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County of San Diego
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Attorneys for Plaintiffs
JAMES SPURLOCK, MARTIN LOZANO, KRIS WRIGHT,
aggrieved employees, and the putative class

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

MARTIN LOZANO, an individual, JAMES
SPURLOCK, an individual, KRIS WRIGHT, an
individual,

Plaintiffs,

v.

SUB OF EL CAJON, LLC a limited liability
company, BUICK GMC SDNC, LLC, a
Delaware limited liability company, BUICK
GMC OF SAN DIEGO, LLC, a limited liability
company, DEALER NATION AUTOMOTIVE,
LLC, a limited liability company, MADISON
AUTOMOTIVE GROUP, LLC, a limited
liability company, CITY+VENTURES,
LLC, a limited liability company, DANNY
WHITE, an individual, TOM HERVEY, an
individual, RON BOWIE, an individual, and
DOES 1 to 50,

Defendants.

CASE NO. 37-2023-00028567-CU-0E-CTL

COMPLAINT

1. INDIVIDUAL, PAGA, AND CLASS
CLAIM - UNPAID WAGES AND
WAITING TIME PENALTIES
2. INDIVIDUAL, PAGA, AND CLASS
CLAIM - INACCURATE WAGE
STATEMENTS IN VIOLATION OF
LAB. CODE § 226
3. INDIVIDUAL AND CLASS CLAIM
- UNFAIR COMPETITION
4. INDIVIDUAL CLAIM - MEAL
BREAK VIOLATION
5. INDIVIDUAL CLAIM - REST
BREAK VIOLATION
6. INDIVIDUAL CLAIM – UNPAID
WAGES AND WAITING TIME
PENALTIES
7. INDIVIDUAL CIAM – FAILURE
TO PRODUCE PAY RECORDS
8. INDIVIDUAL CLAIM – FAILURE
TO PRODUCE PERSONNEL FILE

1
2 Plaintiffs MARTIN LOZANO, JAMES SPURLOCK, and KRIS WRIGHT (hereafter, "Named
3 Plaintiffs") on behalf of themselves and acting for the interests of all current and former employees
4 hereby allege against the named Defendants the following:

5 **NATURE OF THE ACTION**

6 1. This is a wage and hour individual, class, and representative action under Code Civil
7 Procedure § 382 and the Private Attorneys General Act ("PAGA") of 2004, as amended, Labor
8 Code §§ 2698, *et seq.* case seeking unpaid wages and related remedies.

9 2. By this action, Plaintiffs seek all legal remedies available to them based on Defendants'
violations of California law.

10 **JURISDICTION AND VENUE**

11 3. Pursuant to Article VI, § 10 of the California Constitution, subject matter jurisdiction is
12 proper in the Superior Court of California, County of San Diego, State of California because
Plaintiffs allege claims arising under California law.

13 4. This Court has jurisdiction over the Defendants because each is an association, corporation,
14 business entity, or individual that conducts business in the State of California, County of San
15 Diego.

16 5. Pursuant to § 395 of the California Code of Civil Procedure, venue is proper in the Superior
17 Court of California for the County of San Diego because this is where Defendant employed
18 Plaintiff and engaged in the wrongdoing described herein.

19 **PARTIES**

20 6. MARTIN LOZANO, JAMES SPURLOCK, and KRIS WRIGHT (hereafter, "Named
21 Plaintiffs") are individuals and residents of San Diego County.

22 7. SUB OF EL CAJON LLC, BUICK GMC SDNC, LLC, BUICK GMC OF SAN DIEGO,
23 LLC, DEALER NATION AUTOMOTIVE, LLC, MADISON AUTOMOTIVE GROUP, LLC, and
24 CITY+VENTURES, LLC (collectively, the "entity defendants") are limited liability companies
25 that own and/or operate two auto dealerships in the County of San Diego that do business
under the fictitious names of Subaru of El Cajon and South County Buick GMC.

26 8. Daniel White is an individual whose state of residence is believed to be Nebraska.

27 9. Thomas Hervey is an individual whose state of residence is believed to be Texas.

28 10. Ronald Bowie is an individual whose state of residence is believed to be Texas.

