spirit of California’s meal and rest period laws and constitute
13 acts against the public policy behind these laws.

14 144. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
15 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
16 benefits implemented by section 226.7 withheld and retained by Defendants during a period
17 that commences four years prior to the filing of the initial complaint; a permanent injunction
18 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
19 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
20 Procedure section 1021.5 and other applicable laws; and an award of costs.

21 **REQUEST FOR JURY TRIAL**

22 Plaintiff requests a trial by jury.

23 **PRAYER FOR RELIEF**

24 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
25 against Defendants, jointly and severally, as follows:

26 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in
27 excess of thirty-five thousand dollars (\$35,000), exclusive of interest and costs. Plaintiff
28 reserves the right to amend his prayer for relief to seek a different amount.

1 **Class Certification**

- 2 2. That this case be certified as a class action;
- 3 3. That Plaintiff be appointed as the representative of the Class and Subclass;
- 4 4. That counsel for Plaintiff be appointed as class counsel.

5 **As to the First Cause of Action**

- 6 5. That the Court declare, adjudge and decree that Defendants violated California
- 7 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
- 8 pay all overtime wages due to Plaintiff and class members;
- 9 6. For general unpaid wages at overtime wage rates and such general and special
- 10 damages as may be appropriate;
- 11 7. For pre-judgment interest on any unpaid overtime compensation commencing
- 12 from the date such amounts were due, or as otherwise provided by law;
- 13 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
- 14 California Labor Code section 1194(a); and
- 15 9. For such other and further relief as the Court may deem equitable and
- 16 appropriate.

17 **As to the Second Cause of Action**

- 18 10. That the Court declare, adjudge and decree that Defendants violated California
- 19 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
- 20 Order by willfully failing to pay minimum wages to Plaintiff and class members;
- 21 11. For general unpaid wages and such general and special damages as may be
- 22 appropriate;
- 23 12. For pre-judgment interest on any unpaid compensation from the date such
- 24 amounts were due, or as otherwise provided by law;
- 25 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
- 26 California Labor Code section 1194(a);
- 27 14. For liquidated damages pursuant to California Labor Code section 1194.2; and
- 28 15. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date

such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts

1 were due, or as otherwise provided by law;

2 40. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 41. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Seventh Cause of Action**

7 42. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
9 overtime wages, minimum wages, and/or meal and rest period premiums during their
10 employment;

11 43. For all actual, consequential and incidental losses and damages, according to
12 proof;

13 44. For statutory penalties according to proof pursuant to California Labor Code
14 section 210;

15 45. For pre-judgment interest on any unpaid wages from the date such amounts
16 were due, or as otherwise provided by law;

17 46. For attorneys' fees pursuant to California Code of Civil Procedure section
18 1021.5, or as otherwise provided by law; and

19 47. For such other and further relief as the Court may deem equitable and
20 appropriate.

21 **As to the Eighth Cause of Action**

22 48. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
24 related expenses and costs incurred by Plaintiff and class members;

25 49. For unpaid business-related expenses and such general and special damages as
26 may be appropriate;

27 50. For pre-judgment interest on any unpaid business-related expenses from the
28 date such amounts were due pursuant to California Labor Code section 2802(b), or as

otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide notice of material terms of employment);

55. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, and/or 2699(a), (f), and (k), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

56. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or 2699(k) to bring Defendants into compliance with the requirements of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

57. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California

1 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
2 1197, 1197.1, 1198, 2802, and 2810.5;

3 58. For pre-judgment and post-judgment interest as provided by law; and

4 59. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Tenth Cause of Action**

7 60. That the Court declare, adjudge and decree that Defendants' conduct of failing
8 to provide Plaintiff and class members all overtime wages due to them, failing to provide
9 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
10 class members all meal periods, failing to authorize and permit Plaintiff and class members to
11 take all rest periods, failing to provide Plaintiff and class members accurate and complete
12 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
13 failing to timely pay Plaintiff and class members all earned wages during employment, failing
14 to reimburse Plaintiff and class members for business-related expenses, and failing to provide
15 written notice of material terms of employment, constitutes an unlawful business practice in
16 violation of California Business and Professions Code sections 17200, *et seq.*;

17 61. For restitution of unpaid wages to Plaintiff and all class members and
18 prejudgment interest from the day such amounts were due and payable;

