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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

JUAN ESPINOZA, an individual, on behalf
of himself and other similarly situated
employees,

Plaintiff,

vs.

BMW OF NORTH AMERICA, LLC, a
Delaware limited liability company, and
DOES 1-50,

Defendant.

Unlimited Jurisdiction

Case No.: 2024CUOE020626

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. FAILURE TO PAY ALL MINIMUM
AND OVERTIME WAGES
2. UNDERPAYMENT OF MEAL AND
REST PERIOD PREMIUMS
3. FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS
4. FAILURE TO PAY TIMELY WAGES
UPON CESSATION OF
EMPLOYMENT
5. UNFAIR COMPETITION
6. PENALTIES PURSUANT TO
PRIVATE ATTORNEY GENERAL
ACT OF 2004 (PAGA)

DEMAND FOR JURY TRIAL

1 Plaintiff Juan Carlos Espinoza (“Plaintiff”), on behalf of himself and all other similarly
2 situated employees of Defendant BMW of North America, LLC (“Defendant”) employed as non-
3 exempt hourly paid employees in Defendant’s vehicle distribution centers in California, and the
4 State of California complains and alleges as follows:

5 **INTRODUCTION**

6 1. This is a class action lawsuit brought on behalf of Plaintiff and others similarly
7 situated, under Code of Civil Procedure § 382, seeking unpaid wages and interest thereon for
8 failure to compensate employees for all hours worked; failure to pay all minimum and overtime
9 wages owed; failure to pay all premium wages owed for meal and rest period violations; failure to
10 pay all sick leave wages owed; inaccurate wage statements; waiting time penalties in the form of
11 continuation wages for failure to timely pay employees; equitable relief; reasonable attorney’s fees
12 and costs from Defendant. Plaintiff, as proxy for the State of California, also brings a representative
13 law enforcement action under the Private Attorney General Act of 2004 (“PAGA”), Labor Code
14 Section 2698, et seq., to recover civil penalties against Defendant.

15 **JURISDICTION AND VENUE**

16 2. Venue is proper in the County of Ventura because Defendant BMW of North
17 America, LLC’s operated manufacturing and distribution plants in the County of Ventura, and the
18 legal obligations of Defendant BMW of North America, LLC to Plaintiff and similarly situated
19 employees were breached in Oxnard, California.

20 3. This Court has jurisdiction over this action under Article 6 of the California
21 Constitution and California Code of Civil Procedure § 410.10.

22 4. This Court has jurisdiction over Plaintiff’s and Class Members’ claims for unpaid
23 overtime and minimum wages under California Labor Code § 1194.

24 5. This Court has jurisdiction over Plaintiff’s and Class Members’ claims for waiting
25 time penalties and meal period violations under California Labor Code § 218 *et seq.*

26 6. This Court has jurisdiction over Plaintiff’s and the Class Members’ claims for
27 restitution of unpaid wages and other ill-gotten benefits arising from Defendant’s unlawful and/or
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1 unfair business practices under California Business & Professions Code §§17200 *et seq.*

2 **THE PARTIES**

3 **A. Plaintiff**

4 7. Plaintiff Espinoza is over the age of eighteen, and at times mentioned in this
5 complaint, was a resident of California. During the relevant period, Plaintiff worked as a non-
6 exempt, hourly paid employee manufacturing components at Defendant's vehicle distribution
7 center in Oxnard, California. Defendant employed Plaintiff from approximately October 2021 to
8 on or about November 3, 2023.

9 8. Plaintiff seeks to represent similarly situated non-exempt employees employed in
10 Defendant's vehicle distribution centers who, during the relevant period, were subjected to the
11 following violations of California laws: Labor Code Sections 201-203, 226, 226.7, 246, 510, 512,
12 1194, 1197, 1198, 1199 and the applicable Industrial Welfare Commission ("IWC") Wage Orders,
13 including, Wage Order 1-2001, and Bus. & Prof. Code §§ 17200 *et seq.*

14 9. As such, Plaintiff appears in this action on behalf of himself and on behalf of all
15 others similarly situated.

16 **B. Defendant**

17 10. Plaintiff is informed and believes, and thereon alleges, that Defendant BMW of
18 North America, LLC is a Delaware limited liability company that does business in California.
19 Defendant BMW of North America, LLC is an automobile developer, manufacturer, and
20 distributor who operates vehicle distribution centers throughout California.

21 11. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
22 participation in the conduct herein alleged, of the Defendants sued herein as DOES, but is informed
23 and believes and thereon alleges that said Defendants are legally responsible for the wrongful
24 conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will
25 amend this complaint to allege the true names and capacities of the DOE Defendants when
26 ascertained. BMW of North America, LLC, and the DOE Defendants are collectively referred to
27 herein as "Defendant."

1 12. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
2 all respects pertinent to this action as the agent of one or more of the other Defendants, carried out
3 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
4 Defendant are legally attributable to one or more of the other Defendants.

