

1 BRANDON BROUILLETTE, ESQ. (SBN 273156)

2 bbrouillette@crosnerlegal.com

3 RAYMOND WENDELL, ESQ. (SBN 298333)

4 rwendell@crosnerlegal.com

5 ZACHARY M. CROSNER, ESQ. (SBN 272295)

6 zach@crosnerlegal.com

7 **CROSNER LEGAL, PC**

8 9440 Santa Monica Blvd. Suite 301

9 Beverly Hills, CA 90210

10 Tel: (866) 276-7637

11 Fax: (310) 510-6429

12 Attorneys for Plaintiff MARCO OLASABA

13 As an individual and on behalf of all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES**

16 MARCO OLASABA, as an individual and
17 on behalf of all other similarly situated
18 Class Members,

19 Plaintiff,

20 v.

21 LITHIA MOTORS, INC., an Oregon
22 Corporation; VAN NUYS-T, INC., a
23 California Corporation; and DOES 1-100,
24 inclusive,

25 Defendants.

Case No.: **24STCV31335**

CLASS ACTION COMPLAINT FOR:

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized Wage Statements**
6. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
7. **Failure to Reimburse Business Expenses and**
8. **Unfair Competition**

DEMAND FOR JURY TRIAL

1 Plaintiff, MARCO OLASABA (“PLAINTIFF”), as an individual and on behalf of all other
2 similarly situated Class Members (as defined below), hereby files this Complaint against Defendants
3 LITHIA MOTORS, INC., an Oregon Corporation; VAN NUYS-T, INC., a California Corporation;
4 and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is
5 informed and believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
9 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
10 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
11 PLAINTIFF herein occurred in this this judicial district. Venue is also proper pursuant to section
12 393 of the California Code of Civil Procedure because the cause, or some part of the cause, arose in
13 the County of Los Angeles.

14 **THE PARTIES**

15 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
16 California and a citizen of the State of California.

17 3. PLAINTIFF MARCO OLASABA (“PLAINTIFF OLASABA”) worked for
18 DEFENDANTS as a non-exempt employee with a job title of cashier and/or a similar title(s) and/or
19 job position(s) from in or around May 2023, through in or around October 2023. PLAINTIFF
20 OLASABA worked for DEFENDANTS at DEFENDANTS’ Van Nuys, California location(s),
21 which operated/operates under the name(s): “Keyes Toyota.” PLAINTIFF OLASABA regularly
22 worked at least eight (8) to eleven (11) hours per day.

23 4. Defendant LITHIA MOTORS, INC. (“Lithia”) is an Oregon Corporation that, at all
24 relevant times, was authorized to do business within the State of California and is doing business in
25 the State of California.

26 5. Defendant VAN NUYS-T, INC. is a California Corporation that, at all relevant times,
27 was authorized to do business within the State of California and is doing business in the State of
28 California.

1 6. DEFENDANTS own, operate, manage and/or staff its employees to work at the
2 dealerships and/or facilities and/or other location(s) in California, including but not limited to the
3 dealerships, auto stores, and/or facilities in cities throughout California. DEFENDANTS do
4 business under and/or operate under brand names, including but not limited to, “Lithia Motors, Inc.”
5 and/or “Lithia Motors,” “Lithia driveway,” “driveway,” Hyundai of Mission Hills, Keyes Lexus of
6 Valencia, Audi VanNuys, Keyes Audi, Keyes Hyundai of Van Nuys, Keyes Lexus, Keyes European,
7 Keyes Toyota, Audi Valencia, and/or various other automobile makes and/or brand names.
8 DEFENDANTS are one of the largest United States automotive group retailers with more than 200
9 locations in at least eighteen (18) states, with at least thirty (30) dealerships, auto stores and/or other
10 facilities located in cities throughout California. DEFENDANTS, through its various locations and
11 business operations, serve the automotive industry.¹

12 7. The true names and capacities of the DOE Defendants sued herein as DOES 1
13 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
14 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
15 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
16 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
17 become known.

18 8. PLAINTIFF is further informed and believes that, at all relevant times, each
19 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
20 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
21 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
22 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
23 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
24 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
25 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
26 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
27 controlled, aided and abetted the conduct of all other Defendants.

28 ¹ See <https://www.lithia.com/locations/store-locations.htm>. Last visited on February 8, 2024.

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PLAINTIFF MARCO OLASABA’S CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

1 across all of their locations/facilities and subjected all of the Class Members to these same policies
2 and practices regardless of the location(s) where they worked. Among other things, PLAINTIFF is
3 informed and believes that: (1) there is common ownership in, and financial control, in
4 DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control
5 over the day-to-day operations and employment matters, including the power to hire and fire, set
6 schedules, issue employee policies, and determine rates of compensation across its locations in
7 California; (3) DEFENDANTS utilize the same policies and procedures for all California
8 employees, including issuing the same employee handbooks and other form agreements; (4)
9 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
10 employment matters; and, (6) DEFENDANTS share employees.

11 12. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
12 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
13 upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
14 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class Members' wages,
15 hours and working conditions, and/or suffered or permitted PLAINTIFF and the Class Members to
16 work so as to be considered the joint employers of PLAINTIFF and the Class Members.

17 13. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
18 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
19 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
20 working conditions that were distributed to, and/or applied to PLAINTIFF and the Class Members,
21 and further that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF
22 and the Class Members in a uniform manner. DEFENDANTS collectively represented to
23 PLAINTIFF and the Class Members that each was an "at-will" employee of DEFENDANTS, and
24 that DEFENDANTS collectively retained the right to terminate PLAINTIFF's and Class Members'
25 employment with or without cause. Upon information and belief, DEFENDANTS further
26 collectively represented to PLAINTIFF and Class Members in writing the details of their
27 compensation, and the manner in which they were to take meal and rest periods, the procedures
28 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable

1 to PLAINTIFF and Class Members by which DEFENDANTS collectively would evaluate the wage
2 rates of PLAINTIFF and Class Members.

3 14. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
4 and working conditions of PLAINTIFF and Class Members. As such, DEFENDANTS collectively
5 held the right to control virtually every aspect of PLAINTIFF's and the Class Members'
6 employment, including the instrumentality that resulted in the illegal conduct for which PLAINTIFF
7 seeks relief in this Complaint.

8 15. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
9 control over, applied the same policies and practices, and engaged in the same acts and omissions
10 with regard to the other Class Members.

11 **CLASS ALLEGATIONS**

12 16. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly
13 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
14 seeks to represent are defined as follows and referred to as the "Class" or "Class Members":

15 All current and former non-exempt employees that worked in
16 California either directly or via a staffing agency for any one or more
17 of the following Lithia-owned dealerships: Hyundai of Mission Hills,
18 Keyes Lexus of Valencia, Audi VanNuys (formerly Keyes Audi),
19 Keyes Hyundai of Van Nuys, Keyes Lexus, Keyes European, Keyes
20 Toyota, and/or Audi Valencia (prior to its sale in June 2021) – at any
21 time within the four years prior to the filing of the initial Complaint:
22 ("Class Period").

- 23 a. Numerosity. While the exact number of Class Members is unknown to
24 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
25 all members is impractical under the circumstances of this case. PLAINTIFF is
26 informed and believes the Class consists of at least 50 individuals.
- 27 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
28 because common questions of law and fact predominate over individual issues.

Common questions include, but are not limited to, the following: (1) whether DEFENDANTS understated hours worked and failed to pay all amounts due to PLAINTIFF and the Class Members for wages earned, including minimum and overtime wages, under California law; (2) whether DEFENDANTS provided PLAINTIFF and the Class Members with all meal periods or premium payments in lieu thereof in compliance with California law; (3) whether DEFENDANTS provided PLAINTIFF and the Class Members with all rest periods or premium payments in lieu thereof, in compliance with California law; (4) whether DEFENDANTS provided PLAINTIFF and Class Members with accurate, itemized wage statements in compliance with California law, displaying, including but not limited to, the total hours worked during the pay period; (5) whether DEFENDANTS timely paid PLAINTIFF and the Class Members all wages due upon separation of employment; (6) whether DEFENDANTS failed to reimburse PLAINTIFF and the Class Members for all business expenses; and (7) whether DEFENDANTS violated California Business and Professions Code sections 17200, *et seq.*

- c. Ascertainable Class. The proposed Class is ascertainable as members can be identified and located using information in DEFENDANTS' business, payroll and personnel records.
- d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members. PLAINTIFF suffered a similar injury as members of the Class as a result of DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate and pay all owed minimum and overtime wages, failure to provide proper meal periods and rest periods or premium compensation in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses, and failure to timely pay all wages due upon separation of employment.
- e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the Class Members. PLAINTIFF has no interests adverse to the interests of the other

1 Class Members. Counsel who represent PLAINTIFF are competent and
2 experienced in litigating similar class action cases and are California lawyers in
3 good standing. Counsel for PLAINTIFF have the experience and resources to
4 vigorously prosecute this case.

- 5 f. Superiority. A class action is superior to other available means for the fair and
6 efficient adjudication of this controversy since individual joinder of all members
7 of the class is impractical. Class action treatment will permit a large number of
8 similarly situated persons to prosecute their common claims in a single forum
9 simultaneously, efficiently, and without the unnecessary duplication of effort
10 and expense that numerous individual actions would engender. Furthermore, as
11 the damages suffered by each individual member of the Class may be relatively
12 small, the expenses and burden of individual litigation would make it difficult
13 or impossible for individual members of the Class to redress the wrongs done to
14 them, while an important public interest will be served by addressing the matter
15 as a class action. The cost to the court system of adjudication of such
16 individualized litigation would be substantial. Individualized litigation would
17 also present the potential for inconsistent or contradictory judgments. Finally,
18 the alternative of filing a claim with the California Labor Commissioner is not
19 superior, given the lack of discovery in such proceedings, the fact that there are
20 fewer available remedies, and the losing party has the right to a trial de novo in
21 the Superior Court.

22 **FACTUAL AND LEGAL ALLEGATIONS**

23 17. During the relevant period, PLAINTIFF, and each of the Class Members, worked for
24 DEFENDANTS in the State of California. At all times referenced herein, DEFENDANTS exercised
25 control over PLAINTIFF and Class Members, and suffered and/or permitted them to work.

26 18. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for
27 DEFENDANTS as a non-exempt employee with a job title of cashier and/or a similar title(s) and/or
28 job position(s), including but not limited to, from in or around May 2023, through in or around

1 October 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Van Nuys, California
2 location(s), which operated/operates under the name(s): "Keyes Toyota" and/or "Keyes Toyota in
3 Van Nuys." PLAINTIFF regularly worked at least eight (8) to eleven (11) hours per day, at least
4 five (5) to six (6) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted
5 by DEFENDANTS as hours worked. Based on information and belief, PLAINTIFF and other Class
6 Members were also compensated with other non-discretionary compensation.

7 19. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
8 hourly basis for time counted by DEFENDANTS as hours worked.

9 20. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
10 PLAINTIFF and Class Members for all hours worked, resulting in the underpayment of minimum
11 and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Class Members for all
12 hours worked by virtue of, DEFENDANTS' automatic deduction and time rounding policies, and
13 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
14 unlawful practices for missed or improper meal periods, as explained below.

15 21. Based on information and belief, DEFENDANTS implemented a policy and/or
16 practice of rounding meal period start and end times and/or automatically deducting at least thirty
17 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
18 PLAINTIFF and other Class Members were subject to DEFENDANTS' control during purported
19 meal periods and/or were otherwise not afforded lawful meal periods, depriving PLAINTIFF and
20 Class Members of all wages owed.