11. Terence Brown is an individual and a resident of San Diego, California.

12. Daniel White, Thomas Hervey, Ronald Bowie, and Terence Brown are each owners, director, officers, and/or managing agents of one or more of the entity defendants within the meaning of Labor Code Section 558.1.

13. DOES 1 through 50 are individuals and entities who are responsible in some manner for the claims and injuries alleged by Plaintiff in this Complaint. Plaintiff is presently ignorant of the names and identities of DOES 1 through 50, but will amend this complaint to allege the same upon receipt of that information.

14. All named defendants and DOES 1 through 50 are hereafter referred to collectively as "Defendants."

15. Plaintiff is informed and believes that each of the defendants was the agent or employee of each of the other defendants and acted in the scope of agency or employment.

16. Venue is proper in San Diego County because the acts/omissions giving rise to Plaintiffs claims arose in San Diego county.

17. Plaintiffs are informed and believe, and based thereon allege, that at all times relevant herein each Defendant was acting as an agent, joint venture, or as an integrated enterprise and/or alter ego for each of the other Defendants, and each was a co-conspirator with respect to the acts and the wrongful conduct alleged herein, so that each is responsible for the acts of the other in connection with the conspiracy and in proximate connection with the other Defendants.

18. Plaintiffs are informed and believe, and based thereon allege, that each Defendant was acting partly within and partly without the scope and course of their employment, and was acting with the knowledge, permission, consent, and ratification of every other Defendant.

19. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants was an agent, officer, director, managing general partner, managing member, owner, co-owner, partner, employee, and/or representative of each of the Defendants, and were at all times material hereto, acting within the purpose and scope of such agency, employment, contract and/or representation, and that each of them are jointly and severally liable to Plaintiffs and the Aggrieved Employees for the acts alleged herein.

FACTUAL ALLEGATIONS

20. Subaru of El Cajon (hereafter, the "Subaru Dealership") is an auto dealership located at 900 Arnele Ave El Cajon, CA 92020.

21. South County Buick GMC (hereafter, the "Buick dealership") is an auto dealership

1 located at 2202 National City Blvd, National City, CA 91950.

2 22. Plaintiff James Spurlock (“Spurlock”) was employed at the Subaru dealership from
3 approximately December 27, 2022 until February 22, 2023. Spurlock was then employed from
4 approximately February 22, 2023 to May 22, 2023 at the Buick dealership.

5 23. Plaintiff Martin Lozano (“Lozano”) was employed by at the Buick dealership from
6 approximately December 8, 2022 until February 23, 2023.

7 24. Plaintiff Kris Wright (“Wright”) was employed by Subaru dealership from
8 approximately January 13, 2023 to May 19, 2023.

9 25. Named Plaintiffs were non-exempt employees.

10 REPRESENTATIVE ACTION (I.E., PAGA) CLAIMS

11 26. Plaintiffs seek penalties under the PAGA, pursuant to §§ 2698, 2699, *et seq.*, on behalf of
12 the following group:

13 **All individuals who worked at the Subaru of El Cajon dealership or the South County Buick
14 GMC dealership at any time from one year before the PAGA Notice submission to the date of
15 final judgment in this action.**

16 27. All members of this group will be referred to as the “Aggrieved Employees.”

17 28. The “PAGA Period” means from **one year before the PAGA Notice submission through
18 the date of final judgment in this action.**

19 29. California law provides that an employee may file an action against an employer for
20 penalties in connection with violations of the Labor Code and Wage Orders on behalf of him or
21 herself and other aggrieved current and former employees.

22 30. At all material times, Defendants and DOES 1 through 50 were and/or are Aggrieved
23 Employees’ employers or persons acting on behalf of Aggrieved Employees’ employer, within the
24 meaning of California Labor Code § 558.1, who violated or caused to be violated, a section of Part
25 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in
26 any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
27 underpaid employee as set for in, *inter alia*, in Labor Code § 558.

28 31. Plaintiff will have sent notice to the California Labor and Workforce Development Agency
(hereinafter referred to as “LWDA”) and to Defendants informing Defendants of Plaintiffs’ claims
and their intent to pursue litigation, including the specific sections of the California Labor Code
that Defendants violated.