19 62. For the appointment of a receiver to receive, manage, and distribute any and all
20 funds disgorged from Defendants and determined to have been wrongfully acquired by
21 Defendants as a result of violations of California Business & Professions Code sections
22 17200, *et seq.*;

23 63. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
24 California Code of Civil Procedure section 1021.5; and

25 64. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Eleventh Cause of Action**

28 65. That the Court declare, adjudge and decree that Defendants' conduct of denying

1 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
2 an unfair business practice in violation of California Business and Professions Code sections
3 17200, *et seq.*;

4 66. For restitution of the statutory benefits under section 226.7 unfairly withheld
5 from Plaintiff and class members and prejudgment interest from the day such amounts were
6 due and payable;

7 67. For the appointment of a receiver to receive, manage, and distribute any and all
8 funds disgorged from Defendants and determined to have been wrongfully acquired by
9 Defendants as a result of violations of California Business & Professions Code sections
10 17200, *et seq.*;

11 68. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
12 California Code of Civil Procedure section 1021.5;

13 69. For pre-judgment and post-judgment interest as provided by law; and

14 70. For such other and further relief as the Court may deem equitable and
15 appropriate.

16
17 Dated: March 13, 2026

Respectfully submitted,

Capstone Law APC

18
19
20 By: 

Orlando Villalba

Helga Hakimi

21
22 Attorneys for Plaintiff Antonio Frelix
23
24
25
26
27
28

EXHIBIT “1”

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

January 5, 2026

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/411>)

Subject: *Antonio Frelix v. Oakland Motor Cars, Inc., et al.*

Dear PAGA Administrator:

This office represents Antonio Frelix in connection with his claims under the California Labor Code. Mr. Frelix was an employee of OAKLAND MOTOR CARS, INC.; AUBURN MOTORS; BEF MANAGEMENT COMPANY; MCHENRY MOTORS; PERFECTION MOTOR CARS, INC.; and/or VALLEY BMW. For the purpose of this letter, Mr. Frelix collectively refers to these entities as “OAKLAND MOTOR.”

The employers may be contacted directly at the addresses below:

OAKLAND MOTOR CARS, INC.
7273 OAKPORT STREET
OAKLAND, CA 94621

AUBURN MOTORS
4701 MCHENRY AVENUE
MODESTO, CA 95356

BEF MANAGEMENT COMPANY
4701 MCHENRY AVENUE
MODESTO, CA 95356

MCHENRY MOTORS
4369 MCHENRY AVENUE
MODESTO, CA 95356

PERFECTION MOTOR CARS, INC.
4701 MCHENRY AVENUE
MODESTO, CA 95356

VALLEY BMW
4725 MCHENRY AVENUE
MODESTO, CA 95355

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

OAKLAND MOTOR employed Mr. Frelix as an hourly paid, non-exempt employee from approximately October 2024 to March 20, 2025. Mr. Frelix worked as a Salesperson for OAKLAND MOTOR at its dealership location in Oakland, California. During his employment, Mr. Frelix typically worked eight (8) hours or more per day and five (5) days per week. At the time Mr. Frelix's employment with OAKLAND MOTOR ended, he earned approximately \$16.89 per hour plus commissions. His job duties included, without limitation, making vehicle sales, providing customer service, and preparing paperwork, such as sales contracts.

OAKLAND MOTOR has committed each of the following Labor Code violations against Mr. Frelix, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1):¹

OAKLAND MOTOR's Company-Wide and Uniform Payroll and HR Practices

OAKLAND MOTOR CARS, INC.; AUBURN MOTORS; and MCHENRY MOTORS are California corporations; BEF MANAGEMENT COMPANY and PERFECTION MOTOR CARS, INC. are Delaware corporations; and VALLEY BMW is a Washington corporation. Together, they operate a local car dealership chain based in Northern California. Upon information and belief, OAKLAND MOTOR maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Oakland, California, and/or Modesto, California, for all non-exempt, hourly paid employees working for OAKLAND MOTOR in California, including Mr. Frelix and other aggrieved employees. At all relevant times, OAKLAND MOTOR issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Frelix and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular

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

rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

OAKLAND MOTOR willfully failed to pay all overtime wages owed to Mr. Frelix and other aggrieved employees. During the relevant time period, Mr. Frelix and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, OAKLAND MOTOR had, and continues to have, company-wide practices and/or policies of understaffing and assigning heavy workloads, including imposing sales quotas. For example, Mr. Frelix and other salesperson employees were required to meet a minimum sales volume, which required that "[employees] must maintain an average of 8 (eight) closed sales per month on a rolling three-month average to maintain full-time employment. However, if at any time, the Sales Representative does not maintain an acceptable rolling three-month average, the Sales Representative will be subject to termination." (Emphasis in original). These policies and/or practices led Mr. Frelix and other aggrieved employees to continue to work off-the-clock outside of their scheduled shifts in order to handle their workloads and complete their assigned tasks. For example, Mr. Frelix sometimes worked before clocking in for his shifts assisting customers at the dealership or over the phone, which he felt pressured to do, so that he could meet his monthly sales quota. As another example, at OAKLAND MOTOR's direction, Mr. Frelix spent time completing online training modules focusing on dealership procedures, at home and after his shifts, time for which he was not paid.

Moreover, during the relevant time period, OAKLAND MOTOR had, and continues to have, a company-wide policy and/or practice of requiring Mr. Frelix and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts. For example, after clocking out from his shifts, approximately twice per week and for 10 minutes each time, Mr. Frelix was required to walk through the dealership lot and ensure that all vehicles were locked, time for which he was not paid. Thus, OAKLAND MOTOR failed to track all of the time that employees spent performing work-related tasks after their shifts, and Mr. Frelix and other aggrieved employees received no compensation for this time.

Second, as stated, OAKLAND MOTOR had, and continues to have, company-wide policies and/or practices of understaffing and assigning heavy workloads, while also pressuring employees to meet sales quotas. OAKLAND MOTOR's policies and/or practices resulted in a failure to provide Mr. Frelix and other aggrieved employees with adequate meal period coverage, and thus, Mr. Frelix and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. OAKLAND MOTOR also had a practice of failing to schedule meal periods, which further caused Mr. Frelix and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Frelix would clock out and work through his meal periods twice a week because he was busy assisting customers in person. As a further example, Mr. Frelix's meal periods were interrupted approximately once per week by OAKLAND MOTOR's management assigning him a customer, coworkers needing assistance with a customer, or customers approaching Mr. Frelix themselves, whom he felt pressured to assist in the

hopes of making a sale and meeting his monthly quota. Consequently, Mr. Frelix and other aggrieved employees were required to work through meal periods and/or had their meal periods interrupted in order to complete their assigned duties, time for which they were not paid.

Moreover, OAKLAND MOTOR had, and continues to have, a policy and/or practice of requiring that Mr. Frelix and other aggrieved employees monitor their personal cellular phones and respond to OAKLAND MOTOR's management's requests, including during meal periods. As a result, OAKLAND MOTOR's management contacted Mr. Frelix and other aggrieved employees on their cellular phones during unpaid meal periods to discuss work-related matters. OAKLAND MOTOR knew or should have known that Mr. Frelix and other aggrieved employees were performing work while off-the-clock in order to meet OAKLAND MOTOR's expectations, but failed to compensate them for this time.

Third, during the relevant time period, on information and belief, OAKLAND MOTOR's management pressured Mr. Frelix and other aggrieved employees to record compliant meal periods, even when they did not receive a compliant meal period. Thus, OAKLAND MOTOR did not record all hours worked during meal periods, and Mr. Frelix and other aggrieved employees performed work during meal periods for which they were not paid.

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

OAKLAND MOTOR's failure to pay Mr. Frelix and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Frelix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring OAKLAND MOTOR into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. Tit. 8, § 11070(2)(H) (defining "Hours Worked").

As set forth above, due to OAKLAND MOTOR's policies and/or practices of understaffing and assigning heavy workloads, including pressure to meet sales quotas, Mr. Frelix and other aggrieved employees performed work off-the-clock outside of their scheduled shifts, including assisting customers, completing training modules, and walking through the dealership lot to ensure all vehicles were locked. OAKLAND MOTOR failed to track this time that Mr. Frelix and other aggrieved

employees spent working off-the-clock, and Mr. Frelix and other aggrieved employees received no compensation for this time.