21 22. Based on information and belief, Class Members were not paid for all hours worked
22 due to DEFENDANTS' policy and/or practice of rounding time entries or paying according to
23 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
24 and/or practices. For example, based on information and belief, Class Members were required to
25 complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-
26 related phone calls and/or messages they received to their phones and were required to respond to,
27 including but not limited to, communications from supervisors and/or other Class Members
28 regarding scheduling and/or other work tasks, resulting in the underpayment of minimum and

1 overtime wages owed to Class Members.

2 23. For example, PLAINTIFF was consistently required to respond to work-related
3 phone calls and/or messages including but not limited to, at least approximately twice per week on
4 PLAINTIFF's scheduled days off and/or otherwise outside of his scheduled shift start times, with
5 each work-related phone resulting in at least approximately several minutes off-the-clock work and
6 the underpayment of wages owed to PLAINTIFF. For example, at least approximately twice per
7 week, PLAINTIFF's supervisors would call PLAINTIFF outside of his scheduled shift times to
8 discuss work-related matters, such as but not limited to, customer orders and/or other work-related
9 tasks, however, DEFENDANTS did not compensate PLAINTIFF at all for this time spent under
10 DEFENDANTS' control.

11 24. Based on information and belief, DEFENDANTS suffered, permitted, explicitly
12 instructed and/or otherwise required Class Members to perform pre-shift and/or post-shift off-the-
13 clock work, such as but not limited to, contacting prospective customers/customers, completing
14 paperwork and/or data entry, cleaning and/or setting up DEFENDANTS' facilities and/or show
15 room(s), making and/or responding to work-related communications and/or completing other off-
16 the-clock work tasks that were neither recorded nor compensated, resulting in DEFENDANTS'
17 failure to pay Class Members for all hours worked and the underpayment of minimum wages and
18 overtime wages owed to Class Members.

19 25. Based on information and belief, prior to beginning a scheduled shift, Class Members
20 were required to start and/or boot all of DEFENDANTS' computer systems, phone systems /
21 applications and/or software so as to have all systems running at the start of the scheduled shift. As
22 such, based on information and belief, Class Members at times spent at least 10-15 minutes before
23 each scheduled shift preparing and/or troubleshooting different work applications in order to clock
24 in and begin their shifts. This pre-shift work was off-the-clock and uncompensated resulting in
25 unpaid minimum and overtime wages.

26 26. Based on information and belief, at times, DEFENDANTS' electronic employee
27 time-keeping system/app malfunctioned such that Class Members were required to either reinitiate
28 and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable to clock

1 in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock
2 work and the underpayment of wages owed to Class Members. Based on information and belief,
3 Class Members experienced the same issues when clocking out for shifts and/or back in for meal
4 periods. This time spent under DEFENDANTS' control was not recorded and not compensated and
5 resulted in unpaid minimum wages owed to Class Members.

6 27. Based on information and belief, Class Members were required to undergo security
7 screenings and/or other mandated screenings before and/or after a scheduled shift and/or before or
8 after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

9 28. Based on information and belief, DEFENDANTS required Class Members to
10 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
11 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

12 29. Based on information and belief, at times, Class Members were required to complete
13 other work tasks outside of their reported work time, before clocking in for the start of their shift
14 and/or after clocking out for the end of their shift and/or otherwise outside of their scheduled shift
15 times resulting in DEFENDANTS' failure to compensate Class Members for all hours worked and
16 the underpayment of minimum wages and overtime wages to Class Members.

17 30. Based on information and belief, DEFENDANTS failed to pay Class Members the
18 applicable minimum wage for the county and/or city within which the Class Member worked in
19 California. For example, based on information and belief, DEFENDANTS failed to pay Class
20 Members who performed at least two (2) hours of work within the city of Los Angeles and/or within
21 an unincorporated area of the county of Los Angeles, at the applicable minimum wage rate(s) in
22 effect for the city and/or county of Los Angeles, and as such failed to pay all owed minimum wages.
23 See Section 187.02(d) of the Los Angeles Municipal Code (increasing the minimum wage rate,
24 effective July 1, 2023, by \$.74 for a new minimum wage rate of \$16.78 per hour) and Los Angeles
25 County Minimum Wage Ordinance section 8.100.040 (increasing the minimum wage rate for the
26 unincorporated areas of Los Angeles to \$16.90 per hour).

27 31. Moreover, based on information and belief, DEFENDANTS failed to pay Class
28 Members split shift premium wages when they worked split shifts during the relevant period. For

1 example, based on information and belief, at times, DEFENDANTS required Class Members to
2 work two separate shifts in the same day. Based on information and belief, DEFENDANTS failed
3 to pay Class Members split shift compensation whenever PLAINTIFF's and/or other Class
4 Members' work schedules were interrupted by non-paid non-working periods established by
5 DEFENDANTS, which resulted in a violation of the applicable Wage Order (See section 4 of all
6 applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum
7 wage shall be paid in addition to the minimum wage for that workday...). See, also, Cal. Code Regs.
8 Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall
9 be paid in addition to the minimum wage for that workday, except when the employee resides at the
10 place of employment). DEFENDANTS also failed to separately itemize these split shift premium
11 wages on PLAINTIFF's and/or other Class Members' wage statements, in violation of Labor Code
12 sections 510, 1194 and all applicable IWC Wage Orders. See,
13 https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on
14 the pay stub provided to the employee, and it should be shown as a separate category such as "Split
15 Shift Premium" and should not be lumped into another category such as wages, bonus, etc.
16 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF
17 and/or other Class Members on their wage statements.

18 32. Based on information and belief, DEFENDANTS failed to pay Class Members for
19 time they were required to spend completing orientation, policy questionnaires, and/or time spent
20 completing the onboarding process including but not limited to reviewing various documents and
21 policies provided by DEFENDANTS. Based on information and belief, this work time was
22 completed off-the-clock and was not compensated.

23 33. Based on information and belief, DEFENDANTS failed to pay Class Members for
24 time they were required to spend completing orientation, policy questionnaires, and/or time spent
25 completing the onboarding process including but not limited to reviewing various documents and
26 policies provided by DEFENDANTS. Based on information and belief, this work time was
27 completed off-the-clock and was not compensated.

28 34. Based on further information and belief, DEFENDANTS implemented a time-

1 rounding system that as applied systematically deprived PLAINTIFF and other Class Members of
2 compensable time because the time-rounding system implemented by DEFENDANTS would
3 almost always, if not always, result in understating actual compensable work time.

4 35. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
5 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
6 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
7 minimum wages owed to PLAINTIFF and Class Members as well as unpaid overtime wages for
8 those Class Members who worked more than eight (8) hours in a day and/or more than forty (40)
9 hours in a week.

10 36. Based on information and belief, DEFENDANTS had actual and/or constructive
11 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
12 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
13 underpayment of minimum wages owed to PLAINTIFF and other Class Members, in violation of
14 California's minimum and overtime wage laws.

15 37. Based on information and belief, DEFENDANTS failed and continue to fail to pay
16 Class Members two times their regular rate of pay for time worked beyond twelve (12) hours per
17 workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a
18 work week, in violation of California's overtime laws.

19 38. Based on information and belief, DEFENDANTS failed to incorporate all non-
20 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
21 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
22 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
23 Class Members.

24 39. **Meal Period Violations.** PLAINTIFF and other Class Members consistently worked
25 shifts of at least five and one-half hours or more, entitling them to at least one meal period. However,
26 PLAINTIFF and other Class Members would not receive legally compliant thirty (30) minute first
27 and second meal periods. Based on information and belief, Class Members were consistently unable
28 to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late

1 meal periods, interrupted meal periods, and/or work through part or all their meal periods due to
2 understaffing, the nature and constraints of their job duties and/or commentary from supervisors
3 pressuring them to take non-compliant meal periods or skip meal periods completely.

4 40. Based on information and belief, other Class Members were consistently suffered
5 and permitted to take meal periods past the fifth hour of work and/or had their meal periods
6 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
7 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
8 the need to meet DEFENDANTS' goals and expectations. For example, PLAINTIFF was frequently
9 required to clock out for meal periods but to continue working including but not limited to, when
10 the dealership was busy, to continue assisting customers and/or the sales and/or service departments
11 and/or completing other assigned job duties. For example, PLAINTIFF's supervisor(s) frequently
12 instructed PLAINTIFF to clock out before the fifth hour of work for at least a thirty-minute meal
13 period but to continue completing work tasks off-the-clock, including but not limited to, assisting
14 customers and/or the sales and/or service departments, resulting in denied meal periods as well as
15 unpaid wages owed to PLAINTIFF.

16 41. Based on information and belief, DEFENDANTS implemented policies and/or
17 practices that failed to relieve Class Members of all duties and DEFENDANTS' control during
18 unpaid meal periods.

19 42. For example, based on information and belief, DEFENDANTS required Class
20 Members to remain tethered to the worksite premises and/or to work communication devices during
21 unpaid meal periods, and as such, DEFENDANTS failed to relieve Class Members of all duties and
22 DEFENDANTS' control during unpaid meal periods, resulting in denied meal periods and
23 DEFENDANTS' failure to pay Class Members for all hours worked.

24 43. Based on information and belief, DEFENDANTS required Class Members to
25 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
26 into account when scheduling meal periods for Class Members. Based on information and belief,
27 meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

28 44. Based on information and belief, despite DEFENDANTS' failure to provide lawful

1 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
2 times of PLAINTIFF's and other Class Members' meal periods and/or automatically deducting at
3 least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite having
4 actual and/or constructive knowledge that PLAINTIFF and other Class Members did not receive
5 lawful meal periods.

6 45. Moreover, per DEFENDANTS' uniform policy and practice, Class Members who
7 worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute
8 second meal period.

9 46. For example, when PLAINTIFF worked shifts lasting longer than ten (10) and/or
10 twelve (12) hours, PLAINTIFF was not allowed any version of a second meal period.

11 47. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
12 other Class Members as to the timing and duty-free nature of meal periods. Based on further
13 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
14 did DEFENDANTS have any sort of compliant policy in practice.

15 48. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
16 records of the true start and end times of PLAINTIFF's and Class Members' meal periods. Based
17 on information and belief, to the extent meal period were recorded, DEFENDANTS illegally
18 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other Class
19 Members not being paid for all time worked as well as late and/or shortened meal periods. *See*
20 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

21 49. Based on information and belief, DEFENDANTS had actual and/or constructive
22 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
23 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members, in violation
24 of California's meal period laws.

25 50. DEFENDANTS failed to pay PLAINTIFF and other Class Members, an additional
26 hour of wages at their respective regular rates of compensation for each workday a lawful meal
27 period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each
28 workday a lawful meal period was not provided and/or failed to pay the proper meal period premium

1 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
2 shift differential pay and/or other non-discretionary compensation into the regular rate or
3 compensation for purposes of calculating the owed meal period premium.

4 **51. Rest Period Violations.** DEFENDANTS did not properly authorize and provide
5 PLAINTIFF and other Class Members with legally compliant rest periods at a rate of every four (4)
6 hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the
7 work period, as required by law.

8 **52.** PLAINTIFF and other Class Members were not adequately informed, authorized,
9 instructed about, nor permitted an opportunity to take proper rest periods per California law. Based
10 on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of
11 duty-free rest periods.

12 **53.** For example, based on information and belief, DEFENDANTS required PLAINTIFF
13 and other Class Members to remain tethered to DEFENDANTS' premises and/or work
14 communication devices during any rest periods, in violation of California rest period law.

15 **54.** Based on information and belief, Class Members' rest periods were interrupted, cut
16 short, on duty, restricted to work premises and/or late due to understaffing, the nature and constraints
17 of their job duties, and/or due to commentary from supervisors/managers pressuring them to skip
18 rest periods completely or otherwise take non-compliant rest periods. In particular, DEFENDANTS
19 maintained a class-wide policy prohibiting Class Members from leaving the worksite.

20 **55.** Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
21 lasting longer than ten hours.

22 **56.** Based on information and belief, DEFENDANTS implemented policies and/or
23 practices that failed to relieve PLAINTIFF and other Class Members of all duties and
24 DEFENDANTS' control during rest periods.

25 **57.** For example, as described herein, based on information and belief, DEFENDANTS
26 required PLAINTIFF and other Class Members to remain tethered to their worksites and/or tethered
27 to work communication devices during purportedly off-duty rest periods, and as such, PLAINTIFF
28 and other Class Members were not relieved of all duties and DEFENDANTS' control during any

1 rest periods, in violation of California rest period law.

2 58. Based on information and belief, Class Members were pressured to complete their
3 work duties according to a designated schedule such that rest periods were only taken once tasks
4 were completed, and/or as time permitted.

5 59. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
6 which PLAINTIFF and Class Members experienced a missed/unlawful rest period in violation of
7 California law. DEFENDANTS either failed to pay a rest period premium at all for each workday a
8 proper rest period was not provided and/or failed to pay the proper rest period premium for failure
9 to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift
10 differential pay, and/or other non-discretionary compensation into the regular rate of compensation
11 for purposes of calculating the owed rest period premium.

12 60. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
13 provide PLAINTIFF and other Class Members with accurate wage statements that complied with
14 Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Class Members with
15 meal and rest periods that complied with Labor section 226.7, the wage statements DEFENDANTS
16 issued to PLAINTIFF and Class Members failed and continue to fail to correctly set forth the gross
17 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
18 during the pay period and the corresponding number of hours worked at each hourly rate by the
19 employee.

20 61. DEFENDANTS issued wage statements to PLAINTIFF and Class Members that also
21 failed to indicate the earned gross and net wages earned during the pay period, the correct applicable
22 rates of pay for all hours worked, and the total hours worked by PLAINTIFF and Class Members
23 (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve Class
24 Members of all duties and employer control during unpaid meal periods, payment according to
25 scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies
26 and practices) which results in a violation of Labor Code section 226(a).

27 62. Based on information and belief, wage statements issued by DEFENDANTS failed
28 to list the inclusive dates of the pay period for which the Class Member is being paid.

1 63. For example, based on information and belief, wage statements issued by
2 DEFENDANTS failed to list the inclusive dates of the pay period for which the Class Member is
3 being paid. For example, based on information and belief, at times, DEFENDANTS issued wage
4 statements to Class Members containing payment for hours worked during previous pay periods,
5 yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate pay period
6 for that retroactive pay, further failing to list the total hours worked for the pay period, including but
7 not limited to, the total hours worked for the pay period the retroactive pay corresponds with. For
8 example, based on information and belief, DEFENDANTS' wage statements provided to Class
9 Members list a category for "Retro" and/or retroactive pay without including the inclusive dates of
10 the accurate pay period for that retroactive pay, further failing to list the total hours worked for the
11 pay period, including but not limited to, the total hours worked for the pay period the retroactive
12 pay corresponds with, in violation of including but not limited to, Labor Code sections 226(a)(2)
13 and/or 226(a)(6).

14 64. DEFENDANTS' failure to accurately list all hours worked on all wage statements
15 caused confusion to PLAINTIFF and caused and continue to cause confusion to the Class Members
16 over whether they received all wages owed to them. PLAINTIFF and Class Members were injured
17 by DEFENDANTS' failure to provide accurate wage statements.

18 65. In addition, because of the violations detailed above, including but not limited to, not
19 paying regular and overtime wages for all hours worked, not paying all sick leave wages at the
20 proper rates, and failing to provide meal and rest break premiums, DEFENDANTS have violated
21 California Labor Code § 226 by willfully failing to furnish PLAINTIFF and all Class Members with
22 accurate, itemized wage statements. As described herein, based on information and belief,
23 DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned
24 during the pay period into the overtime pay rate calculation, and as such, failed to display the proper
25 overtime rate(s) for each hour of overtime worked by PLAINTIFF and other Class Members.

26 66. Based on information and belief, wage statements issued by DEFENDANTS failed
27 to list all applicable hourly rates in effect during the pay period and the corresponding number of
28 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

1 67. For example, as explained herein, DEFENDANTS compensated Class Members
2 with bonuses, incentive pay, spiffs, piece rate pay and/or commissions and/or other non-
3 discretionary remuneration yet failed to incorporate all non-discretionary remuneration into the
4 regular pay rate(s) used to calculate the owed overtime rate(s). As such, wage statements issued by
5 DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee, in violation of Labor
7 Code section 226(a)(9).

8 68. Based on information and belief, as to Class Members compensated on a piece-rate
9 basis, DEFENDANTS failed, and continue to fail to issue accurate wage statements by not
10 documenting the total hours of compensable rest and/or recovery periods and/or for other non-
11 productive time, the rates of compensation for these hours, and the gross wages paid for these hours,
12 in violation of, including but not limited to California Labor Code section 226(a) and/or 226.2

13 69. Based on further information and belief, wage statements issued by DEFENDANTS
14 fail to list the number of piece-rate units earned and/or any applicable piece rate for those Class
15 Members compensated on a piece-rate basis, in violation of Labor Code section 226(a)(3).

16 70. Moreover, based on information and belief, DEFENDANTS issued wage statements
17 to PLAINTIFF, Class Members that further violate Labor Code section 226(a), by among other
18 things, failing to list the correct name and/or address of the legal entity that is the employer. For
19 example, DEFENDANTS issued wage statements to PLAINTIFF that identify “Lithia & driveway”
20 as the name of the legal entity that is PLAINTIFF’s employer, however, based on information and
21 belief, no legal entity by that name exists. As such, DEFENDANTS issued wage statements to
22 PLAINTIFF that fail to list the correct name and/or address of the legal entity that is the employer,
23 in violation of Labor Code section 226(a)(8).

24 71. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
25 Members that were not accurate and did not include all of the statutorily required information. As
26 such, DEFENDANTS violated Labor Code section 226.

27 72. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
28 information and belief, DEFENDANTS failed to timely pay Class Members all wages that were due

1 and owing upon termination or resignation. Based on information and belief, DEFENDANTS
2 untimely provide final wages to Class Members without regard to the timing requirements of Labor
3 Code sections 201-202.

4 73. Upon separation of employment, Class Members' final paychecks were not timely
5 provided and/or were not timely provided with all owed vacation pay and/or paid time off.
6 Moreover, PLAINTIFF's and Class Members' final paychecks, once provided, did not include all
7 wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime
8 wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the
9 properly accrued rates.

10 74. Based on further information and belief, DEFENDANTS failed to timely provide all
11 owed wages immediately upon discharge of employment. Based on information and belief, at times,
12 Class Members experienced breaks in employment caused by DEFENDANTS whereby Class
13 Members would not be called in for work for longer than a single pay period due to including but
14 not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a
15 discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of
16 such periods of employment, in violation of including but not limited to Labor Code section 201-
17 202.

18 75. These violations subject DEFENDANTS to civil penalties under Labor Code section
19 203, 210, and/or 256.

20 76. **Unreimbursed Business Expenses.** Based on information and belief,
21 DEFENDANTS required PLAINTIFF and Class Members to incur business expenses as a direct
22 consequence of the performance of their job duties without providing reimbursement, in violation
23 of Labor Code section 2802. Based on information and belief, PLAINTIFF and Class Members
24 were improperly required to provide and maintain work tools that are supposed to be the
25 responsibility of the employer.

26 77. Based on information and belief, DEFENDANTS shifted the costs of doing business
27 onto Class Members by requiring them to pay for business expenses, including but not limited to,
28 uniforms, work clothing/shoes, protective equipment/safety gear (e.g., gloves and/or face masks)

1 and/or the use of Class Members' personal mobile phone and data usage for work-related purposes,
2 including but not limited to, receiving and responding to work related messages and/or phone calls.

3 78. For example, based on information and belief, DEFENDANTS required Class
4 Members to download and regularly use work-related application(s), including but not limited to,
5 employee timekeeping applications, without receiving any and/or full reimbursement from
6 DEFENDANTS for the business expenses incurred in connection with being required to use his
7 personal cell phone/mobile device for work.

8 79. Also, based on information and belief, DEFENDANTS required Class Members to
9 use their personal cell phones/mobile devices to make and/or respond to work-related calls and/or
10 messages without providing Class Members with any and/or full reimbursement for these business
11 expenses. For example, PLAINTIFF was consistently required to respond to work-related phone
12 calls at least approximately twice per week throughout his employment, with each call lasting at
13 least approximately several minutes. However, DEFENDANTS failed to provide PLAINTIFF with
14 any reimbursement for the business expenses PLAINTIFF incurred in connection with being
15 required to use his personal cell phone/mobile device to carry out his assigned job duties.

16 80. Based on information and belief, PLAINTIFF and/or other Class Members also
17 received work-related calls/messages to their personal phones from managers and/or supervisors
18 and/or other Class Members regarding scheduling and other work tasks without receiving any and/or
19 full reimbursement from DEFENDANTS for these business expenses.

20 81. Moreover, based on information and belief, Class Members also were required to use
21 and did use personal devices to perform work duties at home/remotely, such as, but not limited to,
22 reviewing and/or completing work-related paperwork and/or other documents as mandated by
23 DEFENDANTS, however DEFENDANTS failed to provide reimbursement / full reimbursement
24 for expenses Class Members incurred as a result of working for DEFENDANTS remotely and/or
25 from their homes, including but not limited to, cost of internet service, home electricity, cost of
26 additional memory and/or virus software for home computer / home computer use, among other
27 business expenses associated with remote work required by DEFENDANTS.

28 82. Based on information and belief, Class Members were not reimbursed for the

1 business use of their personal vehicles, including but not limited to, mileage, wear and tear, and/or
2 cost of fuel when they were required to drive between job sites/facilities and/or otherwise use their
3 personal vehicles for DEFENDANTS' business purposes.

4 83. For example, based on information and belief, at times, Class Members were
5 required to use their personal vehicles to drive between DEFENDANTS' various facilities, offices
6 and/or locations and/or otherwise use their personal vehicles to carry out their assigned job duties
7 but were not provided any and/or full reimbursement for DEFENDANTS' business use of their
8 personal vehicles. As such, DEFENDANTS failed to compensate Class Members at the Internal
9 Revenue Service (IRS) mandated per mile compensation rate for the relevant period.

10 84. Based on further information and belief, at times, Class Members were at times
11 required to supply (purchase and/or maintain) their own hand tools and/or equipment they required
12 to perform their assigned job duties, however, they did not receive any and/or full reimbursement
13 from DEFENDANTS for the expenses incurred in connection therewith.

14 85. Based on information and belief, DEFENDANTS regularly failed to reimburse and
15 indemnify Class Members for business expenses. Pursuant to California Labor Code section 2802,
16 PLAINTIFF and Class Members were entitled to be reimbursed for all reasonable expenses
17 associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by
18 DEFENDANTS.

19 86. DEFENDANTS' failure to provide Class Members with full reimbursement for all
20 reasonable expenses associated with carrying out their duties required that Class Members
21 subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

22 87. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
23 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
24 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

25 **FIRST CAUSE OF ACTION**

26 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
27 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

28 88. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

89. It is fundamental that an employer must pay its employees for all time worked.

1 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
2 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
3 permits deductions from wages when the employer is required or empowered to do so by state or
4 federal law or when the deduction is expressly authorized in writing by the employee for specified
5 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
6 prohibits the pay of less than a statutory or contractual wage scale.

7 90. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
8 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
9 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
10 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
11 period is unlawful.

12 91. DEFENDANTS violated California’s minimum wage laws by failing to compensate
13 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
14 DEFENDANTS’ time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
15 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
16 and/or payment according to scheduled hours worked rather than actual hours worked (described
17 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
18 wages.

19 92. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
20 Class Members for all hours worked.

21 93. Based on information and belief, DEFENDANTS had actual or constructive
22 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
23 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
24 periods, policy and practice of payment according to scheduled work time rather than actual work
25 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
26 owed to PLAINTIFF and other Class Members.

27 94. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
28 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus

1 attorney's fees and costs, in an amount to be proved at trial.

2 **SECOND CAUSE OF ACTION**

3 **Recovery of Unpaid Overtime Wages**
4 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

5 95. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

6 96. Employees in California must be paid overtime, equal to one and one-half times the
7 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
8 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
9 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
10 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
11 consecutive day of work in a workweek, unless they are exempt.

12 97. PLAINTIFF and the Class Members worked overtime hours for which they were not
13 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
14 automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,
15 other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to
16 scheduled hours worked rather than actual hours worked (described above), which resulted in the
17 failure to account for all hours worked and thus the denial of all owed overtime wages.

18 98. Based on information and belief, DEFENDANTS failed to pay twice Class
19 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
20 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
21 violation of California's overtime laws.

22 99. Based on information and belief, DEFENDANTS further violated California's
23 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
24 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
25 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
26 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
27 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
28 other Class Members.

100. DEFENDANTS' conduct described above is in violation of California Labor Code

1 sections 510 and 1194 and all applicable Wage Orders.

2 101. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
3 wages, plus attorney's fees and costs, in an amount to be proved.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
6 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

7 102. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

8 103. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
9 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
10 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
11 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
12 waived, but only under the following circumstances: (1) if an employee's total work period in a day
13 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
14 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
15 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
16 waived by mutual consent of the employer and employee, but only if the first meal period was not
17 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
18 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
19 done so.

20 104. Employers must pay employees an additional hour of wages at the employees'
21 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
22 meal period, first meal period provided after five (5) hours, second meal period provided after 10
23 hours). Lab. Code § 226.7.

24 105. As explained above, PLAINTIFF and other Class Members were consistently unable
25 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
26 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
27 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
28 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
completely.

1 106. Based on information and belief, DEFENDANTS had and continue to have a policy
2 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
3 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
4 Members did not receive compliant meal periods.

5 107. Moreover, based on information and belief, Class Members did not receive a timely,
6 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

7 108. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
8 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
9 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
10 violation of California's meal period laws.

11 109. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
12 periods in violation of California law and/or failed to pay the proper meal period premium for failure
13 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
14 differential pay and/or other non-discretionary compensation into the regular rate or compensation
15 for purposes of calculating the owed meal period premium.

16 110. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
17 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
18 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
19 all in an amount to be proved at trial.

20 **FOURTH CAUSE OF ACTION**
21 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
22 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

23 111. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

24 112. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
25 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
26 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
27 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
28 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10

1 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
2 The rest period requirement obligates employers to permit and authorize employees to take off-duty
3 rest periods, meaning employers must relieve employees of all duties and relinquish control over
4 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

5 113. If the employer fails to provide any required rest period, the employer must pay the
6 employee one hour of pay at the employee's regular rate of compensation for each workday the
7 employer did not provide at least one legally required rest period, pursuant to Labor Code section
8 226.7.

9 114. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
10 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
11 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
12 DEFENDANTS' control due to the nature and constraints of Class Members' job duties,
13 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
14 skip rest periods completely or otherwise take non-compliant rest periods.

15 115. Based on information and belief, DEFENDANTS implemented policies and/or
16 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
17 control during rest periods. Based on further information and belief, Class Members were pressured
18 to complete their work duties according to a designated schedule such that rest periods were only
19 taken once tasks were completed, and/or as time permitted.

20 116. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
21 second, or third rest periods as required by California law.

22 117. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
23 period premium to PLAINTIFF and other Class Members for each workday in which there was a
24 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
25 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
26 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
27 regular rate of compensation for purposes of determining the owed rest period premium.

28 118. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one

1 hour of additional pay at the regular rate of compensation for each workday that a required rest
2 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
3 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
4 trial.

5 **FIFTH CAUSE OF ACTION**

6 **Failure to Furnish Accurate Itemized Wage Statements
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

7 119. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

8 120. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
9 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
10 wage statement accurately stating the following:

11 (1) gross wages earned, (2) total hours worked by the employee,
12 except for any employee whose compensation is solely based on a
13 salary and who is exempt from payment of overtime under
14 subdivision (a) of Section 515 or any applicable order of the Industrial
15 Welfare Commission, (3) the number of piece-rate units earned and
16 any applicable piece rate if the employee is paid on a piece-rate basis,
17 (4) all deductions, provided that all deductions made on written orders
18 of the employee may be aggregated and shown as one item, (5) net
19 wages earned, (6) the inclusive dates of the period for which the
employee is paid, (7) the name of the employee and his or her social
security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

20 121. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
21 meal and rest periods that complied with Labor Code section 226.7, the wage statements
22 DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
23 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
24 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
25 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
26 during the pay period and the corresponding number of hours worked at each hourly rate by the
27 employee, in violation of Labor Code section 226(a)(9).

28 122. Moreover, due to violations detailed above, including but not limited to,

1 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
2 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
3 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
4 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
5 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
6 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
7 compensation earned during the pay period into the regular rate of pay for purposes of calculating
8 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
9 overtime worked by PLAINTIFF and other Class Members.

10 123. As explained above, wage statements issued by DEFENDANTS failed to list the
11 "total hours worked" by PLAINTIFF and Class Members (by virtue of rounded time entries,
12 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
13 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
14 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
15 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
16 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
17 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

18 124. Based on information and belief, wage statements issued by DEFENDANTS failed
19 to list all applicable hourly rates in effect during the pay period and the corresponding number of
20 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
21 For example, as described herein, based on information and belief, DEFENDANTS failed to
22 incorporate all forms of non-discretionary compensation earned during the pay period into the
23 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
24 of overtime worked by Class Members.

25 125. Separately, and independent from the above allegations, DEFENDANTS issued
26 wage statements to PLAINTIFF and Class Members that violate Labor Code section 226(a)(8), by
27 failing to list the correct name and/or address of the legal entity that is the employer.

28 126. Based on information and belief, wage statements issued by DEFENDANTS failed

1 to list the inclusive dates of the pay period for which the Class Member is being paid.

2 127. DEFENDANTS' failure to accurately list all hours worked on all wage statements
3 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
4 Members over whether they received all wages owed to them.

5 128. As a result, PLAINTIFF and other Class Members have suffered injury as they could
6 not easily determine whether they received all wages owed to them and whether they were paid for
7 all hours worked.

8 129. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
9 address of the legal entity that is the employer, PLAINTIFF and Class Members have suffered injury
10 as they could not contact their employer regarding any question(s) they had about wages paid.

11 130. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
12 Class Members with accurate, itemized wage statements.

13 131. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
14 have suffered injury. The absence of accurate information on their wage statements has prevented
15 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
16 mathematical computations to determine the amount of wages owed, and will cause difficulty and
17 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
18 submission of inaccurate information about wages and amounts deducted from wages to state and
19 federal government agencies. As a result, PLAINTIFF and Class Members are required to
20 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
21 and pay records than if DEFENDANT had complied with its legal obligations.

22 132. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
23 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
24 violation occurred and one hundred dollars per employee per violation for each subsequent pay
25 period, not to exceed an aggregate penalty of four thousand dollars per employee.

26 133. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
27 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
28 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to

1 provide currently employed Class Members with inaccurate wage statements in violation of
2 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
3 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
4 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
5 with California Labor Code § 226(a).

6 134. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
7 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
8 attorneys' fees, and costs of suit.

9 **SIXTH CAUSE OF ACTION**
10 **Failure to Timely Pay All Wages Due Upon Separation of Employment**
11 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

12 135. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

13 136. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
14 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
15 payable immediately."

16 137. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
17 employee not having a written contract for a definite period quits his or her employment, his or her
18 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
19 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
20 to his or her wages at the time of quitting."

21 138. Based on information and belief, DEFENDANTS failed and continue to fail to timely
22 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
23 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
24 Members do not include all wages owed as they are devoid of, including but not limited to, all owed
25 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
26 paid time off wages at the properly accrued rates.

27 139. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
28 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
pay, plus attorney's fees and costs, in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
(By PLAINTIFF and the Class Members Against all DEFENDANTS)

140. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

141. California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

142. Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

143. As described above, PLAINTIFF and the Class Members were improperly required to pay for business expenses that are legally the responsibility of the employer.

144. DEFENDANTS’ failure to provide PLAINTIFF and the Class Members with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

145. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Class Members have suffered injury in that they were not completely reimbursed as mandated by California law.

146. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable

1 attorneys' fees, and costs of suit.

2 **EIGHTH CAUSE OF ACTION**

3 **Unfair Competition**

4 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

5 147. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

6 148. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
7 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
8 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
9 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
10 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
11 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
12 wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure
13 to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to
14 provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to,
15 including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
16 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
17 number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and
18 practices).

19 149. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
20 California Labor Code, DEFENDANTS have gained a competitive advantage over other
21 comparable companies doing business in the State of California that comply with their obligations
22 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
23 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
24 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
25 minimum and overtime wages and to pay all wages due upon separation of employment of their
26 employees.

27 150. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
28 and Class Members have suffered injury in fact and lost money or property, as described in more

1 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
2 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
3 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
4 unlawful and unfair business practices.

5 151. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
6 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
7 engaging in each of the unlawful practices and policies set forth herein.

8 152. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
9 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
10 by law.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
13 Class Members as follows:

- 14 1. For an order that the action be certified as a class action;
- 15 2. For an order that PLAINTIFF be appointed as class representative;
- 16 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
- 17 4. For compensatory damages according to proof;
- 18 5. For liquidated damages according to proof;
- 19 6. For penalties according to proof;
- 20 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
21 withheld from PLAINTIFF and the Class Members;
- 22 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
23 section 17200, *et seq.*, of the California Business and Professions Code;
- 24 9. For an order enjoining DEFENDANTS from further acts of unfair competition;

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- 10. For pre-judgment interest as permitted by law;
- 11. For attorney’s fees and costs reasonably incurred; and
- 12. For such other and further relief that the Court deems just and proper.

Dated: November 26, 2024

CROSNER LEGAL, PC

By: 

Brandon Brouillette, Esq.
Raymond Wendell, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff,
MARCO OLASABA

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DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury on all claims so triable.

Dated: November 26, 2024

CROSNER LEGAL, PC

By: 
Brandon Brouillette, Esq.
Raymond Wendell, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff,
MARCO OLASABA