32. Thus, Plaintiffs will have exhausted their administrative remedies and will be entitled to pursue claims and remedies as authorized by PAGA.

33. The Causes of Action alleged herein are appropriately suited for a Representative Action under PAGA (Labor Code § 2698, *et seq.*) because:

- a. This action alleges violations of California Labor Code provisions that provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies, or employees;
- b. Plaintiffs are “aggrieved employees” because Plaintiffs were employed by the alleged violator and had one or more of the Labor Code violations alleged on this Complaint committed against them; and
- c. Plaintiffs will have satisfied the procedural requirements of Labor Code § 2699.3, as set forth above.

CLASS ACTION ALLEGATIONS

34. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a Class Action.

35. The term “Plaintiff Class” shall be defined as follows :

All current and former employees who worked at the Subaru of El Cajon dealership or the South County Buick GMC dealership from four years 178 days prior to the date of filing this action through the date of final judgment who earned any commission wages or elected to have some part of their wages contributed to a 401(k) retirement plan.

36. Plaintiffs seek to represent the Plaintiff Class and the Wage Statement Subclass defined as follows:

Unpaid Wage Subclass: All members of Plaintiff Class who were employed at the Subaru of El Cajon Dealership or the South County Buick GMC dealership within the applicable statute of limitations period.

Wage Statement Subclass: All members of Plaintiff Class who were employed at the Subaru of El Cajon Dealership or the South County Buick GMC dealership at any time within the applicable statute of

1 limitations period.

2 **Waiting Time Penalty Subclass:** All members of the Plaintiff Class
3 whose employment was terminated during the applicable statute of
4 limitations period and did not receive all wages in a timely manner as
5 required by Labor Code §§ 201-204.

6 37. Members of the Plaintiff Class will be referred to collectively as “Class Members.”

7 38. Plaintiffs reserve the right to amend or modify the class description with
8 greater specificity or further division into Classes or limitation to particular issues.

9 39. This action is brought and may properly be maintained as a Class Action
10 because there is a well-defined community of interest in the litigation and the proposed Class
11 Members are easily ascertainable.

12 **A. Numerosity**

13 40. The potential members of the Class as defined are so numerous or many that joinder of all
14 the members of the Class is impracticable.

15 41. While the precise number of Class Members has not been determined at the time,
16 Defendants during the relevant time periods employed more than 100 Class Members at the Subaru
of El Cajon dealership and the South County Buck dealership.

17 **B. Commonality**

18 42. There are questions of law and fact common to the Class that predominate over any
19 questions affecting only individual Class Members.

20 43. Common questions of law and fact include, without limitation and subject to possible
further amendment, the following:

- 21 a. Whether Defendants unlawfully deducted sums from gross sales prior
22 to calculating Class Members’ commission percentage;
- 23 b. Whether Defendants paid required sums to Class Members’ 401(k)
24 retirement plans.
- 25 c. Whether Defendants’ unlawful deductions resulted in the
26 underpayment of wages to Class Members;
- 27 d. Whether Defendants violated Labor Code § 226 by not providing
28 accurate paystubs to Class Members;
- e. Whether Defendants violated the meal and rest break laws in

1 California;

2 f. Whether Defendants promptly paid all wages owed to Class Members
3 after the termination of the Class Members' employment;

4 g. Whether Class Members may recover remedies pursuant to Business
5 & Professions Code §§ 17200, *et seq.*

6 **C. Typicality**

7 44. Plaintiffs' claims are typical of the claims of the respective Classes
8 because Plaintiffs and members of the proposed Classes sustained similar injuries and damages
9 arising out of and caused by Defendants' common courses of conduct and policies in violation of
10 laws, regulations that have the force and effect of law and statutes as alleged herein.

11 **D. Adequacy of Representation**

12 45. Plaintiffs do not have any conflicts of interest with other Class Members
13 and will prosecute the case vigorously on behalf of the Classes.

14 46. Counsel representing Plaintiffs and the putative Classes are competent
15 and experienced in litigating employment class actions, including wage and hour class actions.