Further, as also stated, due to OAKLAND MOTOR's policies and/or practices of understaffing, assigning heavy workloads, including pressure to meet sales quotas, failing to schedule meal periods, and requiring employees to respond to phone communications, Mr. Frelix and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Additionally, as stated, OAKLAND MOTOR pressured Mr. Frelix and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. Thus, OAKLAND MOTOR systematically failed to pay Mr. Frelix and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

Accordingly, OAKLAND MOTOR regularly failed to pay at least minimum wages to Mr. Frelix and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Frelix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring OAKLAND MOTOR into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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

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

First, during the relevant time period, as stated above, OAKLAND MOTOR had, and continues to have, a company-wide policy and/or practice of understaffing and assigning heavy workloads, including imposing sales quotas, which has resulted in a lack of meal period coverage and prevented Mr. Frelix and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, OAKLAND MOTOR had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Frelix and other aggrieved employees to not be relieved of their duties for compliant meal periods. Furthermore, as also stated, OAKLAND MOTOR had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Frelix and other aggrieved employees respond to work-related communications on their personal cellular phones, including during meal periods.

Further, as stated above, on information and belief, because OAKLAND MOTOR frowned upon employees accruing meal period premiums, OAKLAND MOTOR's management pressured Mr. Frelix and other aggrieved employees to record that they took meal periods regardless of whether they had received a compliant meal period or not, in order to strictly limit meal period premiums that would need to be paid by OAKLAND MOTOR.

As a result, Mr. Frelix and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Mr. Frelix missed his meal periods approximately twice per week to continue assisting customers. As a further example, Mr. Frelix had his meal periods interrupted once per week because OAKLAND MOTOR's management assigned him a customer, coworkers needed assistance with a customer, or customers requested his assistance. Additionally, Mr. Frelix took his meal periods late, after the fifth hour of work, approximately twice per week, due to the heavy workload.

Second, Mr. Frelix and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, during his employment, Mr. Frelix worked shifts in excess of ten (10) or more hours per day, but was not provided a second 30-minute meal period. Mr. Frelix and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, OAKLAND MOTOR knew or should have known that as a result of its policies, Mr. Frelix and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. OAKLAND MOTOR further knew or should have known that it did not pay Mr. Frelix and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, OAKLAND MOTOR engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Frelix and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, OAKLAND MOTOR failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Frelix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring OAKLAND MOTOR into compliance with the applicable IWC Wage Order and Labor Code

sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, OAKLAND MOTOR regularly failed to authorize and permit Mr. Frelix and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, OAKLAND MOTOR's company-wide practices of understaffing, assigning heavy workloads, and its requirement that Mr. Frelix and other aggrieved employees respond to phone communications at all times, including during rest periods, prevented Mr. Frelix and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, OAKLAND MOTOR also failed to schedule rest periods, which, coupled with OAKLAND MOTOR's failure to provide adequate rest period coverage, further led to Mr. Frelix and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, on information and belief, OAKLAND MOTOR maintained a company-wide on-premises rest period policy, which effectively required that Mr. Frelix and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Frelix and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, OAKLAND MOTOR effectively maintained control over Mr. Frelix and other aggrieved employees during rest periods.

As a result of OAKLAND MOTOR's practices and policies, Mr. Frelix and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Frelix had to forgo approximately two (2) rest periods per week due to the lack of coverage and heavy workload. As a further example, OAKLAND MOTOR's management sometimes interrupted Mr. Frelix's rest periods and asked that he return to work.

OAKLAND MOTOR has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Frelix and other aggrieved employees have not received premium pay for non-compliant rest periods.

Accordingly, OAKLAND MOTOR failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Frelix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring OAKLAND MOTOR into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

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

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which employees were paid; failing to list the name of the employee and only the last four digits of his or her social security

number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), OAKLAND MOTOR willfully failed to maintain accurate payroll records for Mr. Frelix and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, OAKLAND MOTOR engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Frelix and other aggrieved employees, in violation of section 1198. Also, in light of OAKLAND MOTOR’s failure to provide Mr. Frelix and other aggrieved employees with second 30-minute meal periods to which they were entitled, OAKLAND MOTOR kept no records of meal start and end times for second meal periods.