5 **FACTS RELEVANT TO PLAINTIFF'S CLAIMS**

6 13. Unpaid Minimum and Overtime Wages: Throughout Plaintiff's employment,
7 Defendant employed Plaintiff and other similarly situated employees in its vehicle distribution
8 centers subject to Labor Code Sections 510, 512, 1194, and 1197 and the applicable Industrial
9 Welfare Commission Orders, including Wage Order 1-2001. Plaintiff worked full-time, 8-hours
10 per day and forty-hours per week. Under Labor Code Section 1197 and subsection 4 of Wage
11 Order 1, Plaintiff, and other similarly situated employees were entitled to receive minimum wages
12 for all hours worked. Likewise, Section 3 of Wage Order 1-2001 entitled Plaintiff and other
13 similarly situated employees to overtime wages for all hours worked over 8 hours per day or 40
14 hours per week. Defendant failed to pay all wages for all hours worked, as alleged below, in
15 violation of Labor Code Sections 1194 and 1197 and Wage Order 1-2001.

16 14. Defendant's violation of the applicable Wage Orders constitutes a violation of
17 Labor Code Section 558, which imposes civil penalties upon an employer for violations of any
18 provisions regulating hours and days of work in any order of the IWC. Labor Code Section
19 558(a)(1) and (2). Defendant's violations of Wage Order 1-2001 (3) and (4) also constitute
20 violations of Labor Code Sections 1198 and 1199, which prohibit employment under conditions
21 of labor that violate the IWC Wage Orders and subject Defendant to additional civil penalties. See
22 Wage Order 1-2001(20).

23 15. As detailed below, Defendant suffered and permitted Plaintiff and other similarly
24 situated employees to perform post-shift tasks without compensating Plaintiff and other similarly
25 situated employees for such time and failed to factor non-discretionary bonuses into the regular
26 rate of pay for the payment of overtime wages.

27 16. Bag Checks: Throughout Plaintiff's employment with Defendant, Plaintiff and
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1 other similarly situated employees in Defendant's vehicle distribution centers who also brought
2 bags with them to work were required to undergo mandatory security screenings after they clocked
3 out at the end of their shifts. Plaintiff was required to walk to the security booth located at the
4 entrance of the plant, wait in line, and show security guards his personal bag and its contents. This
5 process could take anywhere from 2 minutes to 8 minutes depending on the length of the line.
6 Plaintiff and other similarly situated employees who brought bags with them to work were not
7 compensated for the time spent undergoing mandatory bag checks.

8 17. Overtime Rate Calculation: Throughout Plaintiff's employment, Defendant
9 employed Plaintiff and other similarly situated employees subject to Labor Code sections 510 and
10 1194 and the applicable IWC Wage Orders, including Wage Order 1-2001. (Violations of Section
11 3 of the applicable Wage Orders constitute a violation of Labor Code Section 1198, which prohibits
12 employment under conditions that violate the IWC Wage Orders.) Plaintiff and other similarly
13 situated employees were entitled to receive overtime for all hours worked in excess of 8 hours in
14 a day or 40 hours in a week. Any work performed in excess of that, "shall be compensated at a rate
15 of no less than one and one-half times the *regular rate of pay* for an employee." Labor Code
16 Section 510(a)(emphasis added).

17 18. During the relevant statutory period, Plaintiff and other similarly situated
18 employees in Defendant's vehicle distribution centers earned overtime pay for working more than
19 the hours prescribed in section 510 and Wage Order 1-2001 (i.e., more than 8 hours in a day or 40
20 hours per week). In addition, Plaintiff and other similarly situated employees received
21 performance-based bonuses and car allowances, indicated on their wage statements as "BONUS"
22 and "1ST CAR ALLOW," that are not excludable under California law when calculating an
23 employee's regular rate of pay (hereinafter "Incentive Pay").

24 19. However, during the relevant periods in which Plaintiff and other similarly situated
25 employees earned overtime and Incentive Pay, including a "BONUS" and/or "1ST CAR
26 ALLOW," Defendant paid Plaintiff and other similarly situated employees overtime wages at a
27 rate that did not correctly factor the amount of Incentive Pay. As a result, Plaintiff and these other
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1 similarly situated employees were underpaid all of their required overtime wages.

2 20. For example, Plaintiff earned a “BONUS” in the sum of \$1,311.67 and a “1ST CAR
3 ALLOW” in the sum of \$221.08 in May 2023. Defendants paid all overtime hours that Plaintiff
4 worked during the relevant time period at a rate of 1.5 times his *base* hourly rate. Defendant did
5 not factor the “BONUS” or the “1ST CAR ALLOW” when calculating Plaintiff’s regular rate of
6 pay for overtime wages as required by law.

7 21. Meal and Rest Period Premiums Regular Rate Miscalculation: Wage Order 1-
8 2001(11) provides, “If an employer fails to provide an employee a meal period in accordance with
9 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at
10 the employee’s **regular rate of compensation** for each workday that the meal period is not
11 provided.” Wage Order 1-2001(11)(D), (12)(B) (same re rest periods) (emphasis added); *see also*
12 Labor Code § 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery
13 period in accordance with a state law, ..., the employer shall pay the employee one additional hour
14 of pay at the employee’s **regular rate of compensation** for each work day that the meal or rest
15 period is not provided.” (Emphasis added)).

16 22. During the relevant statutory period, Defendant paid Plaintiff and similarly situated
17 employees one hour of pay at the employee’s base hourly rate when compensating those
18 employees for acknowledged violations of the meal and rest period requirements, including during
19 periods when the employee earned Incentive Pay required to be factored into an employee’s regular
20 rate of compensation. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 489 P.3d 1166,
21 1178 (2021) (“we hold that the term “regular rate of compensation” in section 226.7(c) has the
22 same meaning as “regular rate of pay” in section 510(a) and encompasses not only hourly wages
23 but all nondiscretionary payments for work performed by the employee.”).

24 23. During their employment with Defendant, Plaintiff and other similarly situated
25 employees were entitled to “paid sick days” pursuant to the California Healthy Workplaces,
26 Healthy Families Act of 2014, California Labor Code Section 245, *et seq.*

27 24. California Labor Code Section 246(l) requires that employers pay sick time to non-
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1 exempt employees at the employee's "regular rate of pay." Employers may either calculate "paid
2 sick days" for non-exempt employees in California at the regular rate of pay for the workweek in
3 which the employee uses paid sick time or by dividing the employee's total wages, not including
4 overtime premium pay, by the employee's total hours worked in the full pay periods of the prior
5 90 days of employment paid to the employee and includes Incentive Pay.

6 25. During the relevant statutory period, Plaintiff and similarly situated employees
7 accrued and took paid sick leave. However, Defendant failed to include such Incentive Pay when
8 determining the "regular rate of pay" for these employees for the purposes of sick leave pay when
9 they were paid sick leave and Incentive Pay in the same relevant period. Instead, Defendant only
10 paid these situated employees paid sick leave wages at their base hourly rate, rather than at their
11 "regular rate of pay."

12 26. For example, Plaintiff earned a "BONUS" in the sum of \$1,311.67 and a 1ST CAR
13 ALLOW" in the sum of \$221.08 in May 2023. Defendant paid all of the paid sick leave Plaintiff
14 took during the relevant time period at his base hourly rate and did not factor in the "BONUS" or
15 "1ST CAR ALLOW" Plaintiff earned during the relevant period when determining his regular rate
16 of pay for the purposes of paid sick leave wages.

17 27. Inaccurate Wage Statements: Labor Code 226(a) requires employers to furnish
18 accurate itemized wage statements in writing that show, inter alia, "(1) gross wages earned, ... (9)
19 applicable hourly rates..."

20 28. Plaintiff and similarly situated California employees of Defendant received wage
21 statements that did not list all wages earned, including the minimum, overtime, and premium
22 wages discussed above. As the above infractions explain, Plaintiff and similarly situated California
23 employees were entitled to overtime, minimum or premium wages that were not paid and,
24 therefore, are entitled to penalty payments pursuant to Labor Code Section 226.

25 29. Waiting Time Penalties: Plaintiff and other similarly situated have ceased their
26 employment with Defendant. Upon the cessation of that employment relationship (and as
27 prescribed by statute), they did not receive all wages owed, as alleged above. Namely, said former
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1 employees did not receive all minimum, overtime and premium wages owed to them on the date
2 of termination. Therefore, Defendant has violated and continues to violate Labor Code Sections
3 201, and 202, because even if they pay employees timely, they have not paid the aforementioned
4 wages.

5 30. Likewise, Defendant has violated Section 203 by not paying the waiting time
6 penalties for failure to comply with Sections 201, and 202. Pursuant to Labor Code Section 203,
7 Plaintiff and other similarly situated individuals are entitled to continuation of their wages, from
8 the day of each discharge they experienced until the wages were paid, up to a maximum of thirty
9 (30) days per discharge.

10 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

11 31. Plaintiff brings this action on behalf of himself and on behalf of the following
12 Classes:

13 **Bag Check Class:** All current and former non-exempt employees of Defendant
14 BMW of North America, LLC employed in Defendant's vehicle distribution
15 centers in California who brought bags to work at any time during the period
16 beginning four years preceding the filing of the Complaint through the date notice
17 is mailed to the Class.

18 **Overtime Regular Rate Class:** All current and former non-exempt employees of
19 Defendant BMW of North America, LLC employed in Defendant's vehicle
20 distribution centers in California who, at any time during the period beginning
21 four years preceding the filing of the Complaint through the date notice is mailed
22 to the Class (1) were paid Incentive Pay and (2) were paid overtime pay during
23 the period for which they received the Incentive Pay.

24 **Sick Leave Class:** All current and former non-exempt employees of Defendant
25 BMW of North America, LLC employed in Defendant's vehicle distribution
26 centers in California who, at any time during the period beginning four years
27 preceding the filing of the Complaint through the date notice is mailed to the
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Class, were (1) paid sick leave and (2) paid Incentive Pay in addition to base hourly wages in either (a) the same workweek in which the person took paid sick leave or (b) during any of the full pay periods in the 90 days prior to the person taking paid sick leave.

Break Premium Class: All current and former non-exempt employees of Defendant BMW of North America, LLC employed in Defendant's vehicle distribution centers in California who (1) were paid Incentive Pay and (2) were paid a meal or rest break premium during the period for which they received the Incentive Pay at any time during the period beginning four years preceding the filing of the Complaint through the date notice is mailed to the Class.

32. This action has been brought and may be properly maintained as a class action pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

33. **Numerosity:** Code of Civil Procedure § 382: members of the Class are so numerous that their individual joinder is impracticable. The precise number of Class members and their addresses are unknown to Plaintiff. However, Plaintiff is informed and believes that the number can be obtained from Defendant's records. Class members may be notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

34. **Existence of Predominance of Common Questions of Fact and Law:** Code of Civil Procedure § 382: Common questions of law and fact exist as to all members of the Classes. These questions predominate over any questions effecting only individual members of the classes. These common factual and legal questions include:

- (a) Whether the time spent undergoing a bag check for those members of the Bag Check Class is compensable;
- (b) Whether Incentive Pay is required to be factored into the regular rate of pay for the payment of overtime wages;
- (c) Whether Incentive Pay is required to be factored into the regular rate of pay for the payment of sick leave wages;

- (d) Whether Incentive Pay is required to be factored into the regular rate of compensation for the payment of meal and rest break premiums;
- (e) Whether Defendant correctly calculated the regular rate of pay for the payment of overtime wages to members of the Overtime Regular Rate Class;
- (f) Whether Defendant correctly calculated the regular rate of pay for the payment of sick leave wages to members of the Sick Leave Class;
- (g) Whether Defendant correctly calculated the regular rate of compensation for the payment of meal and/or rest break premiums to members of the Break Premium Class;
- (h) Whether Defendant was required to include the allegedly unpaid minimum, overtime and premium wages on the wage statements to members of the Classes;
- (i) Whether Defendant failed to provide members of the Classes all wages owed, including sick pay, minimum, overtime, and premium wages at the time of cessation of the employee-employer relationship;

35. **Typicality**: Plaintiff's claims are typical of the claims of the members of each Class because Plaintiff, as an hourly paid employee, was exposed to the same unlawful business practices as the members of the classes. Plaintiff sustained the same types of injuries and losses that the Class members sustained. Plaintiff is subject to the same affirmative defenses as the members of the Class.

36. **Adequacy**: Plaintiff will adequately and fairly protect the interests of the members of the Classes. Plaintiff has no interest adverse to the interests of absent Class members. Plaintiff is represented by legal counsel who has substantial class action experience in civil litigation and employment law.

37. **Superiority**: A class action is superior to other available means for fair and efficient adjudication of the claims of the Class and would be beneficial for the parties and the court. Class action treatment will allow a large number of similarly situated persons to prosecute

1 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
2 duplication of effort and expense that numerous individual actions would require. The monetary
3 amounts due to many individual Class members are likely to be relatively small, and the burden
4 and expense of individual litigation would make it difficult or impossible for individual members
5 of the Classes to seek and obtain relief. A class action will serve an important public interest by
6 permitting such individuals to effectively pursue recovery of the sums owed to them. Further,
7 class litigation prevents the potential for inconsistent or contradictory judgments raised by
8 individual litigation.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES**

11 **(By Plaintiff and Members of the Bag Check Class and the Overtime Regular Rate Class**
12 **against Defendant)**

13 38. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
14 though set forth herein.

15 39. Throughout Plaintiff's employment, Defendant employed Plaintiff and other
16 similarly situated employees subject to Labor Code sections 510, 1194, and 1197, and the
17 Industrial Welfare Commission ("IWC") Wage Orders, including Wage Order 1-2001.

18 40. Under Labor Code section 1197 and subsection 4 of Wage Order 1-2001, Plaintiff
19 and other members of the Bag Check Class were entitled to receive minimum wages for all hours
20 worked on those shifts less than 8 hours. Likewise, section 3 of Wage Order 1-2001 and Labor
21 Code Section 510 entitled Plaintiff and other members of the Bag Check Class to overtime wages
22 for all hours worked over 8 hours per day or 40 hours per week. Defendant failed to pay all wages
23 for all hours worked in violation of Labor Code Sections 1194 and 1197 and Wage Order 1-2001.

24 41. Plaintiff is informed and believes and thereon alleges that at all relevant times
25 within the applicable limitations period, Defendant suffered and permitted Plaintiff and other
26 members of the Bag Check Class to perform work-related tasks off the clock, namely undergoing
27 mandatory bag checks. Plaintiff and other members of the Bag Check Class regularly worked 8-

1 hour shifts. However, on those occasional shifts when Plaintiff and other class members worked
2 less than an 8-hour shift, they are owed minimum wages for those minutes spent undergoing
3 mandatory security screenings. On the majority of their regular shifts, i.e., shifts over 8 hours, they
4 are owed overtime wages for those minutes spent undergoing mandatory security screenings.

5 42. In addition, during the relevant periods in which Plaintiff and other members of the
6 Overtime Regular Rate Class earned overtime and Incentive Pay, Defendant paid Plaintiff and
7 others at a rate that did not correctly factor the amount of Incentive Pay. As a result, Plaintiff and
8 other members of the Overtime Regular Rate Class were underpaid all of their overtime wages
9 they actually earned for the relevant period.

10 43. In committing the violations of state law herein alleged, Defendant has knowingly
11 and willfully refused to perform its obligations to compensate class members for all overtime
12 wages for all hours worked.

13 44. As a direct result, Plaintiff and members of the Bag Check Class and the Overtime
14 Regular Rate Class have suffered and continue to suffer, losses related to the use and enjoyment
15 of such compensation, wages, lost interest on such monies and expenses and attorney's fees in
16 seeking to compel Defendant to fully perform its obligation under state law, all to their respective
17 damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

18 45. Plaintiff, on behalf of himself and the other members of the Bag Check Class and
19 the Overtime Regular Rate Class, requests the unpaid minimum and overtime wages, all penalties
20 they are entitled to, interest, attorneys' fees, costs, and any other remedies allowed by law,
21 including liquidated damages on the minimum wage claim, in an amount to be proven at trial.

22 **SECOND CAUSE OF ACTION**

23 **UNDERPAYMENT OF MEAL AND REST PERIOD PREMIUMS**

24 **(By Plaintiff and Members of the Break Premium Class against Defendant)**

25 46. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
26 though set forth herein.

27 47. At all relevant times, Plaintiff and other members of the Break Premium Class were
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1 employees of Defendant covered by Labor Code sections 226.7 and 512, and Wage Order 1-2001.

2 48. Pursuant to Labor Code sections 226.7 and 512 and Wage Order 1-2001, Plaintiff
3 and the other members of the Break Premium Class were entitled to a rest period of at least 10
4 minutes for each four-hour period of work, or major fraction thereof, and one hour of additional
5 pay for every day a rest period was not provided.

6 49. Pursuant to Labor Code sections 226.7 and 512, and Wage Order 1-2001, Plaintiff
7 and other members of the Break Premium Class were entitled to a meal period of at least 30
8 minutes for each workday they worked more than 5 hours in any workday, and one additional hour
9 of pay at their regular rate of compensation for each workday that a meal period was not provided.

10 50. As alleged above, Defendant paid Plaintiff and other members of the Break
11 Premium Class one hour of pay at the employee's *base* hourly rate when compensating those
12 employees for acknowledged violations of the meal and rest break requirements, including periods
13 for which the employee earned and was paid Incentive Pay required to be factored into an
14 employee's regular rate of compensation. Accordingly, Defendant failed to pay the full amount of
15 the required break premium because it failed to factor the Incentive Pay into Plaintiff's and the
16 other class members' break premiums it paid for acknowledged break violations.

17 51. As a result, of Defendant's unlawful conduct, Plaintiff and the other members of
18 the Break Premium Class have suffered damages in an amount, subject to proof, to the extent they
19 were underpaid additional pay owed for non-compliant meal and rest periods.

20 52. Pursuant to Labor Code section 218, Plaintiff and the other members of the Break
21 Premium Class are entitled to recover the full amount of their underpaid premiums for non-
22 compliant meal and rest periods. Pursuant to Labor Code section 218.5, Plaintiff and the other
23 members of the Break Premium Class are entitled to recover their reasonable attorney's fees and
24 costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and
25 other members of the Break Premium Class are entitled to recover prejudgment interest on the
26 wages owed to them for non-compliant meal and rest periods.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

3 **(By Plaintiff and the Classes against Defendant)**

4 53. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
5 though set forth herein.

6 54. Section 226(a) of the California Labor Code requires Defendant to accurately report
7 total hours worked by Plaintiff and the members of the Bag Check Class, the Overtime Regular
8 Rate Class and the Break Premium Class, and to accurately set forth wages earned. Defendant has
9 knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every
10 wage statement provided to Plaintiff and members of the Classes by failing to accurately list all
11 hours worked due to off-the-clock work and all minimum, overtime and premium wages earned,
12 as discussed above.

13 55. As a consequence of Defendant's knowing and intentional failure to comply with
14 Labor Code section 226(a), Plaintiff and each member of the Classes who worked during the
15 relevant statutory period that he seeks to represent are each entitled to actual damages or penalties
16 not to exceed \$4,000 per person pursuant to Labor Code section 226(b), together with interest
17 thereon and attorneys' fees and costs.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PAY WAGES TIMELY UPON CESSATION OF EMPLOYMENT**

20 **(By Plaintiff and the Classes against Defendant)**

21 56. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
22 though set forth herein.

23 57. Plaintiff and the other members of the Bag Check Class, the Overtime Regular Rate
24 Class and the Break Premium Class were employees of Defendant covered by Labor Code Sections
25 201 or 202 whose employment with Defendant ended during the relevant period.

26 58. California Labor Code Section 201 provides that all wages earned and unpaid at
27 the time of an employee's discharge are due and payable immediately. California Labor Code

1 Section 202 provides that, in the case of an employee who resigns or quits, all such wages must be
2 paid not later than 72 hours thereafter, unless the employee has given 72 hours previous notice, in
3 which case the employee must be paid all wages due at the time of quitting. Pursuant to California
4 Labor Code § 203, an employer who willfully fails to pay all such wages in accordance with
5 Sections 201 or 202 must pay that employee statutory waiting time penalties of a day's wages until
6 all wages owed are paid (up to 30 days).

7 59. Defendant failed to pay all wages due at the time of the cessation of the employee-
8 employer relationship in accordance with Labor Code Section 201 or 202 as a result of the unpaid
9 minimum, overtime, paid sick leave and premium wages alleged above.

10 60. Labor Code Section 246(I) requires that employers pay sick time pay to non-exempt
11 employees at that employee's "regular rate of pay." Employers must calculate paid sick leave for
12 non-exempt employees (1) "in the same manner as the regular rate of pay for the workweek in
13 which the employee uses paid sick leave, whether or not the employee actually works overtime in
14 that workweek" or (2) "by dividing the employee's total wages, not including overtime premium
15 pay, by the employee's total hours worked in the full pay periods of the prior 90 days of
16 employment." Labor Code Section 246(I).

17 61. The "regular rate of pay includes all remuneration for employment with the
18 exception of overtime pay and includes, but is not limited to, base hourly wages, performance-
19 based bonuses and other forms of non-discretionary wages.

20 62. During the relevant time, Defendant failed to include Incentive Pay when
21 determining the "regular rate of pay" for Plaintiff and the other members of the Sick Leave Class
22 for purposes of sick leave pay.

23 63. According to the California Supreme Court, sick pay is a form of wages. *Murphy*
24 *v. Kenneth Cole Prods.*, 40 Cal.4th 1094, 1103 (2007).

25 64. Plaintiff is informed and believes and thereon alleges that at all relevant times
26 within the applicable limitations period, Defendant maintained and continues to maintain a policy
27 or practice of not paying terminated employees all their final wages, including all minimum,
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1 overtime, premium, and sick pay wages earned before termination due under Labor Code Section
2 201 or 202.

3 65. Defendant's failure to pay Plaintiff and members of the Classes all wages earned
4 prior to termination, in accordance with Labor Code Sections 201 or 202, was willful. Defendant
5 had the ability to pay all wages earned by employees prior to termination in accordance with Labor
6 Code Sections 201 or 202, but intentionally adopted policies or practices incompatible with the
7 requirements of Labor Code Sections 201 or 202.

8 66. Pursuant to Labor Code Section 201 or 202, Plaintiff and other members of the
9 Classes are entitled to all wages earned prior to termination that Defendant failed to pay them.

10 67. Pursuant to Labor Code Section 203, Plaintiff and other members of the Classes
11 are entitled to continuation of their wages, from the day their earned and unpaid wages were due
12 upon termination until paid, up to a maximum of 30 days.

13 68. As a result of Defendant's conduct, Plaintiff and other members of the Classes have
14 suffered damages in an amount, subject to proof, to the extent they were not paid for all wages
15 earned prior to termination.

16 69. As a result of Defendant's conduct, Plaintiff and members of the Classes have
17 suffered damages in an amount, subject to proof, to the extent they were not paid all continuation
18 wages owed under Labor Code Section 203.

19 70. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of the
20 Classes are entitled to recover the full amount of their unpaid wages, continuation wages under
21 Labor Code Section 203, reasonable attorney's fees and costs of suit. Pursuant to Labor Code
22 Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members of the Classes are
23 entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid
24 continuation wages.

1 **FIFTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(By Plaintiff and the Classes against Defendant)**

4 71. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
5 though set forth herein.

6 72. Defendant is a “person” as defined under Business and Professions Code § 17021.

7 73. Plaintiff alleges that Defendant committed the unfair business practices, as defined
8 by Cal. Bus. & Prof. Code § 17200, et seq., by violating the laws alleged to have been violated in
9 this Complaint and which allegations are incorporated herein by reference as though set forth
10 herein, which allegations include, but are not limited to:

- 11 a. Failing to pay Plaintiff and Overtime Regular Rate Class Members all
12 overtime wages due as a result of Defendant’s failure to factor Incentive Pay
13 into class members’ regular rate of pay for the payment of overtime in
14 violation of California law;
- 15 b. Failing to pay Plaintiff and Bag Check Class Members all minimum wages
16 due as a result of off the clock bag checks in violation of California law;
- 17 c. Failing to pay Plaintiff and Break Premium Class Members all premium
18 wages owed for meal and rest period violations as a result of Defendant’s
19 failure to factor Incentive Pay into class members’ regular rate of
20 compensation for the payment of break premiums in violation of California
21 law;
- 22 d. Failing to provide all sick leave wages owed to Plaintiff and Sick Leave Class
23 Members as a result of Defendant’s failure to factor Incentive Pay into class
24 members’ regular rate of pay for the payment of sick leave pay in violation of
25 California law;
- 26 e. Failing to provide accurate wage statements consistent with California law;
- 27

1 f. Failing to pay final wages upon cessation of employment consistent with
2 California law.

3 74. Plaintiff and members of the Classes have been deprived of their rights to
4 minimum, overtime, premium and sick leave wages for all hours worked, meal periods, rest
5 periods, paid sick leave, accurate wage statements, and/or timely payment of all earned wages due
6 upon termination of employment.

7 75. As a result of Defendant's unfair competition as alleged herein, Plaintiff and other
8 members of the Classes have suffered injury in fact and lost money or property.

9 76. Pursuant to Business and Professions Code Section 17203, Plaintiff and other
10 members of the Classes are entitled to restitution of all wages and other monies owed and
11 belonging to them, including interest thereon, that Defendant wrongfully withheld from them and
12 retained for themselves by means of their unlawful and unfair business practices.

13 77. Plaintiff and Class Members are entitled to recover reasonable attorney's fees in
14 connection with their unfair competition claims pursuant to Code of Civil Procedure Section
15 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

16 **SIXTH CAUSE OF ACTION**

17 **CIVIL PENALTIES UNDER PAGA**

18 **(By Plaintiff, Aggrieved Employees, and the State of California against Defendant)**

19 78. Plaintiff re-alleges and incorporated by reference the foregoing allegations as
20 though set forth herein.

21 79. At all times relevant to this action, Plaintiff and other Aggrieved Employees were
22 "Aggrieved Employees" within the meaning of Labor Code Section 2699.

23 80. Defendant's conduct herein, arising from Defendant's failure to pay minimum and
24 overtime wages for all hours worked under Labor Code Sections 510, 1194, and 1197, meal and
25 rest period violations under Labor Code Sections 226.7, and 512, underpayment of sick leave
26 wages under Labor Code Section 246(I), failure to provide legally compliant wage statements
27 under Labor Code Section 226, and failure to pay all wages upon cessation of employment in
28

violation of Labor Code Sections 201-203, gives rise to violations of PAGA.

81. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current or former employees, to bring civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

82. Plaintiff has complied with procedures for bringing suit specified in Labor Code Section 2699.3. By letter dated February 1, 2024, Plaintiff gave written notice to the Labor and Workforce Development Agency (LWDA) via its online filing system and via certified mail to Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the February 1, 2024 letter is attached hereto as **Exhibit 1**. To date, more than 65 days after the postmark date of February 1, 2024, the LDWA has not advised Plaintiff and other Aggrieved Employees that it intends to investigate Plaintiff's allegations.

83. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved Employees are entitled to civil penalties for Defendant's violations of the Labor Code and applicable Wage Orders of the Industrial Wage Order Commission, including Wage Order 1-2001, in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the LDWA, and 25% shall be distributed to the aggrieved employees.

84. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and all others similarly situated employees, prays for relief and judgment against Defendant as follows:

CLASS CERTIFICATION:

1. An order that the action be certified as a class action;

2. An order that Plaintiff be certified as the representative of the Classes;
3. An order that counsel for Plaintiff be confirmed as Class counsel;

ON THE FIRST CAUSE OF ACTION:

1. Damages for unpaid overtime wages;
2. Damages for unpaid minimum wages;
3. Liquidated Damages;
4. Prejudgment interest;

ON THE SECOND CAUSE OF ACTION:

1. Damages for underpayment of additional pay owed for acknowledged non-compliant meal and rest periods;
2. Prejudgment interest;

ON THE THIRD CAUSE OF ACTION:

1. Damages for inaccurate wage statements;
2. Prejudgment interest;

ON THE FOURTH CAUSE OF ACTION:

1. Damages for unpaid wages earned prior to termination of employment;
2. Damages for unpaid continuation wages owed for failing to pay all earned wages timely upon termination of employment;
3. Prejudgment interest;

ON THE FIFTH CAUSE OF ACTION:

1. Restitution of all unpaid wages and other monies owed and belonging to the Classes that Defendant unlawfully withheld from them and retained for itself;
2. Prejudgment interest;

ON THE SIXTH CAUSE OF ACTION

1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to Aggrieved Employees);
2. Costs;

1 3. Reasonable attorney's fees;

2 4. Such other and further relief as the Court deems just and proper.

3 **ON ALL CAUSES OF ACTION:**

4 1. Judgment in favor of Plaintiff and the putative Classes against Defendant;

5 2. Reasonable attorney's fees;

6 3. Costs of suit; and

7 4. Such other relief as the Court deems just and proper.

8
9 Dated: April 8, 2024

MOSS BOLLINGER, LLP

10
11 By: 

Jeremy F. Bollinger

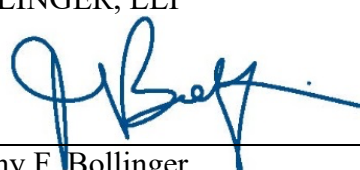
12 Attorneys for Plaintiff JUAN ESPINOZA

13
14 **DEMAND FOR JURY TRIAL**

15 Plaintiff demands a trial by jury for himself and the Classes on all claims so triable.

16
17 Dated: April 8, 2024

MOSS BOLLINGER, LLP

18
19 By: 

Jeremy F. Bollinger

20 Attorneys for Plaintiff JUAN ESPINOZA

EXHIBIT 1



Moss Bollinger
LLP

JEREMY F. BOLLINGER
310.982.2984/fax: 818.963.5954
jeremy@mossbollinger.com

February 1, 2024

VIA PAGA ONLINE FILING

Secretary Stewart Knox
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

BMW of North America, LLC
c/o 1505 Corporation C T Corporation System
330 N. Brand Blvd., Ste. 700
Glendale, CA 91203

Re: Notice pursuant to Labor Code Section 2699.3
Labor Code Private Attorneys General Act ("PAGA")

Employers: BMW of North America, LLC

Employee: Juan Carlos Espinoza, on behalf of himself and on behalf of all current and former similarly situated California vehicle distribution center employees of BMW of North America, LLC.

Dear Secretary Knox:

Pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee Juan Carlos Espinoza ("Plaintiff"), on behalf of himself and all other similarly situated current and former non-exempt employees of Defendant BMW of North America, LLC ("Defendant") who worked in Defendant's vehicle distribution centers in California, alleges that Defendant violated the California Labor Code throughout Plaintiff's employment and within the one year prior to the mailing of this letter.

15300 Ventura Boulevard, Suite 207, Sherman Oaks, California 91403

General Facts

During the relevant one year period before the date Plaintiff submitted this letter to the Labor & Workforce Development Agency (“LWDA”), Plaintiff worked for Defendant as a non-exempt hourly paid employee manufacturing components at Defendant’s vehicle distribution center in Oxnard, California. Defendant employed Plaintiff from approximately October 2021 to on or about November 3, 2023.

Defendant is a Delaware corporation that develops, manufactures and distributes automobiles and automotive parts throughout California.

Plaintiff seeks civil penalties on behalf of himself, the State of California, and all other similarly aggrieved California employees for the violations described herein.

Unpaid Minimum and Overtime Wages

Throughout Plaintiff’s employment, Defendant employed Plaintiff and other similarly aggrieved employees subject to Labor Code Sections 510, 512, 1194, and 1197 and the applicable Industrial Welfare Commission Wage Orders, including Wage Order 1-2001. Under Labor Code Section 1197 and subsection 4 of Wage Order 1, Plaintiff and other similarly aggrieved employees were entitled to receive minimum wages for all hours worked. Likewise, Section 3 of Wage Order 1-2001 entitled Plaintiff and other similarly aggrieved employees to overtime wages for all hours worked over 8 hours per day or 40 hours per week. Defendant failed to pay all wages for all hours worked in violation of Labor Code Sections 1194 and 1197 and Wage Order 1-2001.

Defendant’s violations of the applicable Wage Orders constitute a violation of Labor Code Section 558, which imposes civil penalties upon an employer for violations of any provisions regulating hours and days of work in any order of the IWC. Labor Code Section 558(a)(1) and (2). Defendant’s violations of Wage Order 1-2001 (3) and (4) also constitute violations of Labor Code Sections 1198 and 1199, which prohibit employment under conditions of labor that violate the IWC Wage Orders and subject Defendant to additional civil penalties. See Wage Order 1-2001(20).

As detailed below, Defendant suffered and permitted Plaintiff and other similarly aggrieved employees to perform post-shift tasks without compensating Plaintiff and other similarly aggrieved employees for such time and failed to factor non-discretionary bonuses into the regular rate of pay for the payment of overtime wages.

Bag Checks

Throughout Plaintiff’s employment with Defendant, Plaintiff and other similarly aggrieved employees who also brought bags with them to work were required to undergo mandatory

security screenings after they clocked out at the end of their shifts. Plaintiff was required to walk to the security booth located at the entrance of the plant, wait in line, and show security guards his personal bag and its contents. This process could take anywhere from 2 minutes to 8 minutes depending on the length of the line. Plaintiff and other similarly aggrieved employees who brought bags with them to work were not compensated for the time spent undergoing mandatory bag checks.

Overtime Rate Calculation

Throughout Plaintiff's employment, Defendant employed Plaintiff and other similarly aggrieved employees subject to Labor Code sections 510 and 1194 and the applicable IWC Wage Orders, including Wage Order 1-2001. (Violations of Section 3 of the applicable Wage Orders constitute a violation of Labor Code Section 1198, which prohibits employment under conditions that violate the IWC Wage Orders.) Plaintiff and other similarly aggrieved employees were entitled to receive overtime for all hours worked in excess of 8 hours in a day or 40 hours in a week. Any work performed in excess of that, "shall be compensated at a rate of no less than one and one-half times the *regular rate of pay* for an employee." Labor Code Section 510(a)(emphasis added).

During the one-year period prior to the date of this letter, Plaintiff and other similarly aggrieved employees earned overtime pay for working more than the hours prescribed in section 510 and Wage Order 1-2001 (i.e., more than 8 hours in a day or 40 hours per week). In addition, Plaintiff and other similarly aggrieved employees received performance-based bonuses and car allowances, including but not limited to the payments indicated on their wage statements as "BONUS" and "1ST CAR ALLOW" that are not excludable under California law when calculating an employee's regular rate of pay.

However, during the relevant periods in which Plaintiff and other similarly aggrieved employees earned overtime and incentive pay, including a "BONUS" and/or "1ST CAR ALLOW," Defendant paid Plaintiff and other similarly aggrieved employees overtime wages at a rate that did not correctly factor the amount of incentive pay. As a result, Plaintiff and these other similarly aggrieved employees were underpaid all of their required overtime wages.

For example, Plaintiff earned a "BONUS" in the sum of \$1,311.67 and a "1ST CAR ALLOW" in the sum of \$221.08 in May 2023. Defendants paid all overtime hours that Plaintiff worked during the relevant time period at a rate of 1.5 times his *base* hourly rate. Defendant did not factor the "BONUS" or the "1ST CAR ALLOW" when calculating Plaintiff's regular rate of pay for overtime wages as required by law.

As Defendant failed to pay all overtime wages, Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period and \$200 per pay period for each

subsequent violation. