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as an aggrieved employee, and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAIME ZAMORA FIDEL, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

v.

DICK BROWNING, INC., a California
corporation; CERRITOS DODGE, INC., a
California corporation; VICTORVILLE
NISSAN, INC., a California corporation;
HIGH DESERT AUTOS, INC., a California
corporation; DAV, INC., a California
corporation; VAHI, INC., a California
corporation; AUTO SQUARE AUTOS, INC.,
a California corporation; TRIANGLE
MOTORS, INC., a California corporation; and
DOES 1 through 100, inclusive; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: **24STCV11259**

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5, 1197.1
AND 2699**

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$35,000.00]

1 Plaintiff JAIME ZAMORA FIDEL, as an aggrieved employee, brings this Action under the
2 Labor Code Private Attorneys' General Act of 2004 ("PAGA") to collect civil penalties under
3 PAGA for all other aggrieved employees, and, in doing so, alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
6 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against DICK BROWNING,
7 INC., and any of its respective subsidiaries or affiliated companies within the State of California
8 ("Dick Browning"); and CERRITOS DODGE, INC., and any of its respective subsidiaries or
9 affiliated companies within the State of California ("Cerritos"); VICTORVILLE NISSAN, INC.,
10 and any of its respective subsidiaries or affiliated companies within the State of California
11 ("Victorville"); HIGH DESERT AUTOS, INC., and any of its respective subsidiaries or affiliated
12 companies within the State of California ("High Desert"); DAV, INC., and any of its respective
13 subsidiaries or affiliated companies within the State of California ("DAV"); VAHI, INC., and any
14 of its respective subsidiaries or affiliated companies within the State of California ("VAHI"); AUTO
15 SQUARE AUTOS, INC., and any of its respective subsidiaries or affiliated companies within the
16 State of California ("Auto Square"); TRIANGLE MOTORS, INC., and any of its respective
17 subsidiaries or affiliated companies within the State of California ("Triangle") (collectively, and
18 with DOES 1 through 100, as further defined below, "Defendants"), as a proxy of the Labor and
19 Workforce Development Agency of the State of California ("LWDA"), on behalf of all other current
20 and former non-exempt employees of Defendants working within the Civil Penalty Period, as further
21 defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code
22 sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 227.3, 232, 232.5, 245, 246, 432, 432.3,
23 432.5, 432.7, 432.8, 1102.5, 1197.5, 1198.5, 1527, 3366, 3457, and 8397.4, on behalf of all
24 employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved
25 Employees").

26 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
27 of Civil Procedure section 410.10.

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1 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
2 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
3 causes of action complained of herein arose; the county in which the employment relationship
4 began; the county in which performance of the employment contract, or part of it, between Plaintiff
5 and Defendants was due to be performed; the county in which the employment contract, or part of
6 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,
7 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
8 and Aggrieved Employees in Los Angeles County, and because Defendants employ numerous
9 Aggrieved Employees in Los Angeles County.

10 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
11 Defendants during the applicable statutory period and suffered one or more of the Labor Code
12 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
13 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
14 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
15 reasonable attorneys’ fees and costs, for all other aggrieved current and former employees of
16 Defendants during the Civil Penalty Period. Plaintiff does not seek to assert his own claim for civil
17 penalties under PAGA as part of this Action.

18 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
19 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
20 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
21 PAGA allegations described herein is not required.

22 6. During the period beginning one (1) year preceding the provision of notice to the
23 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
24 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210,
25 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 404, 432, 432.3, 432.5, 432.7,
26 432.8, 510, 512, 558, 1102.5, 1174, 1174.5, 11821.12, 1194, 1197, 1197.1, 1197.5, 1198.5, 1527,
27 2699, 2802, 2810.3, 2810.5, 3366, 3457, and 8397.4, among others, California Code of Regulations,
28 Title 8, Section 3395, Business and Professions Code sections 16600, 16700, and 17200,

1 Government Code section 12952, as well as applicable Wage Orders.

2 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
3 on behalf of all other aggrieved current and former employees within the statutory period, to bring
4 a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section
5 2699.3 without asserting a claim to bring Plaintiff's own claim for civil penalties under PAGA.
6 (*See, e.g., Balderas v. Fresh Start Harvesting, Inc.*) Specifically, Plaintiff does not seek to recover
7 Plaintiff's 25% share of civil penalties for the particular Labor Code violations Plaintiff experienced.
8 Rather, this is a purely representative PAGA action wherein Plaintiff seeks to recover all civil
9 penalties for the Labor Code violations experienced by third-party aggrieved employees (Aggrieved
10 Employees) and the State of California's 75% of the civil penalties for the Labor Code violations
11 Plaintiff experienced.

12 8. On or around February 23, 2024, Plaintiff provided written notice pursuant to Labor
13 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
14 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
15 as well as by certified mail, with return receipt requested to Defendants, and each of them.

16 9. Plaintiff also provided Defendants, and each of them, with notice under Labor Code
17 section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other's wage
18 and hour violations under Labor Code section 2810.3 on February 23, 2024 by certified mail with
19 return receipt requested.

20 10. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
21 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
22 calendar days of the February 23, 2024 postmarked date of the herein-described notice sent by
23 Plaintiff to the LWDA and Defendants.

24 **PAGA REPRESENTATIVE ALLEGATIONS**

25 11. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to pay overtime wages to Aggrieved Employees in the State of California in violation of
27 California state wage and hour laws as a result of, without limitation, Aggrieved Employees working
28 over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a

1 workweek without paying them proper overtime wages, as a result of, without limitation, failing to
2 accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
3 employees to work off the clock, including, without limitation, by requiring employees: to remain
4 on-call, to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-
5 shift tasks after clocking out, to clock out for meal periods and continue working, to don and doff
6 uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make
7 phone calls or drive off the clock; failing to include all forms of remuneration, including non-
8 discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the
9 regular rate of pay for the pay periods where overtime was worked and the additional compensation
10 was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee
11 time entries, editing and/or manipulation of time entries to show less hours than actually worked,
12 for paying straight pay instead of overtime pay, and by attempting but failing to properly implement
13 an alternative workweek schedule ("AWS") (including, without limitation, by failing to implement
14 a written agreement designating the regularly scheduled alternative workweek in which the
15 specified number of work days and work hours are regularly recurring; failing to adopt the AWS in
16 a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the
17 affected employees in the work unit; failing to follow the notice/disclosures procedures prior to any
18 AWS election; and/or failing to register an AWS election with the State of California, as required
19 by Labor Code section 511 and applicable Wage Orders), to the detriment of Aggrieved Employees.

20 12. At all relevant times mentioned herein, Defendants had and have a practice or policy
21 of failing to compensate Aggrieved Employees with minimum wages for all hours worked or
22 otherwise under Defendants' control as a result of, without limitation, failing to accurately track
23 and/or pay for all minutes actually worked; by requiring Aggrieved Employees: to remain on-call;
24 to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift
25 tasks after clocking out, to clock out for meal periods and continue working, to don and doff
26 uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make
27 phone calls or drive off the clock; detrimental rounding of employee time entries, editing and/or
28 manipulation of time entries to show less hours than actually worked; failing to pay reporting time

1 pay; paid time off and vacation time owed; and failing to pay split shift premiums, to the detriment
2 of Aggrieved Employees.

3 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to provide Aggrieved Employees a thirty (30) minute uninterrupted, timely, and complete
5 meal period for days on which the employee worked in excess of five (5) and ten (10) hours per day
6 without being afforded uninterrupted, timely, and complete 30-minute meal periods or
7 compensation in lieu thereof including, without limitation, by interrupting meal periods; not
8 providing timely meal periods; failing to provide first and second meal periods; providing short
9 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
10 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
11 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
12 employees worked, as required by California wage and hour laws.

13 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
14 of failing to provide Aggrieved Employees paid, uninterrupted, timely, and complete rest periods of
15 at least ten (10) minutes per four (4) hours worked or major fractions thereof, or compensation in
16 lieu thereof, including, without limitation, by failing to provide rest periods all together; requiring
17 that they be bundled together and/or with meal periods; interrupting them; requiring that employees
18 carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion;
19 and not permitting employees to leave the premises; and/or otherwise requiring on-duty/on-call rest
20 periods, as required by California wage and hour laws.

21 15. At all times relevant hereto, Defendants had and have a policy or practice of failing
22 to permit Aggrieved Employees from taking cooldown rest periods as required under California
23 Code of Regulations, Title 8, Section 3395, and have failed to pay premium pay in lieu thereof under
24 Labor Code section 226.7.

25 16. At all times relevant hereto, Defendants had and have a policy or practice of failing
26 to pay premium payments under Labor Code section 226.7 to Aggrieved Employees for non-
27 compliant meal periods and rest periods, as well as the failure to provide cooldown periods, at the
28

1 proper regular rate of pay in violation of Labor Code sections 512, 226.7, and applicable wage
2 orders.

3 17. At all times mentioned herein, Defendants had and have a policy or practice of
4 unlawfully deducting wages due, or to become due, or as an advance on wages to be earned; an
5 order, check, draft, note, memorandum, gift card, or other acknowledgment of indebtedness, (unless
6 it was negotiable and payable in cash, on demand, without discount, at some established place of
7 business in the state), the name and address of which must but did not appear on the instrument, and
8 at the time of its issuance and for a reasonable time thereafter, which must be but was not at least
9 30 days, the maker or drawer did not have sufficient funds in, or credit arrangement, or
10 understanding with the drawee for its payment of any scrip, coupon, or other thing redeemable, in
11 merchandise, or purporting to be payable or redeemable otherwise than in money. Plaintiff is further
12 informed and believes, and based thereon alleges that such wages were not compensated at the
13 “regular rate” of compensation as provided under Labor Code sections 226.7 and 510, subsection
14 (a).

15 18. At all relevant times mentioned herein, Defendants had and have a policy or practice
16 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
17 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;
18 total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in
19 effect during the pay period and the corresponding number of hours worked at each hourly rate by
20 the employee; the legal name of the employer and/or the name and address of the legal entity
21 securing the employer’s services if the employer is a farm labor contractor; and other such
22 information as required by Labor Code section 226, subdivision (a).

23 19. At all relevant times mentioned herein, Defendants had and have a policy or practice
24 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
25 Aggrieved Employees with documents signed to obtain or hold employment under Labor Code
26 section 432, personnel records under Labor Code section 1198.5, and time records under Labor
27 Code section 1174, making it difficult for Aggrieved Employees to calculate their unpaid wages
28 and/or premium payments, to the detriment of Aggrieved Employees.

1 20. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to timely pay Aggrieved Employees, among other wages, all wages owed as a result of
3 Defendants' practice or policy of failing to pay, among other wages, overtime wages at the regular
4 rate of pay, minimum wages, premium wages at the regular rate of pay, paid time off, paid sick
5 leave, and vacation time owed as required by Labor Code sections 201, 202, and 203.

6 21. At all relevant times herein, Defendants had and have a policy or practice of failing
7 to pay Aggrieved Employees their paid time off and vacation time owed upon separation of
8 employment as wages at their final rate of pay in violation of Labor Code section 227.3 and
9 applicable Wage Orders.

10 22. At all relevant times mentioned herein, Defendants have had a policy or practice of
11 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
12 limitation, Aggrieved Employees, with their costs incurred for driving personal vehicles (*i.e.*,
13 mileage and gas), purchasing uniforms, including, without limitation, for steel-toe boots, non-slip
14 shoes, and other safety and/or personal protective equipment ("PPE"), providing uniform and other
15 deposits, separately laundering mandatory uniforms, for the purchase of tools, and for the purchase
16 and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge
17 of their duties, or of their obedience to the directions of Defendants, as required by Labor Code
18 2802.

19 23. At all relevant times mentioned herein, Defendants have had a policy or practice of
20 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
21 Protection Act of 2011) by, among other things, failing to provide Aggrieved Employees with the
22 rates of pay and overtime rates of pay applicable to their employment; allowances claimed as part
23 of the minimum wage; the regular payday designated by Defendants; the name, address, and
24 telephone number of the workers' compensation insurance carrier; information regarding paid sick
25 leave; and other pertinent information required to be disclosed by Defendants under Labor Code
26 section 2810.5.