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

Mr. Frelix and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring OAKLAND MOTOR into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon

termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

Mr. Frelix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring OAKLAND MOTOR into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

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

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

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

Mr. Frelix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring OAKLAND MOTOR into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, OAKLAND MOTOR, on a company-wide basis, required that Mr. Frelix and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to fully reimburse them for all of the costs of their work-related mobile device expenses. For example, Mr. Frelix and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including communicating with management regarding work-related issues and potential clients via phone calls and text messages to make sales. Further, Mr. Frelix and other aggrieved employees were required to download a mobile application, "Paycom," which they used to clock in and out for their shifts and meal periods. Although OAKLAND MOTOR required Mr. Frelix and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, OAKLAND MOTOR failed to fully reimburse them for these costs.

OAKLAND MOTOR could have provided Mr. Frelix and other aggrieved employees with actual equipment for use on the job, such as company mobile devices; or, OAKLAND MOTOR could have reimbursed employees for the costs of their mobile device usage. Instead, OAKLAND MOTOR passed these operating costs onto Mr. Frelix and other aggrieved employees. At all relevant times, Mr. Frelix did not earn at least two (2) times the minimum wage.

Thus, OAKLAND MOTOR had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Frelix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring OAKLAND MOTOR into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

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

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

During the relevant time period, OAKLAND MOTOR failed to provide Mr. Frelix and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, OAKLAND MOTOR failed to provide Mr. Frelix and other aggrieved employees with the overtime rate(s) of pay in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that OAKLAND MOTOR provided to Mr. Frelix is blank where the aforementioned wage information should be filled in. OAKLAND MOTOR's

failure to provide Mr. Frelix and other aggrieved employees with written notice of basic information regarding their employment with OAKLAND MOTOR is in violation of California Labor Code section 2810.5.

Mr. Frelix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring OAKLAND MOTOR into compliance with Labor Code section 2810.5, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” OAKLAND MOTOR, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Frelix’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Frelix seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and 558, Mr. Frelix, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against OAKLAND MOTOR for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1860
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Ninel", with a stylized, cursive script.

Ninel Kocharyan

Copy: OAKLAND MOTOR CARS, INC. (via U.S. Certified Mail); AUBURN MOTORS (via U.S. Certified Mail); BEF MANAGEMENT COMPANY (via U.S. Certified Mail); MCHENRY MOTORS (via U.S. Certified Mail); PERFECTION MOTOR CARS, INC. (via U.S. Certified Mail); VALLEY BMW (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1860
Los Angeles, CA. 90067



9589 0710 5270 0211 5993 21

OAKLAND MOTOR CARS, INC.
7273 OAKPORT STREET
OAKLAND, CA 94621

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.

OAKLAND MOTOR CARS, INC.
7273 OAKPORT STREET
OAKLAND, CA 94621



9590 9402 8803 4005 5612 48

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature	☐ Agent
☒	☐ Addressee
3. Received by (Printed Name)	C. Date of Delivery

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

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

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

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

Domestic Return Receipt

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

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

OFFICIAL USE

Certified Mail Fee

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

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ ☐ ☐

Postmark

Here

OAKLAND MOTOR CARS, INC.
7273 OAKPORT STREET
OAKLAND, CA 94621

PS

Capstone Law, APC
1875 Century Park, East, 1860
Los Angeles, CA. 90067



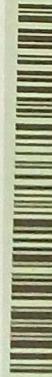
9589 0720 5270 0211 5993 14

AUBURN MOTORS
4701 MCHENRY AVENUE
MODESTO, CA 95356

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.

AUBURN MOTORS
4701 MCHENRY AVENUE
MODESTO, CA 95356



9590 9402 8803 4005 5612 31

2. Address label must be placed on the reverse of the card.

9589 0720 5270 0211 5993 14

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ X

☐ Agent

☐ Addressee

Received by (Printed Name)

C. Date of Delivery

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

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

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

restricted Delivery

Domestic Return Receipt

Capstone Law, APC
1875 Century Park, East, 1860
Los Angeles, CA. 90067



9589 0710 5270 0211 5993 07

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee

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

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

Postmark

BEF MANAGEMENT COMPANY
4701 MCHENRY AVENUE
MODESTO, CA 95356

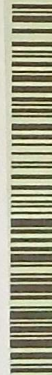
PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

BEF MANAGEMENT COMPANY
4701 MCHENRY AVENUE
MODESTO, CA 95356

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.