16 47. Plaintiffs will fairly and adequately represent and protect the interests of
17 the Class Members.

18 **E. Superiority of Class Action and Manageability**

19 48. A class action is superior to other available means for the fair and
20 efficient adjudication of the controversy because individual joinder of all Class Members is not
21 practicable, and questions of law and fact common to the Classes predominate over any questions
22 affecting only individual members of the Classes.

23 49. Each Class Member was damaged or suffered injury and may recover remedies because of
24 Defendants' illegal policies and/or practices.

25 50. Class Action treatment will allow those similarly situated persons to litigate their claims in
26 the manner that is most efficient and economical for the parties and the judicial system.

27 51. Plaintiffs are unaware of any difficulties likely to be encountered in the management of this
28 action that would preclude maintenance as a Class Action.

52. At the appropriate time, Plaintiffs will present a trial methodology and plan that will
streamline the action, base liability and damages on common evidence and common modes of
proof through Defendants' corporate records, testimony of corporate common policy and practices,
representative evidence, sampled and presented in a manner consistent with recognized scientific

1 and statistical principles.

2 53. Such methodology may include bifurcation of liability and damages, the use of
3 professionally administered survey evidence, seeking adjudication of class-wide legal issues of
4 specific claims or preliminary factual issues, and other methods or proposals to manage class-wide
5 determinations common to all persons in the proposed Class.

6 54. For the reasons alleged in this Complaint, this action should be certified as a Class Action.

7 **FIRST CAUSE OF ACTION**

8 **UNPAID WAGES AND WAITING TIME PENALTIES**

9 **Individual, Class and PAGA Claim By the Unpaid Wage Subclass, the Waiting Time 10 Penalty Subclass, and Aggrieved Employees Against All Defendants**

11 55. Plaintiffs hereby incorporate by reference and re-alleges as if fully stated herein all
12 previous and subsequent allegations in this complaint.

13 56. Labor Code Section 204 codifies an employee's right to be paid wages and the time within
14 which wages must be paid.

15 57. Labor Code Sections 201 and 202 place further requirements on an employer to pay wages
16 within a shorter period of time upon termination of employment.

17 58. Labor Code Section 203 provides for the imposition of penalties on an employer who fails
18 to pay wages on termination of employment, in violation of Labor Code Sections 201 and 202.

19 59. Defendants failed to pay all wages due to members of the Unpaid Wage Subclass because:

- 20 a. Defendants failed to pay all wages due to commissioned employees because they
21 made unlawful deductions from gross sales prior to calculating employee
22 commissions.
- 23 b. Defendants misstated the number of units sold and the amounts of the sales,
24 thereby calculating commissions based on a deflated figure.
- 25 c. Defendants failed to pay the required sums into employees' 401(k) retirement
26 plans.

27 60. Lab. Code § 203 provides for a waiting time penalty in the event an employer does not
28 timely pay the wages of an employee at the conclusion of their employment. The waiting time
penalty provides that the wages of the employee continue as a penalty at the employee's daily
rate until paid, not to exceed 30 days.

61. The employment of Waiting Time Penalty Subclass members ceased thirty (30) or
more days prior to present.

62. As of the present date, Defendants have not provided the Waiting Time Penalty Subclass with all wages due and payable.

63. Defendants' failure to pay was willful.

64. It has been more than thirty (30) days since the Waiting Time Penalty Subclass were entitled to all wages due and payable.

65. Unpaid Wage Subclass members are entitled to recover all wages and 401(k) payments wrongfully withheld, together with interest on the same.

66. Waiting Time Penalty Subclass members are entitled to their daily wage for a period of thirty (30) days as a penalty.

67. Unpaid Wage Subclass and Waiting Time Penalty Subclass members are entitled to attorney fees and costs pursuant to Lab. Code §§ 1194 and 218.5.

68. Aggrieved Employees seek the imposition of maximum civil penalties against all defendants as provided for under the PAGA, including, without limitation Labor Code Section 2699(f).

SECOND CAUSE OF ACTION

INACCURATE WAGE STATEMENTS IN VIOLATION OF LAB. CODE§ 226

Individual, Class and PAGA claim By the Wage Statement Subclass and Aggrieved Employees Against All Defendants

69. Plaintiff hereby incorporates by reference and re-alleges as if fully stated herein all previous and subsequent allegations in this complaint.

70. Defendants failed to pay all wages due to members of the Wage Statement Subclass because:

- a. Defendants failed to pay all wages due to commissioned employees because they made unlawful deductions from gross sales prior to calculating employee commissions.
- b. Defendants misstated the number of units sold and the amounts of the sales, thereby calculating commissions based on a deflated figure.
- c. Defendants failed to pay the required sums into employees' 401(k) retirement plans.

71. Pursuant to Lab. Code§ 226(a)(1)-(9), employers must issue wage statements to their employees that accurately include 9 distinct pieces of information. The failure to comply with just one of these 9 requirements triggers an employer's liability for statutory damages pursuant

1 to Lab. Code § 226(e).

2 72. The Wage Statement Subclass's pay stubs are deficient and non compliant in that the
3 paystubs failed to accurately state Plaintiff's gross wages or net wages earned, in violation of Lab.
4 Code§ 226(a)(1) and Lab. Code § 226(a)(5),

5 73. As a result, members of the Wage Statement Subclass were harmed in that they were unable
6 to promptly and easily determine from the wage statement alone the information listed in §
7 226(e)(2)(B)(i)-(iii).

8 74. Defendants' failure to comply with the requirements of Lab. Code§ 226(a) was knowing
9 and intentional.

10 75. Pursuant to Lab. Code § 226(e)(1), Wage Statement Subclass members are therefore entitled to a
11 statutory penalty of fifty dollars (\$50) for the initial violation, and one hundred dollars
12 (\$100) per pay period for each subsequent violation.

13 76. Wage Statement Subclass members are also entitled to attorney fees and costs
14 pursuant to Lab. Code § 226.

15 77. Additionally, Defendants' violation of Labor Code section 226 is a wrong redressable
16 under the PAGA, entitling Aggrieved Employees and members of the Wage Statement
17 Subclass to recover civil penalties in the amount of \$100 per pay period for the first violation
18 an \$200 per pay period for each subsequent violation pursuant to Labor Code Section 2699(f).

19 78. Aggrieved Employees seek the imposition of maximum civil penalties against all
20 defendants as provided for under the PAGA, including, without limitation Labor Code Section
21 2699(f).

22 **THIRD CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **Individual and Class Claim By the Plaintiff Class Against All Defendants**

25 79. Plaintiffs hereby incorporate by reference and re-allege as if fully stated herein all
26 previous and subsequent allegations in this complaint.

27 80. Defendants failed to pay all wages due to members of Plaintiff Class because:

- 28 a. Defendants failed to pay all wages due to commissioned employees because they
made unlawful deductions from gross sales prior to calculating employee
commissions.
- b. Defendants misstated the number of units sold and the amounts of the sales,
thereby calculating commissions based on a deflated figure.

c. Defendants failed to pay the required sums into employees' 401(k) retirement plans.

81. Defendants' conduct in failing to pay Plaintiff Class's wages constituted unfair competition.

82. Pursuant to Business and Professions § 17203, Plaintiff Class is entitled to Restitution of all wrongfully withheld wages and premiums.

83. Plaintiff Class may recover attorney fees pursuant to Code of Civil Procedure § 1021.5

FOURTH CAUSE OF ACTION

MEAL PERIOD VIOLATION

Individual Claim By Named Plaintiffs Against All Defendants

84. Named Plaintiffs hereby incorporate by reference and re-allege as if fully stated herein all previous and subsequent allegations in this complaint.

85. During the relevant period, Defendants unlawfully required Named Plaintiffs to work for more than five (5) hours without providing them lawful meal periods of at least thirty (30) minutes, in violation of Lab. Code §§ 226.7 and 512.

86. During the relevant time period, the Defendants failed to pay Named Plaintiffs the meal period premium due pursuant to Lab. Code § 226.7.

87. Therefore, Named Plaintiffs are entitled to relief provided by Lab. Code § 226.7 in the amount equal to an additional one (1) hour of pay at Named Plaintiffs' regular rate of compensation for each day that a meal period was not provided.

88. Named Plaintiffs are entitled to attorney fees and costs pursuant to Lab. Code §§ 1194 and 218.5.

FIFTH CAUSE OF ACTION

REST PERIOD VIOLATION

Individual Claim By Named Plaintiffs Against All Defendants

89. Named Plaintiffs hereby incorporate by reference and re-allege as if fully stated herein all previous and subsequent allegations in this complaint.

90. The applicable wage order and Lab. Code § 226.7 are applicable to Named Plaintiffs' employment by Defendants.

91. Lab. Code § 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the IWC.

1 92. The applicable Wage Order provides that "[e]very employer shall authorize and permit
2 all employees to take rest periods, which insofar as practicable shall be in the middle of each
3 work period" and that the "rest period time shall be based on the total hours worked daily at the
4 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 (3½) hours.

5 93. During the relevant time period, Defendants willfully required Named Plaintiffs to
6 work four (4) or more hours without authorizing or permitting legally compliant, ten (10)
7 minute rest periods per each four (4) hour period worked.

8 94. During the relevant time period, Defendants failed to pay Named Plaintiffs the rest
9 period premium due pursuant to Lab. Code § 226.7.

10 95. Defendant's' conduct violates the applicable Wage Order and Lab. Code§ 226.7.

11 96. Pursuant to the applicable wage order and Lab. Code§ 226.7(b), Named Plaintiffs are
12 entitled to recover from Defendants one (1) additional hour of pay at their regular hourly rate of
compensation for each work day that any rest period was not provided.

13 97. Named Plaintiffs are entitled to attorney fees and costs pursuant to Lab. Code §§
14 1194 and 218.5.

15 **SIXTH CAUSE OF ACTION**

16 **UNPAID WAGES AND WAITING TIME PENALTIES**

17 **Individual Claim By Named Plaintiffs Against All Defendants**

18 98. Named Plaintiffs hereby incorporate by reference and re-allege as if fully stated herein all
previous and subsequent allegations in this complaint.

19 99. Defendants paid Named Plaintiffs with a monthly draw against commissions in the
20 approximate amount of \$5,374. Defendants did not pay Named Plaintiffs hourly, instead paying
21 Named Plaintiffs only the draw and commissions, where applicable. Named Plaintiffs were not
22 separately compensated for their overtime hours, and are entitled to compensation for unpaid
wages in the amount of 1.5 times their regular rate of pay for each overtime hour worked.

23 100. Defendants did not pay Named Plaintiffs all wages owed, including meal period and
24 rest period premium pay and overtime pay.

25 101. Defendants were aware they failed to pay Named Plaintiffs all wages, including
26 overtime pay and meal and rest period pay, at the conclusion of their employment.

27 102. Defendants' failure to pay Named Plaintiffs all wages due at the conclusion of their
28 employment was willful.

1 103. Lab. Code § 203 provides for a waiting time penalty in the event an employer does not
2 timely pay the wages of an employee at the conclusion of their employment. The waiting time
3 penalty provides that the wages of the employee continue as a penalty at the employee's daily
4 rate until paid, not to exceed 30 days.

5 104. Each Named Plaintiffs' employment with Defendants ended more than thirty (30) days
6 before the present date.

7 105. As of the present date, Defendants have not provided any Named Plaintiff with all
8 wages due and payable.

9 106. Defendants have not compensated Plaintiff with the overtime pay or premium pay owed
10 for missed and/or non-compliant meal or rest periods.

11 107. Defendants' failure to pay was willful.

12 108. Named Plaintiffs are entitled to recover all unpaid compensation, as well as
13 prejudgment interest.

14 109. Named Plaintiffs are entitled to their daily wage for a period of thirty (30) days as a
15 waiting time penalty under Labor Code section 203.

16 110. Named Plaintiffs are entitled to attorney fees and costs pursuant to Lab. Code §§
17 1194 and 218.5.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO PRODUCE PAY RECORDS**

20 **Individual Claim By Martin Lozano and James Spurlock Against the Entity Defendants**

21 111. Lozano and Spurlock hereby incorporate by reference and re-allege as if fully stated herein all
22 previous and subsequent allegations in this complaint.

23 112. Under Labor Code § 226(c), "[a]n employer who receives a written or oral request to inspect or
24 receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall
25 comply with the request as soon as practicable, but no later than 21 calendar days from the date of the
26 request."

27 113. Plaintiffs sent record requests to Defendants as follows:

28 a. James Spurlock, on May 26, 2023.

b. Martin Lozano, on March 20, 2023, May 5, 2023, and May 18, 2023.

114. Defendants failed to timely produce the records they were required to.

1 115. Under Labor Code § 226(f), “[a] failure by an employer to permit a current or former employee to
2 inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former
3 employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the
4 employer.”

5 116. Under Labor Code § 226(h), “[a]n employee may also bring an action for injunctive relief to
6 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney’s fees.”

7 117. Under Labor Code § 226(h) and otherwise, Lozano and Spurlock each seek a \$750 penalty for each
8 request sent, and injunctive relief in the form of an order that Defendants fully comply with their production
9 obligations, attorney’s fees, and costs.

10 **EIGHTH CAUSE OF ACTION**
11 **FAILURE TO PRODUCE PERSONNEL FILE**
12 **By All Plaintiffs Against All Defendants**

13 118. Plaintiffs hereby incorporate by reference and re-allege as if fully stated herein all previous and
14 subsequent allegations in this complaint.

15 119. Under Labor Code § 1198.5, “[e]very current and former employee, or his or her representative,
16 has the right to inspect and receive a copy of the personnel records that the employer maintains relating to
17 the employee’s performance or to any grievance concerning the employee... not later than 30 calendar days
18 from the date the employer receives a written request...”

19 120. Plaintiffs sent record requests to Defendants as follows:

20 a. James Spurlock, on May 26, 2023.

21 b. Martin Lozano, on March 20, 2023, May 5, 2023, and May 18, 2023.

22 121. Defendants failed to timely produce the records it was required to under Labor Code § 1198.5.

23 122. Under Labor Code § 1198.5(k), “[i]f an employer fails to permit a current or former employee,
24 or his or her representative, to inspect or copy personnel records within the times specified in this section, or
25 times agreed to by mutual agreement as provided in this section, the current or former employee or the
26 Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.”

27 123. Under Labor Code § 1198.5(l), “[a] current or former employee may also bring an action for
28 injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney’s fees

1 in such an action.”

2 124. Under Labor Code § 1198.5(k),(l), and otherwise, Lozano and Spurlock each seek the \$750 penalty
3 for each request sent, injunctive relief in the form of an order that Defendants fully comply with their
4 production obligations, attorney’s fees, and costs.

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiff prays for the following relief:

7 1. Special damages.

8 2. Premium pay as allowable by law including, without limitation, Lab. Code §§ 226.7
and 512.

9 3. Waiting time penalties as allowable by law including, without limitation, Lab. Code §
10 203.

11 4. Unpaid wages according to proof.

12 5. Restitution of unpaid wages and premium pay according to proof.

13 6. Interest as allowable by law including, without limitation, Lab. Code § 218.6.

14 7. Attorney fees where allowable by law including, without limitation, Lab. Code § 218.5,
Lab. Code § 1194 and Lab. Code § 226.

15 8. Statutory damages where allowable by law including, without limitation, Lab. Code §
16 226(e).

17 9. maximum civil penalties against all defendants as provided for under the PAGA,
18 including, without limitation Labor Code Section 2699(f).

19 10. Statutory penalties, attorney fees, costs, and injunctive relief for failure to produce
20 personnel files and pay records, pursuant to Labor Code Sections 226 and 1198.5.

21 11. Costs.

22 12. Such other and further relief as the Court deems just and proper.

23 Date: July 3, 2023

THE LAW OFFICE OF IAN PANCER

24 /s/ Ian Pancer

25 Ian Pancer, Esq.

26 Attorneys for Named Plaintiffs, Aggrieved

27 Employees, and the Plaintiff Class