

January 22, 2024

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov

Via Online Submission

Bakersfield Auto Group, LLC
101 Larkspur Landing Circle #120
Larkspur, CA 94939
Via registered agent of service:
1505 Corporation CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, CA 95833

Via U.S. Certified Mail

Re: **PRIVATE ATTORNEY GENERAL ACT CLAIM NOTICE:**
Violations of California Labor Code Sections §§ 410, 1194, 1197, 1197.1, 201, 202, 203, 226, 204, 210, 226.7, 510 and 512, Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3 and Cal. Business and Professions Code § 17200.

Dear Sir/ Madam:

This office represents DAVID B. MURBACH (“Clients”) and other aggrieved employees in a class action against BAKERSFIELD AUTO GROUP, LLC. (“Defendant”). This office intends to file the enclosed Class Action and PAGA Complaint on behalf of Clients and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Clients were employed as commission-based sales representatives who were not compensated for non-productive time, and whose overtime, double time, meal, rest break and sick pay calculations were not made in accordance with the legally required regular rate of pay. As a consequence, Clients contend that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Clients contend that Defendant’s conduct violated Labor Code sections §§ 410, 1194, 1197, 1197.1, 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3,

226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the First Amended Complaint for the class action and PAGA action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Clients, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Clients and (v) sets forth the illegal practices used by Defendant. Clients therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Clients and all aggrieved California employees and Class Members

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

Sincerely,



Matt Blum, Esq.
The Law Office of Matt Blum
Attorney for Plaintiff

Enclosure (1)

First Amended Class Action Complaint for Damages

1 **THE LAW OFFICE OF MATT BLUM**

2 Matt Blum, Esq. (State Bar #285944)
3 550 West C Street, Suite 960
4 San Diego, CA 92101
5 Tel: (860) 271-6273
6 Fax: (619) 238-1351
7 mblumlaw@gmail.com

8 **JCL LAW FIRM, APC**

9 Jean-Claude Lapuyade (State Bar #248676)
10 5440 Morehouse Drive, Suite 3600
11 San Diego, CA 92121
12 Telephone: (619) 599-8292
13 Facsimile: (619) 599-8291
14 jlapuyade@jcl-lawfirm.com

15 Attorneys for Plaintiff David B. Murbach

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **KERN COUNTY – METROPOLITAN DIVISION**

18 DAVID B. MURBACH, an individual, on behalf
19 of himself and on behalf of all persons similarly
20 situated,

21 Plaintiff,

22 vs.

23 BAKERSFIELD AUTO GROUP, LLC a
24 California Limited Liability Company; and
25 DOES 1 through 50, inclusive,

26 Defendants.

Case No. _____

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
9. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT AT LABOR CODE SECTIONS 2698, et seq.

DEMAND FOR JURY TRIAL

Plaintiff DAVID B. MURBACH (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant Bakersfield Auto Group, LLC (“Defendant Bakersfield Auto”) is a California limited liability corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

2. PLAINTIFF was employed by DEFENDANT in California from January of 2023 through August of 2023 and worked at all times for DEFENDANT as a non-exempt commission-based sales employee entitled to be separately compensated for him non-productive time, including rest periods.

3. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all individuals who are or previously were employed by Defendant Bakersfield Auto in California and classified as non-exempt, exempt, commission-based and/or piece-rate based employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

4. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which failed to lawfully compensate these employees. DEFENDANT's policy and practice alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

7. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

8. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work assignments while clocked out for what should be PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates.

DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's business records.

A. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick Pay

10. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS were compensated at an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific elements of an employee's performance and/or commissions.

11. DEFENDANTS' non-discretionary commission and bonus program provided the CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation when the employees met the various performance goals set by DEFENDANT. However, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned non-discretionary bonus and/or commission wages, DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or commission wages as part of the employees' "regular rate of pay."

12. Management and supervisors described the bonus and commissions programs and commission compensation program to potential and new employees as part of the compensation package for new and used car salespersons including PLAINTIFF and the CALIFORNIA CLASS. As a matter of law, the incentive and commission compensation received by PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly calculated into the "regular rate of pay" for purposes of overtime compensation and sick pay. DEFENDANT's failure to do so has resulted in DEFENDANT's systematic underpayment of overtime compensation and sick pay to PLAINTIFF and other CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation was

1 in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code
2 Sections 201, 202, 203 and/or 204.

3 13. In violation of the applicable sections of the California Labor Code and the requirements
4 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
5 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
6 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime, meal and rest
7 period premiums, and sick pay. This uniform policy and practice of DEFENDANTS is intended to
8 purposefully avoid the payment of the correct overtime and, meal and rest period premiums, and sick
9 pay as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair
10 advantage over competitors who complied with the law. To the extent equitable tolling operates to toll
11 claims by the CALIFORNIA CLASS members against DEFENDANTS, the CLASS PERIOD should
12 be adjusted accordingly.

13 **B. Commission-Based and Piece-Rate Violations**

14 14. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and the
15 CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those instances
16 where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate
17 basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately compensated for all
18 non-productive time at an hourly rate that is no less than the applicable minimum wage.
19 Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA CLASS were paid in
20 part on a commission and/or piece-rate basis, DEFENDANT failed to separately compensate
21 PLAINTIFF and the CALIFORNIA CLASS for all non-productive time, including but not limited to,
22 paid rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result,
23 PLAINTIFF and the CALIFORNIA CLASS forfeited minimum wages and overtime wages by
24 DEFENDANT'S failure to separately compensate their non-productive time at an hourly rate that is no
25 less than the applicable minimum wage.

26
27 ///

1 **C. Meal and Rest Period Violations**

2 15. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
3 CLASS Members were from time to time unable to take a thirty (30) minute off duty meal breaks and
4 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
5 Members were required from time to time to perform work as ordered by DEFENDANT for more than
6 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to
7 time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal
8 period for some workdays in which these employees were required by DEFENDANT to work ten (10)
9 hours of work. DEFENDANT also engaged in the practice of rounding the meal period times to avoid
10 paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members. PLAINTIFF and other
11 members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation
12 and in accordance with DEFENDANT's corporate policy and practice.

13 16. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA
14 CLASS Members were also required from time to time to work in excess of four (4) hours without being
15 provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
16 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a
17 first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
18 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for
19 some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA
20 CLASS Members were also not provided with one-hour wages in lieu thereof. Additionally, the
21 applicable California Wage Order requires employers to provide employees with off-duty rest periods,
22 which the California Supreme Court defined as time during which an employee is relieved from all
23 work-related duties and free from employer control. In so doing, the Court held that the requirement
24 under California law that employers authorize and permit all employees to take rest period means that
25 employers must relieve employees of all duties and relinquish control over how employees spend their
26 time which includes control over the locations where employees may take their rest period. Employers
27 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five

minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work premises during their rest period.

D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

17. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. DEFENDANT required these employees to work off the clock without paying them for all the time they were under DEFENDANT's control, including but not limited to, receiving and answering work-related communications. As such, DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were undercompensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime wage rates. To the extent that the time worked off the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

E. Wage Statement Violations

18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. DEFENDANT violated

1 Cal. Labor Code 226(a)(8) by failing to list the correct legal entity that employed Plaintiff and other
2 California Labor Sub-Class Members. Further, from time to time, DEFENDANTS included Holiday
3 hours into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2),
4 notwithstanding the fact that Holiday hours are not considered hours worked. DEFENDANTS' inclusion
5 of Holiday hours into the total hours worked in itemized wage statements issued to PLAINTIFF and
6 other CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2). Aside, from the violations
7 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement
8 that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from
9 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
10 statements which violated Cal. Lab. Code § 226.

11 **F. Untimely Payment of Wages Violations**

12 19. Pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA
13 CLASS members were entitled to timely payment of wages during their employment. PLAINTIFF and
14 the CALIFORNIA CLASS members, from time to time, did not receive payment of all wages, including,
15 but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period
16 premium wages within permissible time period. Cal. Lab. Code § 210 provides:

17 [I]n addition to, and entirely independent and apart from, any other penalty provided in
18 this article, every person who fails to pay the wages of each employee as provided in
19 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
20 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

21 20. DEFENDANT from time to time failed to timely pay PLAINTIFF and members of the
22 CALIFORNIA LABOR SUB-CLASS Members at the close of the payroll period in accordance with
23 Cal. Lab. Code § 204, including but not limited to the "Retro Pay Flat" wage payment.

24 21. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and other
25 members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties
26 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based
27 thereon alleges that such failure to pay sick pay at regular rate was willful, such that PLAINTIFF and

1 members of the CALIFORNIA CLASS whose employment has separated are entitled to waiting time
2 penalties pursuant to Cal. Lab. Code Sections 201-203.

3 **G. Unlawful Deductions Violations**

4 22. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to collect
5 or receive from an employee any part of wages theretofore paid by said employer to said employee."
6 DEFENDANT failed to pay all compensation due to PLAINTIFF and other CALIFORNIA LABOR
7 SUB-CLASS Members, made unlawful deductions from compensation payable to PLAINTIFF and
8 CALIFORNIA LABOR SUB-CLASS Members, failed to disclose all aspects of the deductions from
9 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, and thereby
10 failed to pay these employees all wages due at each applicable pay period and upon termination.
11 PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal
12 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

13 **H. Unreimbursed Business Expense Violations**

14 23. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
15 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by
16 the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their
17 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required
18 to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab.
19 Code § 2802 expressly states that "an employer shall indemnify his or him employee for all necessary
20 expenditures or losses incurred by the employee in direct consequence of the discharge of his or him
21 duties, or of his or him obedience to the directions of the employer, even though unlawful, unless the
22 employee, at the time of obeying the directions, believed them to be unlawful."

23 24. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
24 Members as a business expense, were required by DEFENDANT to use their own personal cellular
25 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are not
26 reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal
27 cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA

1 CLASS Members were required by DEFENDANT to use their personal cellular phones. As a result, in
2 the course of their employment with DEFENDANT, PLAINTIFF and other members of the
3 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited
4 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit of
5 DEFENDANT.

6 25. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally required
7 off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code
8 and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT did
9 not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and
10 also failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The nature of the
11 work performed by the PLAINTIFF did not prevent PLAINTIFF from being relieved of all of
12 PLAINTIFF's duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure
13 to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
14 records. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
15 \$75,000.

16 **JURISDICTION AND VENUE**

17 26. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
19 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT
20 pursuant to Cal. Code of Civ. Proc. § 382.

21 27. Venue is proper in this Court pursuant to California Code of Civil Procedure Sections 395
22 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i)
23 currently maintains and at all relevant times-maintained offices and facilities in this County and/or
24 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in
25 this County against members of the CALIFORNIA CLASS.

26 ///

27 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53
- 54
- 55
- 56
- 57
- 58
- 59
- 60
- 61
- 62
- 63
- 64
- 65
- 66
- 67
- 68
- 69
- 70
- 71
- 72
- 73
- 74
- 75
- 76
- 77
- 78
- 79
- 80
- 81
- 82
- 83
- 84
- 85
- 86
- 87
- 88
- 89
- 90
- 91
- 92
- 93
- 94
- 95
- 96
- 97
- 98
- 99
- 100

31. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

1 32. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
2 Members is impracticable.

3 33. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

- 4 a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
5 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
6 in place company policies, practices and procedures that failed to record and pay
7 PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
8 worked, including minimum wages owed and overtime wages owed for work
9 performed by these employees; and,
10 b) Committing an act of unfair competition in violation of the UCL, by failing to
11 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
12 with the legally required meal and rest periods.

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

- 15 a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
16 joinder of all such persons is impracticable and the disposition of their claims as
17 a class will benefit the parties and the Court;
18 b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
19 raised in this Complaint are common to the CALIFORNIA CLASS will apply to
20 every member of the CALIFORNIA CLASS;
21 c) The claims of the representative PLAINTIFF are typical of the claims of each
22 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
23 of the CALIFORNIA CLASS, was classified as a nonexempt employee paid on
24 an hourly basis who was subjected to the DEFENDANT's deceptive practice and
25 policy which failed to provide the legally required meal and rest periods to the
26 CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF and
27 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of

1 DEFENDANT's employment practices. PLAINTIFF and the members of the
2 CALIFORNIA CLASS were and are similarly or identically harmed by the same
3 unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

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

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

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

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of

the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

- a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
- b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

- 1 e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts
2 of unfair competition, statutory violations and other improprieties, and in obtaining adequate
3 compensation for the damages and injuries which DEFENDANT's actions have inflicted upon
4 the CALIFORNIA CLASS;
- 5 f) There is a community of interest in ensuring that the combined assets of DEFENDANT are
6 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
7 sustained;
- 8 g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA
9 CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA
10 CLASS as a whole;
- 11 h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records
12 of DEFENDANT; and,
- 13 i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid
14 conclusion to all litigation of all wage and hour related claims arising out of the conduct of
15 DEFENDANT as to the members of the CALIFORNIA CLASS.

16 37. DEFENDANT maintains records from which the Court can ascertain and identify by job
17 title each of DEFENDANT's employees who have been intentionally subjected to DEFENDANT's
18 company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the
19 Complaint to include any additional job titles of similarly situated employees when they have been
20 identified.

21 **THE CALIFORNIA LABOR SUB-CLASS**

22 38. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
23 causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS
24 who are or previously were employed by Defendant Bakersfield Auto in California and classified as
25 non-exempt, exempt, commission-based and/or piece-rate based employees (the "CALIFORNIA
26 LABOR SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint
27 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS

PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

- a) Whether DEFENDANT unlawfully failed to correctly calculate and pay compensation due to members of the CALIFORNIA LABOR SUBCLASS for missed meal and rest breaks in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- b) Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;

- c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- e) Whether DEFENDANT's conduct was willful.

43. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUBCLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
- e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,
- f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

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

- a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt and/or commission-based employee who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and;
- d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

- 1 a) Without class certification and determination of declaratory, injunctive, statutory and other legal
2 questions within the class format, prosecution of separate actions by individual members of the
3 CALIFORNIA LABOR SUB-CLASS will create the risk of:
- 4 1) Inconsistent or varying adjudications with respect to individual members of the
5 CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of
6 conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
7 2) Adjudication with respect to individual members of the CALIFORNIA LABOR
8 SUB-CLASS which would as a practical matter be dispositive of interests of the other
9 members not party to the adjudication or substantially impair or impede their ability to
10 protect their interests.
- 11 b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on
12 grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate
13 class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that
14 DEFENDANT fails to pay all wages due. Including the correct wages for all time worked by
15 the members of the CALIFORNIA LABOR SUBCLASS as required by law;
- 16 c) Common questions of law and fact predominate as to the members of the CALIFORNIA
17 LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed
18 above, and predominate over any question affecting only individual CALIFORNIA LABOR
19 SUB-CLASS Members, and a Class Action is superior to other available methods for the fair
20 and efficient adjudication of the controversy, including consideration of:
- 21 1) The interests of the members of the CALIFORNIA LABOR SUBCLASS in
22 individually controlling the prosecution or defense of separate actions in that the
23 substantial expense of individual actions will be avoided to recover the relatively small
24 amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-
25 CLASS Members when compared to the substantial expense and burden of individual
26 prosecution of this litigation;
- 27
28

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

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

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

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

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

a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR

SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final classwide relief appropriate with respect to the CALIFORNIA LABOR SUBCLASS as a whole;
- h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- i) Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

///

///

///

///

1 **PAGA ALLEGATIONS**

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

6 **INTRODUCTION**

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

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

20 50. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANTS’ violations under
21 PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other relief the
22 Court deems proper pursuant to the PAGA. Nothing in this cause of action shall be construed as
23 attempting to obtain any relief that would not be available in a PAGA-only action.

24 **THE CONDUCT**

25
26 51. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay
27 PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during
28

1 which an employee is subject to the control of an employer, including all the time the employee is
2 suffered or permitted to work. DEFENDANT requires PLAINTIFF and AGGRIEVED
3 EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control.
4 Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what
5 is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted
6 by work assignments while clocked out for what should be PLAINTIFF's off-duty meal break.
7 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
8 practice of rounding the actual time worked and recorded by PLAINTIFF and AGGRIEVED
9 EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their
10 employment, PLAINTIFF and C AGGRIEVED EMPLOYEES are paid less than they would have
11 been paid had they been paid for actual recorded time rather than "rounded" time. As a result,
12 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage
13 compensation, and off-duty meal breaks by working without their time being correctly recorded
14 and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay
15 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is evidenced by
16 DEFENDANT's business records.

17 **A. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
18 **Sick Pay**

19 52. State law provides that employees must be paid overtime at one-and-one-half times their "regular
20 rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an hourly
21 rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific elements of
22 an employee's performance and/or commissions.

23 53. DEFENDANTS' non-discretionary commission and bonus program provided the AGGRIEVED
24 EMPLOYEES, including PLAINTIFF, with commissions and/or bonus compensation when the
25 employees met the various performance goals set by DEFENDANT. However, when calculating
26 the regular rate of pay, in those pay periods where PLAINTIFF and the AGGRIEVED
27 EMPLOYEES worked overtime and earned non-discretionary bonus and/or commission wages,

1 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
2 commission wages as part of the employees' "regular rate of pay."

3 54. Management and supervisors described the bonus and commissions programs and commission
4 compensation program to potential and new employees as part of the compensation package for
5 new and used car salespersons including PLAINTIFF and the AGGRIEVED EMPLOYEES. As a
6 matter of law, the incentive and commission compensation received by PLAINTIFFS and other
7 AGGRIEVED EMPLOYEES must be included and correctly calculated into the "regular rate of
8 pay" for purposes of overtime compensation and sick pay. DEFENDANT's failure to do so has
9 resulted in DEFENDANT's systematic underpayment of overtime compensation and sick pay to
10 PLAINTIFF and other AGGRIEVED EMPLOYEES. Specifically, California Labor Code Section
11 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the
12 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the
13 employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated
14 herein, by failing to include the incentive compensation as part of the "regular rate of pay" for
15 purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of
16 which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

17 55. In violation of the applicable sections of the California Labor Code and the requirements of the
18 Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
19 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and
20 the other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime, meal and rest
21 period premiums, and sick pay. This uniform policy and practice of DEFENDANTS is intended to
22 purposefully avoid the payment of the correct overtime and, meal and rest period premiums, and
23 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
24 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
25 operates to toll claims by the AGGRIEVED EMPLOYEES members against DEFENDANTS, the
26 PAGA PERIOD should be adjusted accordingly.

27 ///

B. Commission-Based and Piece-Rate Violations

56. From time-to-time during the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis. In those instances where PLAINTIFF and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis, PLAINTIFF and the AGGRIEVED EMPLOYEES were entitled to be separately compensated for all non-productive time at an hourly rate that is no less than the applicable minimum wage. Notwithstanding, in those instances where PLAINTIFF and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to separately compensate PLAINTIFF and the AGGRIEVED EMPLOYEES for all non-productive time, including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited minimum wages and overtime wages by DEFENDANT'S failure to separately compensate their non-productive time at an hourly rate that is no less than the applicable minimum wage.

C. Meal and Rest Period Violations

57. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and other AGGRIEVED EMPLOYEES. PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT's corporate policy and practice.

58. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES were also required from time to time to work in excess of four (4) hours without being provided ten (10)

1 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
2 minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and
3 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight
4 (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for
5 some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
6 AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof.
7 Additionally, the applicable California Wage Order requires employers to provide employees with
8 off-duty rest periods, which the California Supreme Court defined as time during which an
9 employee is relieved from all work-related duties and free from employer control. In so doing, the
10 Court held that the requirement under California law that employers authorize and permit all
11 employees to take rest period means that employers must relieve employees of all duties and
12 relinquish control over how employees spend their time which includes control over the locations
13 where employees may take their rest period. Employers cannot impose controls that prohibit an
14 employee from taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's
15 policy restricted PLAINTIFF and other AGGRIEVED EMPLOYEES from unconstrained walks
16 and is unlawful based on DEFENDANT's rule which states PLAINTIFF and other AGGRIEVED
17 EMPLOYEES cannot leave the work premises during their rest period.

18 **D. Wage Statement Violations**

19 59. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other AGGRIEVED
20 EMPLOYEES with complete and accurate wage statements which failed to show, among other
21 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer
22 shall furnish each of his or her employees with an accurate itemized wage statement in writing
23 showing, among other things, gross wages earned and all applicable hourly rates in effect during the
24 pay period and the corresponding amount of time worked at each hourly rate. DEFENDANT violated
25 Cal. Labor Code 226(a)(8) by failing to list the correct legal entity that employed Plaintiff and other
26 AGGRIEVED EMPLOYEES. Further, from time to time, DEFENDANTS included Holiday hours
27 into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2),
28

1 notwithstanding the fact that Holiday hours are not considered hours worked. DEFENDANTS'
2 inclusion of Holiday hours into the total hours worked in itemized wage statements issued to
3 PLAINTIFF and other AGGRIEVED EMPLOYEES violates Cal. Lab. Code § 226(a)(2). Aside,
4 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
5 itemized wage statement that lists all the requirements under California Labor Code 226 et seq. As
6 a result, DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
7 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

8 **E. Untimely Payment of Wages Violations**

9 60. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED EMPLOYEES
10 were entitled to timely payment of wages during their employment. PLAINTIFF and the
11 AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages, including,
12 but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period
13 premium wages within permissible time period. Cal. Lab. Code § 210 provides:

14 [I]n addition to, and entirely independent and apart from, any other penalty provided in
15 this article, every person who fails to pay the wages of each employee as provided in
16 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
17 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
18 each subsequent violation, or any willful or intentional violation, two hundred dollars
19 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
20 withheld.

21 61. DEFENDANT from time to time failed to timely pay PLAINTIFF and AGGRIEVED EMPLOYEES
22 at the close of the payroll period in accordance with Cal. Lab. Code § 204, including but not limited
23 to the “Retro Pay Flat” wage payment.

24 62. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and other
25 AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time penalties
26 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based
27 thereon alleges that such failure to pay sick pay at regular rate was willful, such that PLAINTIFF

1 and AGGRIEVED EMPLOYEES whose employment has separated are entitled to waiting time
2 penalties pursuant to Cal. Lab. Code Sections 201-203.

3 **F. Unlawful Deductions Violations**

4 63. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to collect or receive
5 from an employee any part of wages theretofore paid by said employer to said employee."
6 DEFENDANT failed to pay all compensation due to PLAINTIFF and other AGGRIEVED
7 EMPLOYEES, made unlawful deductions from compensation payable to PLAINTIFF and
8 AGGRIEVED EMPLOYEES, failed to disclose all aspects of the deductions from compensation
9 payable to PLAINTIFF and AGGRIEVED EMPLOYEES, and thereby failed to pay these
10 employees all wages due at each applicable pay period and upon termination. PLAINTIFF and
11 AGGRIEVED EMPLOYEES seek recovery of all illegal deductions from wages according to proof,
12 related penalties, interest, attorney fees and costs

13 **G. Unreimbursed Business Expense Violations**

14 64. DEFENDANT intentionally and knowingly failed to reimburse and indemnify PLAINTIFF and
15 the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
16 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
17 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are
18 required to indemnify employees for all expenses incurred in the course and scope of their
19 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence
21 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
22 even though unlawful, unless the employee, at the time of obeying the directions, believed them
23 to be unlawful."

24 65. In the course of their employment PLAINTIFF and other AGGRIEVED EMPLOYEES as a
25 business expense, were required by DEFENDANT to use their own personal cellular phones as a
26 result of and in furtherance of their job duties as employees for DEFENDANT but are not
27 reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal

1 cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other AGGRIEVED
2 EMPLOYEES were required by DEFENDANT to use their personal cellular phones. As a result,
3 in the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
4 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited to,
5 costs related to the use of their personal cellular phones all on behalf of and for the benefit of
6 DEFENDANT.

7 66. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally required off-duty
8 meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code
9 and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF.
10 DEFENDANT did not have a policy or practice which provided timely off-duty meal and rest
11 breaks to PLAINTIFF and also failed to compensate PLAINTIFF for PLAINTIFF's missed meal
12 and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent PLAINTIFF
13 from being relieved of all of PLAINTIFF's duties for the legally required off-duty meal periods.
14 As a result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods
15 is evidenced by DEFENDANT's business records. The amount in controversy for PLAINTIFF
16 individually does not exceed the sum or value of \$75,000.

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

20 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

21 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

22
23 67. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

25 68. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code §
26 17021.

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

4 Any person who engages, has engaged, or proposes to engage in unfair
5 competition may be enjoined in any court of competent jurisdiction. The
6 court may make such orders or judgments, including the appointment of
7 a receiver, as may be necessary to prevent the use or employment by any
8 person of any practice which constitutes unfair competition, as defined in
this chapter, or as may be necessary to restore to any person in interest
any money or property, real or personal, which may have been acquired
by means of such unfair competition.

9 Cal. Bus. & Prof. Code § 17203.

10 70. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
11 business practice which violates California law, including but not limited to, the applicable Industrial
12 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections
13 201, 202, 203, 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor
14 Standards Act and federal regulations promulgated thereunder, for which this Court should issue
15 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary
16 to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages
17 wrongfully withheld.

18 71. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in that
19 these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or substantially
20 injurious to employees, and were without valid justification or utility for which this Court should issue
21 equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code,
22 including restitution of wages wrongfully withheld.

23 72. By the conduct alleged herein, DEFENDANT’s practices were deceptive and fraudulent
24 in that DEFENDANT’s policy and practice failed to provide the legally mandated meal and rest periods,
25 the required amount of compensation for missed meal and rest periods and overtime and minimum
26 wages owed, failed to timely pay wages, and failed to reimburse all necessary business expenses
27 incurred, and failed to provide Fair Labor Standards Act overtime wages due for overtime worked as a
28

1 result of failing to include non-discretionary incentive compensation into their regular rates of pay for
2 purposes of computing the proper overtime pay due to a business practice that cannot be justified,
3 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation
4 of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
5 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

6 73. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
7 deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members of
8 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

9 74. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
10 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally required
11 meal breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
12 Lab. Code §§ 226.7 and 512.

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

17 76. PLAINTIFF further demands on behalf of himself and each member of the CALIFORNIA
18 LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid rest period was
19 not timely provided as required by law.

20 77. By and through the unlawful and unfair business practices described herein,
21 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other
22 members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived
23 them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
24 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against
25 competitors who comply with the law.

26 78. All the acts described herein as violations of, among other things, the Industrial Welfare
27 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were

1 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
2 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
3 Bus. & Prof. Code §§ 17200, *et seq.*

4 79. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
5 seek such relief as may be necessary to restore to them the money and property which DEFENDANT
6 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been
7 deprived, by means of the above described unlawful and unfair business practices, including earned but
8 unpaid wages for all time worked.

9 80. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
10 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
11 that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and
12 unfair business practices in the future.

13 81. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
14 and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT.
15 Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful
16 and unfair business practices described herein, PLAINTIFF and the other members of the
17 CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm
18 unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business
19 practices.

20 **SECOND CAUSE OF ACTION**

21 **For Failure To Pay Minimum Wages**

22 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
24 **Defendants)**

25 82. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS,
26 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.

83. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

85. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

86. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

87. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

88. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice that denies accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

1 90. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the
3 correct minimum wage compensation for their time worked for DEFENDANT.

4 91. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
5 permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work without
6 paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA
7 LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR
8 SUB-CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all
9 earned wages.

10 92. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
11 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS for the true time they
12 worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have suffered
13 and will continue to suffer an economic injury in amounts which are presently unknown to them and
14 which will be ascertained according to proof at trial.

15 93. DEFENDANT knew or should have known that PLAINTIFF and the other members of
16 the CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked.
17 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
18 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT
19 perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA
20 LABOR SUB-CLASS the correct minimum wages for their time worked.

21 94. In performing the acts and practices herein alleged in violation of California labor laws,
22 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time
23 worked and provide them with the requisite compensation, DEFENDANT acted and continues to act
24 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the
26 consequences to them, and with the despicable intent of depriving them of their property and legal rights,
27
28

1 and otherwise causing them injury in order to increase company profits at the expense of these
2 employees.

3 95. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
4 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as
5 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
6 Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined
7 to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their
8 employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
9 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties
10 are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
11 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
12 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

13
14 **THIRD CAUSE OF ACTION**

15 **For Failure To Pay Overtime Compensation**

16 **[Cal. Lab. Code §§ 510, *et seq.*]**

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
18 **Defendants)**

19 96. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
20 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of this
21 Complaint.

22 97. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a
23 claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
24 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all
25 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve
26 (12) hours in a workday, and/or forty (40) hours in any workweek.

1 105. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
2 overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF and the
3 other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid collective bargaining
5 agreement that would preclude the causes of action contained herein this Complaint. Rather,
6 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA LABOR SUB-CLASS based
7 on DEFENDANT's violations of nonnegotiable, non-waiveable rights provided by the State of
8 California.

9 106. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that
11 they are entitled to, constituting a failure to pay all earned wages.

12 107. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of the
13 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess of
14 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were required to work,
16 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
17 evidenced by DEFENDANT's business records and witnessed by employees.

18 108. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
19 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS for the true amount
20 of time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 have suffered and will continue to suffer an economic injury in amounts which are presently unknown
22 to them and which will be ascertained according to proof at trial.

23 109. DEFENDANT knew or should have known that PLAINTIFF and the other members of
24 the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.
25 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
26 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT
27

perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)**

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

4 113. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to
5 provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
6 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
7 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not
8 prevent these employees from being relieved of all of their duties for the legally required off-duty meal
9 periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR
10 SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their
11 meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
12 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work
13 is evidenced by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
14 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some
15 workdays in which these employees were required by DEFENDANT to work ten (10) hours of work
16 from time to time. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
17 CLASS therefore forfeited meal breaks without additional compensation and in accordance with
18 DEFENDANT's strict corporate policy and practice.

19 114. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC
20 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUBCLASS Members
21 who were not provided a meal period, in accordance with the applicable Wage Order, one additional
22 hour of compensation at each employee's regular rate of pay for each workday that a meal period was
23 not provided.

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

27 ///

1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Required Rest Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

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

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

19 118. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC
20 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUBCLASS Members
21 who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour
22 of compensation at each employee's regular rate of pay for each workday that rest period was not
23 provided.

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

27 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53
- 54
- 55
- 56
- 57
- 58
- 59
- 60
- 61
- 62
- 63
- 64
- 65
- 66
- 67
- 68
- 69
- 70
- 71
- 72
- 73
- 74
- 75
- 76
- 77
- 78
- 79
- 80
- 81
- 82
- 83
- 84
- 85
- 86
- 87
- 88
- 89
- 90
- 91
- 92
- 93
- 94
- 95
- 96
- 97
- 98
- 99
- 100

2

3

4
5

6
78
9

- 10
1
15
15
14
15
10
15
18
19
20
2
25
25
24
25
20
25

122. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* DEFENDANT violated Cal. Labor Code 226(a)(8) by failing to list the correct legal entity that employed Plaintiff and other CALIFORNIA LABOR SUB-CLASS Members. Further, from time to time, DEFENDANTS included Holiday hours into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding the fact that Holiday hours are not considered hours worked. DEFENDANTS' inclusion of Holiday hours into the total hours worked in itemized wage statements issued to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members violates Cal. Lab. Code § 226(a)(2). As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

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

1 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS
2 herein).

3 **SEVENTH CAUSE OF ACTION**

4 **For Failure to Reimburse Employees for Required Expenses**

5 **[Cal. Lab. Code § 2802]**

6 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
7 **Defendants)**

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

10 125. Cal. Lab. Code § 2802 provides, in relevant part, that: An employer shall indemnify his
11 or him employee for all necessary expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or him duties, or of his or him obedience to the directions of the employer, even
13 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
14 unlawful.

15 126. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
16 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUBCLASS members for
17 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.
18 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
19 for expenses which included, but were not limited to, costs related to using their personal cellular phones
20 on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA
21 LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones
22 in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse
23 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using
24 their personal cellular phones for DEFENDANT within the course and scope of their employment for
25 DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is
26 estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses
27 were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

1 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
2 LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and
3 regulations of California.

4 127. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by
5 himself and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for
6 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate
7 and costs under Cal. Lab. Code § 2802.

8 **EIGHTH CAUSE OF ACTION**

9 **For Failure to Pay Wages When Due**

10 **[Cal. Lab. Code §§ 201, 202, 203]**

11 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

12 **and Against All Defendants)**

13 128. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS, reallege
14 and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

16 As used in this article:

17 (a) "Wages" includes all amounts for labor performed by employees of every
18 description, whether the amount is fixed or ascertained by the standard of time, task,
19 piece, Commission basis, or other method of calculation.

20 (b) "Labor" includes labor, work, or service whether rendered or performed under
21 contract, subcontract, partnership, station plan, or other agreement if the labor to be
22 paid for is performed personally by the person demanding payment.

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

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

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

1 constitute the date of payment for purposes of the requirement to provide payment
2 within 72 hours of the notice of quitting.

3 132. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-CLASS
4 Members' employment contract.

5 133. Cal. Lab. Code § 203 provides, in relevant part, that:

6 If an employer willfully fails to pay, without abatement or reduction, in accordance
7 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged
8 or who quits, the wages of the employee shall continue as a penalty from the due date
9 thereof at the same rate until paid or until an action therefor is commenced; but the
10 wages shall not continue for more than 30 days.

11 134. The employment of PLAINTIFF and many CALIFORNIA LABOR SUBCLASS
12 Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by
13 law.

14 135. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of
15 the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have not been
16 fully paid their wages due to them, PLAINTIFF demands thirty days of pay as penalty for not paying all
17 wages due at time of termination for all employees who terminated employment during the
18 CALIFORNIA LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages
19 due, plus interest and statutory costs as allowed by law.

20 **NINTH CAUSE OF ACTION**

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

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

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

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

26 137. PAGA is a mechanism by which the State of California itself can enforce state labor laws through
27 the employee suing under the PAGA who does so as the proxy or agent of the state's labor law
28 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
enforcement action designed to protect the public and not to benefit private parties. The purpose
of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens

as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

138. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to himself and all and all non-exempt, exempt, commission-based and/or piece-rate based employees who worked for Defendant in California (the "AGGRIEVED EMPLOYEES").

139. PLAINTIFF has provided gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

140. The policies, acts and practices heretofore described were and are an unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d) failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked, and (e) failed to provide accurate itemized wage statements, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties

1 as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the
2 State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
3 EMPLOYEES.

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

12 13 14 **PRAYER FOR RELIEF**

15 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as
16 follows:

17 1. On behalf of the CALIFORNIA CLASS:

- 18 A. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as
19 a class action pursuant to Cal. Code of Civ. Proc. § 382;
20 B. An order temporarily, preliminarily and permanently enjoining and restraining
21 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
22 C. An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from
23 compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS;
24 and,
25 D. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
26 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to
27 the other members of the CALIFORNIA CLASS.

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

B. Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

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

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

3. On all claims:

B. Such other and further relief as the Court deems just and equitable; and,

C. An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

1 **PRAYER FOR RELIEF FOR PAGA CLAIM**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

3 (a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including
4 pursuant to Labor Code § 2699, *et seq.*;

5 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
6 Private Attorneys General Act; and

7 For such other relief as the Court deems just and proper.
8
9
10

11 **DEMAND FOR A JURY TRIAL**

12 PLAINTIFF demands a jury trial on issues triable to a jury.
13

14 Dated: January 22, 2024

Respectfully Submitted,
THE LAW OFFICE OF MATT BLUM

15
16 By: _____
Matt Blum, Esq.
Attorneys for PLAINTIFF
17
18
19
20
21
22
23
24
25
26
27
28