BEF MANAGEMENT COMPANY
4701 MCHENRY AVENUE
MODESTO, CA 95356



9590 9402 8803 4005 5612 24

2. Article Number (Transfer from service label)

9589 0710 5270 0211 5993 07

(over \$500)

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒

☐ Agent

☐ Addressee

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☐ Certified Mail[®]

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Restricted Delivery

☐ Restricted Delivery

☐ Priority Mail Express[®]

☐ Registered Mail[™]

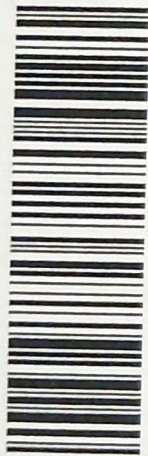
☐ Registered Mail Restricted Delivery

☐ Signature Confirmation[™]

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Capstone Law, APC
1875 Century Park, East, 1860
Los Angeles, CA. 90067



9589 0710 5270 0211 5992 91

MCHENRY MOTORS
4369 MCHENRY AVENUE
MODESTO, CA 95356

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.

1. MCHENRY MOTORS
4369 MCHENRY AVENUE
MODESTO, CA 95356



9590 9402 8803 4005 5612 17

2. Article Number (Transfer from card to label)

9589 0710 5270 0211 5992 91

(over \$500)

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent

☐ Addressee

C. Date of Delivery

Received by (Printed Name)

Is delivery address different from item 1? ☐ Yes ☐ No

If YES, enter delivery address below:

Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☐ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

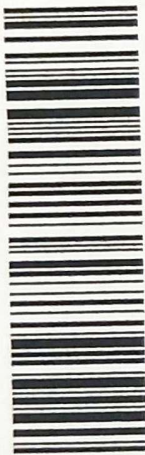
☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Capstone Law, APC
1875 Century Park, East, 1860
Los Angeles, CA. 90067



9589 0710 5270 0211 5992 77

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

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

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
Postmark

VALLEY BMW
4725 MCHENRY AVENUE
MODESTO, CA 95355

VALLEY BMW
4725 MCHENRY AVENUE
MODESTO, CA 95355

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.

VALLEY BMW
4725 MCHENRY AVENUE
MODESTO, CA 95355



9590 9402 8803 4005 5612 55

2. Article Number (Transfer from service label)

9589 0710 5270 0211 5992 77

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent
☐ Addressee

Received by (Printed Name)

C. Date of Delivery

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

Service Type

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

iii Restricted Delivery

Domestic Return Receipt

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.

OAKLAND MOTOR CARS, INC.
1273 OAKPORT STREET
OAKLAND, CA 94621



9590 9402 8803 4005 5612 48

2 Article Number (Transfer from service label)

9589 0710 5270 0211 5993 21

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

3. Received by (Printed Name)

Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ Agent

☐ Addressee

C. Date of Delivery

☐ No

Service Type

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

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

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

Domestic Return Receipt

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.

1.

**MCHENRY MOTORS
4369 MCHENRY AVENUE
MODESTO, CA 95356**



9590 9402 8803 4005 5612 17

2. Article Number (Transfer from service label)

9589 0710 5270 0211 5992 91

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Received by (Printed Name)

☐ Agent☐ Addressee

C. Date of Delivery

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

Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery☐ Restricted Delivery
(over \$500)

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

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **March 13, 2026**, I served the document described as: **DECLARATION OF WILL HENRY WITH RESPECT TO STATUS OF DISTRIBUTION AND RELEASE OF FUNDS** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

John P. Boggs
jboggs@employerlawyers.com
David J. Reese
dreese@employerlawyers.com
William D. Wheelock
bwheelock@employerlawyers.com
Felix Zhuk
fzhuk@employerlawyers.com
FINE, BOGGS & PERKINS LLP
80 Stone Pine Road, Ste., 210
Half Moon Bay, CA 94019
Telephone: 650-712-8908
Facsimile: 650-712-1712

Attorneys for Defendants:
OAKLAND MOTOR CARS, INC.
AUBURN MOTORS
BEF MANAGEMENT COMPANY
MCHENRY MOTORS
PERFECTION MOTOR CARS, INC.
VALLEY BMW

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

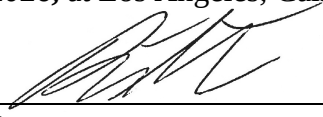
☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **March 13, 2026**, at Los Angeles, California.

Riley McIntire

Type/Print Name



Signature