27 24. At all relevant times mentioned herein, Defendants failed to provide Aggrieved
28 Employees with the amount of paid sick leave required to be provided pursuant to California law

1 (including, without limitation Labor Code section 245, *et seq.*), and also did not permit its use upon
2 request as contemplated under California laws, to the detriment of Aggrieved Employees.

3 25. At all relevant times mentioned herein, Defendants had or have a policy or practice
4 of failing to reimburse deposits made, including uniform deposits, together with all interest owed at
5 the separation of employment in violation of Labor Code section 404.

6 26. At all relevant times mentioned herein, Defendants have had a policy or practice of
7 failing to pay Aggrieved Employees their wages in accordance with Labor Code Section 204, which
8 requires that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month
9 shall be paid for between the 16th and 26th day of the month during which the labor was performed,
10 and labor performed between the 16th and the last day, inclusive of any calendar month, shall be
11 paid for between the 1st and 10th day of the following month.”

12 27. At all times mentioned herein, Defendants have had, and continue to have, a policy
13 of failing to provide all working employees with suitable seats when the nature of the work
14 reasonably permits the use of seats. Defendants have also failed to place an adequate number of
15 seats in reasonable proximity to the work area and/or permitted employees to use such seats when
16 it does not interfere with the performance of their duties and employees are not engaged in the active
17 duties of their employment, and the nature of their work requires standing.

18 28. At all times mentioned herein, Defendants have had, and continue to have, a policy
19 of failing to provide all temporary workers with owed wages weekly by not later than the regular
20 payday of the following week.

21 29. At all times mentioned herein, Defendants have had, and continue to have, a policy
22 of failing to provide adequate and readily accessible sanitation facilities; a regular schedule for
23 servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
24 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
25 blowers; and a sufficient number of toilets to be used by each sex of employee.

26 30. At all times mentioned herein, Defendants have had, and continue to have, a policy
27 of failing to conducting unlawful background checks on prospective and current employees prior to
28 making a conditional offer. Plaintiff is informed and believes, and based thereon alleges, that

1 Defendants violated applicable laws by, without limitation: requiring job applicants and employees
2 to disclose their conviction history before Defendants made a conditional offer of employment;
3 inquiring into or considering the conviction history of applicants before Defendants made any
4 conditional offers of employment; considering, distributing, or disseminating information about
5 arrests not followed by conviction, referrals to or participation in a pretrial or posttrial diversion
6 program, convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant
7 to law, or any conviction for which the convicted person has received a full pardon or has been
8 issued a certificate of rehabilitation, while conducting conviction history background checks in
9 connection with any applications for employment; intending to deny an applicant a position of
10 employment solely or in part because of the applicant's conviction history; and asking applicants
11 for employment to disclose, through any written form or verbally, information concerning or related
12 to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that
13 occurred while the person was subject to the process and jurisdiction of the juvenile court, to the
14 detriment of Aggrieved Employees.

15 31. At all times mentioned herein, Defendants have had, and continue to have, a practice
16 or policy of relying on the salary history information of an applicant for employment as a factor in
17 determining whether to offer employment to an applicant or what salary to offer the applicant in
18 violation of Labor Code section 432.3 by including, on Defendants' application for employment, an
19 inquiry regarding current and/or former salary history information, including, without limitation,
20 compensation and benefits of the applicant for employment.

21 32. At all times mentioned herein, Defendants have had, and continue to have, a practice
22 or policy of requiring Aggrieved Employees to agree in writing to confidentiality policies that
23 unlawfully restrain trade by prohibiting Aggrieved Employees from speaking with prospective
24 employers about their work with Defendants, including but not limited to their wages and working
25 conditions. Defendants also required Aggrieved Employees to inform prospective employers of
26 Defendants' restrictions of Aggrieved Employees' freedom to work.

27 33. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of preventing Aggrieved Employees from using or disclosing the skills, knowledge and experience

1 they obtained at Defendants for purposes of competing with Defendants, including, without
2 limitation, preventing Aggrieved Employees from disclosing their wages in negotiating a new job
3 with a prospective employer, and from disclosing who else works at Defendants and under what
4 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
5 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
6 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
7 Code sections 232, 232.5, and 1197.5, subdivision (k).

8 34. Defendants had and have a policy or practice of preventing Aggrieved Employees
9 from disclosing violations of state and federal law, either within Defendants to their managers or
10 outside to private attorneys or government officials, among others, in violation of Business and
11 Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition,
12 Plaintiff is informed and believes that Defendants' herein-described policies and/or practices
13 prevent Aggrieved Employees from disclosing information about unsafe or discriminatory working
14 conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5.

15 35. Defendants had and have a policy or practice of preventing Aggrieved Employees
16 from engaging in lawful conduct during non-work hours, thus violating state statutes entitling
17 employees to disclose wages, working conditions, and illegal conduct, including, without limitation,
18 Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Plaintiff is
19 informed and believes that this lawful conduct includes the exercise of Aggrieved Employee's
20 constitutional rights of freedom of speech and economic liberty.

21 36. Plaintiff, in Plaintiff's representative capacity *only*, seeks civil penalties under Labor
22 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts on behalf of
23 only and all other Aggrieved Employees, which violate the California Labor Code as described
24 above.

25 **PARTIES**

26 **A. Plaintiff**

27 37. Plaintiff Jaime Zamora Fidel is a resident of the State of California. At all relevant
28 times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to,
2 working on vehicles that have been in a collision and need repair, disassembling vehicles, welding
3 and cutting body of vehicles, and other duties in acting as a mechanic. Plaintiff is informed and
4 believes, and based thereon alleges, that Plaintiff Jaime Zamora Fidel worked for Defendants from
5 approximately November of 2022 through the present.

6 **B. Defendants**

7 38. Plaintiff is informed and believes and based thereon alleges that Defendant Dick
8 Browning is, and at all times relevant hereto was, a corporation organized and existing under and
9 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
10 State of California.

11 39. Plaintiff is informed and believes and based thereon alleges that Defendant Cerritos is,
12 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
13 laws of the State of California and doing business in the County of Los Angeles, State of California.

14 40. Plaintiff is informed and believes and based thereon alleges that Defendant Victorville
15 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
16 the laws of the State of California and doing business in the County of Los Angeles, State of
17 California.

18 41. Plaintiff is informed and believes and based thereon alleges that Defendant High Desert
19 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
20 the laws of the State of California and doing business in the County of Los Angeles, State of
21 California.

22 42. Plaintiff is informed and believes and based thereon alleges that Defendant DAV is, and
23 at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws
24 of the State of California and doing business in the County of Los Angeles, State of California.

25 43. Plaintiff is informed and believes and based thereon alleges that Defendant VAHI is, and
26 at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws
27 of the State of California and doing business in the County of Los Angeles, State of California.

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1 44. Plaintiff is informed and believes and based thereon alleges that Defendant Auto Square
2 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
3 the laws of the State of California and doing business in the County of Los Angeles, State of
4 California.

5 45. Plaintiff is informed and believes and based thereon alleges that Defendant Triangle is,
6 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
7 laws of the State of California and doing business in the County of Los Angeles, State of California.

8 46. The true names and capacities, whether individual, corporate, associate, or otherwise,
9 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
10 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
11 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
12 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
13 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
14 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
15 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
16 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
17 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
18 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
19 include Dick Browning, Cerritos, Victorville, High Desert, DAV, VAHI, Auto Square, Triangle,
20 and any of their parent, subsidiary, or affiliated companies within the State of California, as well as
21 DOES 1 through 100 identified herein.

22 **JOINT LIABILITY ALLEGATIONS**

23 47. Plaintiff is informed and believes, and based thereon alleges, that at all times
24 mentioned herein, each of the defendants was the agent, principal, employee, employer,
25 representative, joint venture or co-conspirator of each of the other defendants, either actually or
26 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
27 employment, joint venture, and conspiracy.

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1 48. All of the acts and conduct described herein of each and every corporate defendant
2 was duly authorized, ordered, and directed by the respective and collective defendant corporate
3 employers, and the officers and management-level employees of said corporate employers. In
4 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
5 their said employees, agents, and representatives, and each of them; and upon completion of the
6 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
7 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
8 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
9 aforementioned corporate employees, agents and representatives.

10 49. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
11 thereon alleges that Defendants, and each of them, are joint employers.

12 **FIRST CAUSE OF ACTION**

13 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

14 50. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
15 preceding paragraphs as though fully set forth hereat.

16 **Civil Penalties Under Labor Code § 210**

17 51. At all relevant times herein, Labor Code section 204, requires and required that:
18 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
19 between the 16th and 26th day of the month during which the labor was performed, and labor
20 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
21 between the 1st and 10th day of the following month.”

22 52. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
23 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
24 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
25 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
26 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
27 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
28 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

1 53. At all relevant times herein, Defendants have had a consistent policy or practice of
2 failing to pay Aggrieved Employees during their employment on a timely basis as per Labor Code
3 section 204. Thus, pursuant to Labor Code section 210, Aggrieved Employees are entitled to
4 recover civil penalties for Defendants' violations of Labor Code section 204, in the amount of one
5 hundred dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and
6 two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in
7 connection with each payment that was made in violation of Labor Code section 204.

8 54. Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the
9 particular Labor Code violation(s) that Plaintiff experienced.

10 Civil Penalties Under Labor Code § 226.3

11 55. Defendants had and have a policy or practice of failing to comply with Labor Code
12 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
13 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
14 wages earned; the name and address of each employer with whom they have been placed to work;
15 all applicable hourly rates in effect during the pay period and the corresponding number of hours
16 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
17 entity securing the employer's services if the employer is a farm labor contractor; and other such
18 information as required by Labor Code section 226, subdivision (a).

19 56. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a)
20 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
21 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
22 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
23 deduction statement or fails to keep the records required in subdivision (a) of Section 226."

24 57. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
25 this section are in addition to any other penalty provided by law."

26 58. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
27 and have a policy or practice of failing to furnish Aggrieved Employees with itemized wage
28 statements that accurately reflect gross wages earned; total hours worked; net wages earned; all

1 deductions; all applicable hourly rates in effect and the corresponding number of hours worked at
2 each hourly rate in effect during the pay period; the legal name of the employer and/or the name and
3 address of the legal entity securing the employer's services if the employer is a farm labor contractor;
4 and other such information as required by Labor Code section 226, subdivision (a).

5 59. Pursuant to Labor Code section 226.3, Aggrieved Employees are entitled to recover
6 civil penalties for Defendants' violation of Labor Code section 226, subdivision (a) in the amount
7 of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period for the initial
8 violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay period for each
9 subsequent violation.

10 60. Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the
11 particular Labor Code violation(s) that Plaintiff experienced.

12 Violation of Labor Code § 558

13 61. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
14 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
15 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
16 penalty as follows:

17 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
18 pay period for which the employee was underpaid in addition to an amount sufficient
19 to recover underpaid wages;

20 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
21 employee for each pay period for which the employee was underpaid in addition to
22 an amount sufficient to recover underpaid wages;

23 (3) Wages recovered pursuant to this section shall be paid to the affected employee."

24 62. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
25 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
26 causing Aggrieved Employees not to: be paid with the rates of pay and overtime rates of pay
27 applicable to their employment, allowances claimed as part of the minimum wage, the regular
28 payday designated by employer, the name of the employer, including any "doing business as" names

1 used, the name, address, and telephone number of the workers' compensation insurance carrier,
2 information regarding paid sick leave, and other pertinent information.

3 63. As a direct and proximate result of the herein-described Labor Code violations,
4 pursuant to Labor Code section 558, Aggrieved Employees are entitled to recover civil penalties for
5 Defendants' herein-described Labor Code violations in the amount fifty dollars (\$50) for each
6 Aggrieved Employee per pay period for the initial violation, and one hundred dollars (\$100) for
7 each Aggrieved Employee per pay period for each subsequent violation.

8 64. Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the
9 particular Labor Code violation(s) that Plaintiff experienced.

10 Violation of Labor Code § 1174.5

11 65. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
12 every person employing labor in California to "[a]llow any member of the commission or the
13 employees of the Division of Labor Standards Enforcement free access to the place of business or
14 employment of the person to secure any information or make any investigation that they are
15 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
16 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
17 or papers of the person."

18 66. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
19 every person employing labor in California to "[k]eep a record showing the names and addresses of
20 all employees employed and the ages of all minors."

21 67. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
22 every person employing labor in California to "[k]eep, at a central location in the state or at the
23 plants or establishments at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
25 piece rate paid to, employees employed at the respective plants or establishments. These records
26 shall be kept in accordance with rules established for this purpose by the commission, but in any
27 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
28 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units

1 earned.”

2 68. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
3 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
4 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
5 member of the commission or employees of the division to inspect records pursuant to subdivision
6 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

7 69. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
8 willfully failed to keep adequate or accurate time records including wage statements and similar
9 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
10 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
11 under Labor Code section 1174.

12 70. As a direct and proximate result of the herein-described Labor Code violations,
13 pursuant to Labor Code section 1174.5, Aggrieved Employees are entitled to recover civil penalties
14 for Defendants’ herein-described Labor Code violations in the amount of five hundred dollars
15 (\$500) per violation per Aggrieved Employee.

16 71. Plaintiff does not seek to recover Plaintiff’s 25% share of civil penalties for the
17 particular Labor Code violation(s) that Plaintiff experienced.

18 Violation of Labor Code § 1197.1

19 72. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
20 person acting either individually or as an officer, agent, or employee of another person, who pays
21 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
22 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
23 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
24 Section 203 as follows:

- 25 (1) For any initial violation that is intentionally committed, one hundred dollars
26 (\$100) for each underpaid employee for each pay period for which the
27 employee is underpaid. This amount shall be in addition to an amount
28 sufficient to recover underpaid wages, liquidated damages pursuant to Section

1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

73. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation, routinely failing to pay Aggrieved Employees’ minimum wages for all hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, entitling Plaintiff and other Aggrieved Employees to actual and liquidated damages.

74. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 1197.1, Aggrieved Employees are entitled to recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each subsequent violation.

75. Plaintiff does not seek to recover Plaintiff’s 25% share of civil penalties for the particular Labor Code violation(s) that Plaintiff experienced.

Civil Penalties Under Labor Code § 2699

76. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed

1 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
2 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
3 action brought by an aggrieved employee on behalf of himself or herself and other current or former
4 employees pursuant to the procedures specified in Labor Code section 2699.3.

5 77. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
6 Code except those for which a civil penalty is specifically provided, the established civil penalty for
7 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
8 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
9 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
10 employee per pay period for each subsequent violation.

11 78. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
12 each of them, violated the Labor Code sections described herein, including, without limitation, for
13 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
14 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
15 name of the employer, including "doing business as" names used, the name, address, and telephone
16 number of the workers' compensation insurance carrier, information regarding paid sick leave, and
17 other pertinent information required to be disclosed by Defendants under Labor Code section
18 2810.5, failing to provide Aggrieved Employees with the amount of paid sick leave required to be
19 provided pursuant to California and local laws.

20 79. Moreover, Aggrieved Employees within the State of California are entitled to an
21 award of reasonable attorneys' fees and costs in connection with their herein-described claims for
22 civil penalties.

23 80. Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the
24 particular Labor Code violation(s) that Plaintiff experienced.

25 **PRAYER**

26 **WHEREFORE**, on behalf of Aggrieved Employees, Plaintiff prays for judgment against
27 Defendants as follows:

28 ///

- 1 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
2 1174.5, 1197.1, and 2699 for all Aggrieved Employees aside from Plaintiff;
3 B. An award of reasonable attorneys’ fees and costs pursuant to Labor Code sections
4 210, 226.3, 558, 1174.5, 1197.1, and 2699;
5 C. Pre-judgment and post-judgment interest;
6 D. For costs of suit incurred herein; and
7 E. Such other and further relief as the Court deems just and proper.

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10 Dated: May 6, 2024

BIBIYAN LAW GROUP, P.C.

11 BY: /s/ Jasmin Aradi

12 DAVID D. BIBIYAN

13 JEFFREY D. KLEIN

JASMIN ARADI

14 Attorneys for Plaintiff JAIME ZAMORA

15 FIDEL, as an aggrieved employee on behalf of
16 all other aggrieved employees under the Labor
17 Code Private Attorneys’ General Act of 2004
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