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 Superior Court of California
 County of Los Angeles
 10/13/2023

David W. Slayton, Executive Officer / Clerk of Court

By: T. Bivins Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

EDGAR ESTRADA, an individual, on behalf
 of himself and others similarly situated

PLAINTIFF,

v.

UNITED AUTO AND TRUCK, INC.; and
 DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 23STCV18569

**[Case Assigned for All Purposes to
 Lawrence P. Riff in Dept. 7]**

**[Amended as a matter of right, pursuant to
 Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND
 REPRESENTATIVE ACTION
 COMPLAINT**

1. Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7
2. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
3. Violation of Labor Code § 226(a)
4. Penalties Pursuant to Labor Code § 203
5. Violation of Business & Professions Code § 17200
6. Penalties Pursuant to Labor Code §2699, et seq.

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1 Plaintiff EDGAR ESTRADA, an individual, on behalf of himself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, § 2699, *et seq.* (hereafter “PAGA”),
4 complains of Defendant UNITED AUTO AND TRUCK, INC. (“Defendant”) and each of them,
5 as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382, on behalf of Plaintiff and a Proposed Class defined as:

10 All persons who are employed or have been employed as a non-
11 exempt employee by UNITED AUTO AND TRUCK, INC., in the
12 State of California since four (4) years prior to the filing of this
action to the present. (“Proposed Class”)

13 2. For at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
15 their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class
16 Members within the State of California, including Plaintiff, rest periods of at least ten (10) minutes
17 per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour
18 of pay at the employee’s regular rate of compensation for each workday that the rest period was
19 not provided, as required by California state wage and hour laws. Further, Defendant also had a
20 consistent policy of paying rest period premiums at the base rate and not the blended rate in
21 violation of *Ferra v. Loews Hollywood Hotel, LLC* and Labor Code §§ 226.7.

22 3. For at least four (4) years prior to the filing of this action and continuing to the
23 present, Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of purchasing
24 specialized tools necessary to perform their job duties. The work performed by Plaintiff and the
25 Proposed Class necessitated the use of special tools. Defendant provided inadequate rusty and old
26 tools, and so Plaintiff and the Proposed Class had to purchase tools necessary to perform their job
27 duties. As a result, Plaintiff and the Proposed Class purchased these tools and Defendant never
28 reimbursed them for the cost.

4. For at least one (1) year prior to the filing of this action continuing to the present, Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 4-2001 and Labor Code § 226(a) by failing to provide Plaintiff and the Proposed Class accurate itemized wage statements in writing showing the total hours worked at each applicable hourly rate in effect during the pay period and the corresponding number of hours worked at each hourly rate by Plaintiff and the members of the Proposed Class.

5. For at least three (3) years prior to the filing of this action continuing to the present, Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and the Proposed Class.

6. Plaintiff, on behalf of himself and all Proposed Class Members brings this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, and 2802; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking rest period penalties, unreimbursed expenses, accurate itemized wage statements, other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

7. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

8. For at least one (1) year prior to the date of the letter sent to the Labor Workforce and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to PAGA, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or formerly employed by Defendant during the liability period as defined in their PAGA notice letter (*see* Exhibit “1”), brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant’s violations of Labor §§ 201, 202, 203, 226(a), 226.7, and 2802.

II.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure

§ 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

10. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of Los Angeles and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within Los Angeles County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class Members within the State of California and the county of Los Angeles.

12. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

13. Plaintiff files this amended complaint adding a claim for penalties pursuant to Labor Code § 2699, *et seq.* as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C)].

III.

PARTIES

A. PLAINTIFF

14. Plaintiff EDGAR ESTRADA is a resident of California.

15. Plaintiff and all Proposed Class Members, were regularly required to:

- a. Work without being provided rest periods;
- b. Work without being reimbursed for their out of pocket expenses; and,
- c. Work without being provided accurate itemized wage statements;

16. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members for wages at the termination of their employment with Defendant.

1 17. As a result of this conduct, Defendant has engaged in unfair competition and
2 unlawful business practices.

3 18. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA
4 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
5 §2699(c).)

6 **B. DEFENDANTS**

7 19. Defendant UNITED AUTO AND TRUCK, INC. is believed to be a California
8 corporation operating within the State of California. Defendant’s corporate address is believed to
9 be 13101 Foothill Blvd, Sylmar, CA 91343. Upon information and belief, Defendant employed
10 Plaintiff and similarly situated persons as hourly employees within California. Defendant has done
11 and does business throughout the State of California.

12 20. The true names and capacities, whether individual, corporate, associate, or
13 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
14 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
15 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
16 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
17 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
18 capacities of the Defendants designated hereinafter as DOES when such identities become known.

19 21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
20 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
21 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
22 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
23 employer and/or joint employer of Plaintiff and the Proposed Class Members.

24 22. Furthermore, Defendants acted in all respects as the employers or joint employers
25 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
26 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
27 engaged, thereby creating a common law employment relationship, with the Proposed Class.
28 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

1 **IV.**

2 **FACTUAL BACKGROUND**

3 23. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
4 classified as non-exempt employees by Defendant. Defendant hires employees who work as
5 hourly employees who are paid on an hourly basis.

6 24. Upon information and belief, Plaintiff and the Proposed Class are covered by
7 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
8 Code of Regs. § 11040).

9 25. On a regular and consistent basis, Plaintiff and the Proposed Class have been
10 required to work four hour increments (or major fractions thereof) without being provided with a
11 ten (10) minute rest period. Defendant also failed to pay such employees one (1) hour of pay at
12 the employee's regular rate of compensation for each work day that the complaint rest period was
13 not provided, as required by California state wage and hour laws. Defendant has had a consistent
14 policy of paying rest period premiums at the base rate and not the blended rate, when rest break
15 premiums are provided, as required. Additionally, Defendant failed to inform Plaintiff and the
16 Proposed Class of their right to take rest periods by way of a lawful policy.

17 26. On a regular and consistent basis, Plaintiff and the Proposed Class have not been
18 properly reimbursed expenses associated with the cost of tools necessary for the completion of
19 their job duties.

20 27. Defendant has failed to comply with Industrial Welfare Commission ("IWC")
21 Wage Order 4-2001(7) and Labor Code § 226(a) by failing to maintain time records showing total
22 hours worked by the employee and all applicable hourly rates in effect during the pay period and
23 the corresponding number of hours worked at each hourly rate by the employee for Plaintiff and
24 the Proposed Class.

25 28. Defendant willfully failed to pay wages and compensation, when Plaintiff and all
26 Proposed Class Members quit or were discharged. This failure was willful, without legal
27 justification, and interfered with Plaintiff's and Class Members' rights.

28 29.

30. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

V.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class composed of and defined as follows:

All persons who are employed or have been employed as a non-exempt employee by UNITED AUTO AND TRUCK, INC., in the State of California since four (4) years prior to the filing of this action to the present. (“Proposed Class”)

32. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

33. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. NUMEROSITY

34. The potential members of the Proposed Class as defined are so numerous that joinder of all the members of the Proposed Class is impracticable. While the precise number of proposed Class Members has not been determined at this time, Plaintiff is informed and believes that Defendant currently employ, and during the relevant time periods employed over 50 members of the Proposed Class.

35. Plaintiff alleges that Defendant's employment records would provide information as to the number and location of all Proposed Class Members. Joinder of all members of the Proposed Class is not practicable.

B. COMMONALITY

36. There are questions of law and fact common to the Proposed Class that predominate over any questions affecting only individual Proposed Class Members. These common questions of law and fact include, without limitation:

1 a. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4 -
2 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
3 of their right to take rest periods and failing to provide required rest periods throughout the term
4 of employment and failing to compensate said employees one (1) hours wages in lieu of rest
5 periods;

6 b. Whether Defendants violated Labor Code § 2802 and/or Wage Order 4-
7 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the
8 cost of tools;

9 c. Whether Defendants violated Labor Code § 226(a) and Wage Order 4-2001
10 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to
11 furnish accurate itemized wage statements that accurately show total hours worked, all applicable
12 hourly rates in effect during the pay period and the corresponding number of hours worked at each
13 hourly rate, for Plaintiff and the members of the Proposed Class;

14 d. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
15 compensation due and owing at the time that any Proposed Class Member's employment with
16 Defendant terminated;

17 e. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
18 Code by engaging in the acts previously alleged; and

19 f. Whether Plaintiff and the members of the Proposed Class are entitled to
20 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

21 g. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts
22 alleged herein.

23 **C. TYPICALITY**

24 37. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
25 all members of the Proposed Class sustained injuries and damages arising out of and caused by
26 Defendant's common course of conduct in violation of laws, regulations that have the force and
27 effect of law, and statutes as alleged herein.

28 ///

1 **D. ADEQUACY OF REPRESENTATION**

2 38. Plaintiff will fairly and adequately represent and protect the interests of the
3 members of the proposed Class.

4 39. Counsel who represent Plaintiff and the Proposed Class are competent and
5 experienced in litigating large employment class actions.

6 **E. SUPERIORITY OF CLASS ACTION**

7 40. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
9 practicable, and questions of law and fact common to the Proposed Class predominate over any
10 questions affecting only individual members of the Proposed Class. Each member of the Proposed
11 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
12 practice of failing to provide meal and rest periods, failing to reimburse expenses, failing to provide
13 accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

14 41. Class action treatment will allow those similarly situated persons to litigate their
15 claims in the manner that is most efficient and economical for the parties and the judicial system.
16 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
17 action that would preclude its maintenance as a class action.

18 **VI.**

19 **FIRST CAUSE OF ACTION**

20 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

21 **FAILURE TO ALLOW REST PERIODS PURSUANT TO**

22 **LABOR CODE § 226.7**

23 42. Plaintiff, on behalf of himself and the proposed Class, realleges and incorporates
24 by reference all previous paragraphs.

25 43. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
26 compensation for each rest period the employer fails to provide. Employees are entitled to a paid
27 ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant
28 failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

1 44. Plaintiff and the Class consistently worked shifts with no rest breaks, and Defendant
2 failed to maintain an accurate policy advising Plaintiff and the Class of these rest breaks and failed
3 to provide Plaintiff and the Class with rest breaks of not less than ten (10) minutes as required by
4 the Labor Code during the relevant time period. Rest breaks were frequently missed, interrupted,
5 or late, as Plaintiff and the Proposed Class had a heavy workload and were not always able to take
6 a rest break.

7 45. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff
8 and the Proposed Class with a second rest period despite regularly requiring Plaintiff and the
9 Proposed Class work over six (6) hours.

10 46. As a result, Defendant failed to provide Plaintiff and the Proposed Class with
11 compliant rest periods.

12 47. Further, Plaintiff and the Proposed Class were not compensated with one (1) hour
13 of wages at the regular rate of compensation for each compliant rest period that was not provided
14 as required by Labor Code § 226.7. In *Ferra v. Loews Hollywood Hotel, LLC*, the California
15 Supreme Court set forth the formula for calculating the one extra hour of premium pay that
16 employees are owed if an employer fails to provide a compliant meal period or rest break.
17 Specifically, the Court held that those premium payments must include the hourly value of any
18 nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an
19 employee's base hourly rate. *Ferra* requires the rest period premium payments must include the
20 hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot
21 simply be paid at an employee's base hourly rate. Here, when rest premiums are provided,
22 Defendant has had a consistent policy of paying rest period premiums at the base rate and not the
23 blended rate in violation of Labor Code §§ 226.7.

24 48. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
25 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven
26 at trial.

27 ///

28 ///

1 **VII.**

2 **SECOND CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

5 **LABOR CODE § 2802**

6 49. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 50. Labor Code § 2802 requires employers to indemnify employees for all necessary
9 expenditures incurred by employees in the discharge of their duties.

10 51. Defendants have failed to reimburse Plaintiff and the Proposed Class for the cost
11 of using tools that were not provided by Defendant but were necessary for the performance of
12 Plaintiff and the Proposed Class's job duties. Defendant provided tools for Plaintiff and the
13 Proposed Class to perform their duties, however these tools were old and rusty, and prevented
14 Plaintiff and the Proposed Class from performing their job duties. As a result, Plaintiff and the
15 Proposed Class had to purchase tools/equipment that was necessary to perform their job duties.
16 This tools/equipment were not provided by Defendant, and Defendant failed to reimburse Plaintiff
17 and the Proposed Class for the costs associated with using this personal tools/equipment.

18 52. As a result of the unlawful acts of Defendants, Plaintiff and the Proposed Class
19 have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
20 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

21 **VIII.**

22 **THIRD CAUSE OF ACTION**

23 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

24 **VIOLATION OF LABOR CODE § 226(A)**

25 53. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
26 by reference all previous paragraphs.

27 54. California Labor Code § 226(a) requires employers to issue wage statements that
28 accurately report total hours worked, and the corresponding number of hours worked at each

hourly rate, and that contain the address of the legal entity that is the employer. (Labor Code §§ 226(a)(2) and (9).)

55. As a result of Defendant's failure to pay wages as described above, Defendant has failed to include the appropriate rates of pay and the accurate hours worked on itemized wage statements for Plaintiff and the Proposed Class.

56. IWC Wage Orders 4-2001(7), 4-2000(7), 4-1998(7) require defendants to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statements, and must show all deductions from payment of wages, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate, and accurately report total hours worked by Plaintiff and the members of the proposed Class. Defendant failed to keep accurate records of the total daily hours worked.

57. Labor Code § 226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiff and the Class are issued wage statements that do not include the total hours worked by the employee.

58. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the Class are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

59. Defendants' failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

60. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an

1 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
2 reasonable attorneys' fees.

3 **IX.**

4 **FOURTH CAUSE OF ACTION**

5 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

6 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

7 61. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
8 by reference all previous paragraphs.

9 62. Numerous members of the Proposed Class including the Plaintiff are no longer
10 employed by Defendant. They were either fired or quit Defendant's employ.

11 63. Defendant's failure to pay wages, as alleged above was willful in that Defendant
12 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
13 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
14 penalty until paid for a period of up to thirty (30) days from the time they were due.

15 64. Defendant has failed to pay Plaintiff and others a sum certain at the time of
16 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
17 sums for thirty (30) days thereafter. (See *Huff v. Securitas Security Services USA, Inc.* (2018) 23
18 Cal.App.5th 745, 754, reh'g denied (June 13, 2018), review denied (Aug. 8, 2018), allowing named
19 Plaintiff to pursue penalties for violations that he may not have personally suffered.

20 65. Pursuant to the provisions of Labor Code § 203, Plaintiff and the Proposed Class
21 are entitled to a penalty in the amount of Plaintiff's and the Proposed Class Members' daily wage
22 multiplied by thirty (30) days.

23 **X.**

24 **FIFTH CAUSE OF ACTION**

25 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

26 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

27 66. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
28 by reference all previous paragraphs.

1 67. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
2 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
3 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
4 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
5 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
6 interest within the meaning of Code of Civil Procedure § 1021.5.

7 68. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
8 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
9 appropriate equitable relief.

10 69. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
11 practices.

12 70. California’s wage and hour laws express fundamental public policies. Providing
13 employees with proper wages and compensation are fundamental public policies of this State and
14 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
15 vigorously minimum labor standards, to ensure that employees are not required or permitted to
16 work under substandard and unlawful conditions, and to protect law-abiding employers and their
17 employees from competitors who lower their costs by failing to comply with minimum labor
18 standards.

19 71. Defendant has violated statutes and public policies as alleged herein. Through the
20 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
21 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
22 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
23 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
24 guaranteed to all employees under law.

25 72. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
26 violation of § 17200, *et seq.* of the Business & Professions Code.

27 73. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
28 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of

§ 17200, *et seq.* of the Business & Professions Code.

74. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and others similarly situated have been damaged in a sum as may be proven.

75. Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the proposed Class the money Defendant has unlawfully failed to pay.

XI.

SIXTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF THEMSELVES AND THE AGGRIEVED EMPLOYEES

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

83. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

84. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code § 2699, *et seq.* use of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, and 2802; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

85. For each such penalty, Plaintiff and the aggrieved employees are entitled to penalties in an amount to be shown at trial, subject to the following formula:

a. \$100 for the initial violation per employee per pay period.

b. \$200 for each subsequent violation per employee per pay period.

86. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

87. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the

1 LWDA¹ and mailed a letter by certified mail to Defendant's entity address, which is 13101 Foothill
2 Blvd, Sylmar, CA 91343, as proscribed by the Code on August 4, 2023, describing Defendant's
3 conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, and 2802, (*see* Exhibit "1.")
4 Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice
5 (*see* Exhibit "2").

6 88. As no letter evidencing the LWDA's intention to investigate was received by
7 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
8 action as though the LWDA had not chosen to investigate pursuant to Labor Code
9 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
10 Amended Class and Representative Action Complaint immediately.

11 **RELIEF REQUESTED**

12 **WHEREFORE**, Plaintiff prays for the following relief:

13 1. For compensatory damages in the amount of Plaintiff's and each Proposed Class
14 Members' hourly wage for each rest period missed or taken late from at least four (4) years prior
15 to the filing of this action to the present as may be proven;

16 2. For compensatory damages in the amount of Plaintiff's and each Proposed Class
17 Members' unreimbursed out of pocket expenses as a requirement of employment;

18 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
19 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
20 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
21 an aggregate penalty of four thousand dollars (\$4,000);

22 4. For penalties pursuant to Labor Code § 203 for all employees who were terminated
23 or resigned equal to their daily wage times thirty (30) days;

24 5. An award of prejudgment and post judgment interest;

25 6. An order enjoining Defendant and its agents, servants, and employees, and all
26 persons acting under, in concert with, or for it from providing Plaintiff with rest periods,

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 reimbursed expenses, accurate itemized wage statements, and wages upon termination/resignation
2 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, , 2802, and IWC 4-2001;

3 7. For restitution for unfair competition pursuant to Business & Professions Code
4 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

5 8. For penalties and other relief pursuant to Labor Code §2699, *et seq.* for Plaintiff
6 and all other Aggrieved Employees for Defendant's violation of Labor Code §§ 201, 202, 203,
7 226(a), 226.7, and 2802; Wage Order 4-2001; and California Code of Regulations, Title 8, Section
8 11040;

9 9. An award providing for payment of costs of suit;

10 10. An award of attorneys' fees; and

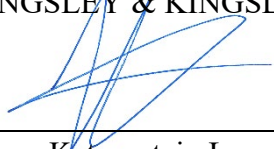
11 11. Such other and further relief as this Court may deem proper and just.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

14
15 DATED: October 13, 2023

KINGSLEY & KINGSLEY, APC

16
17 By: 

Liane Katzenstein Ly

Attorneys for Plaintiff and the Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

August 4, 2023

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

United Auto and Truck, Inc.
13101 Foothill Blvd
Sylmar, CA 91343
Via Certified Mailing # 7022 3330 0002 1335 6925

Re: Edgar Estrada v. United Auto and Truck, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Edgar Estrada (“Plaintiff”) and a proposed group of current and former employees working for United Auto and Truck, Inc. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee by United Auto and Truck, Inc., in the State of California since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a second rest period despite regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. As Such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 4, 2023

Page 2 of 3

nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Plaintiff and all aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each compliant rest period that was not provided as required by Labor Code § 226.7. *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when rest premiums are provided, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7

In addition, Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal tools for business related purposes. Defendant provided tools for Plaintiff and the aggrieved employees to perform their duties, however these tools were old and rusty, and prevented Plaintiff and the aggrieved employees from performing their job duties. As a result, Plaintiff and the aggrieved employees had to purchase tools/equipment that was necessary to perform their job duties. This tools/equipment were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using this personal tools/equipment.

As a result of the claims alleged above, Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the total hours worked by the employee. As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendants has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Also, Defendant issued to Plaintiff and the aggrieved employees itemized wage statements that did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9). The itemized wage statements provided to Plaintiff and the aggrieved employees did not include the hours worked at each hourly rate.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 4, 2023

Page 3 of 3

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203. As such, Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §§201, 202, and 203. (See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754, reh’g denied (June 13, 2018), review denied (Aug. 8, 2018), allowing named Plaintiff to pursue PAGA penalties for violations not personally suffered.

Plaintiff also brings a claim on behalf of himself only for a violation of Labor Code §§ 226 and 1198.5. Plaintiff requested the right to review his personnel file and his pay records by sending a letter to Defendant. Defendant refused to provide the requested documentation in violation of these statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§ 226 and 1198.5 with respect to Plaintiff only.

Further, under Labor Code § 2699.3(c)(2)(A), Defendant may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226, 226(a), 226.7, 1198.5, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly

[LKL/tg]

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Liane

Your Last Name *

Katzenstein Ly

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

(818) 990-8300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Edgar Estrada

Plaintiff/Aggrieved Employee Occupation *

Mechanic

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

United Auto and Truck, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

13101 Foothill Blvd

Employer City *

Sylmar

Employer State *

California

Employer Zip/Postal Code *

91343

Employer Industry *

Auto Repair

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information**Estimated Number of Employees Impacted by Violations ***

50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Child Labor – Specify Ages**Provide Details of Other Violation ***

Violation of Labor Code Sections 226 & 1198.5

Other(Maybe Multiple)☐ Other Violation

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information**Billing First Name ***

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

(818) 990-8300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Boulevard Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

[REDACTED]

Credit Card Number *

[REDACTED]

CVV Number *

[REDACTED]

Credit Card Expiration Month *[REDACTED]
mm**Credit Card Expiration Year ***[REDACTED]
yyyy**Notice and Other Attachments****PAGA Claim Notice (must be a .pdf) ***[Choose File](#) PAGA Letter – ...and Truck.pdf**Other Attachment – (if any) (must be a .pdf)**[Choose File](#) No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

Thank you for submission of your PAGA Case.

noreply@salesforce.com <noreply@salesforce.com>

on behalf of

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Fri 8/4/2023 12:20 PM

To: **Service Email** <service@kingsleykingsley.com>

External Email!

8/4/2023

LWDA Case No. LWDA-CM-972931-23

Law Firm : Kingsley & Kingsley, APC

Plaintiff Name : Edgar Estrada

Employer: United Auto and Truck, Inc.

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate Attorneys General Act.htm&data=05%7C01%7CTaylor%40kingsleykingsley.com%7Cae50b7cdb2ac4c21ff7608db951fdc52%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638267736307057346%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=Ek57P2t4MxvWoygd8n6JorCl6ODeBuKr3YNtcka6erY%3D&reserved=0](https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate%20Attorneys%20General%20Act.htm&data=05%7C01%7CTaylor%40kingsleykingsley.com%7Cae50b7cdb2ac4c21ff7608db951fdc52%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638267736307057346%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=Ek57P2t4MxvWoygd8n6JorCl6ODeBuKr3YNtcka6erY%3D&reserved=0)

State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

noreply@salesforce.com <noreply@salesforce.com>

on behalf of

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Fri 8/4/2023 12:20 PM

To: **Service Email** <service@kingsleykingsley.com>

External Email!

Thank you for your payment.

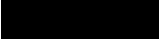
Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-972931-23

Order Number: ORD-000245610

Total: \$75.00

Card Type: 

Date: 8/4/2023

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Boulevard Suite 1200

Encino, California

91436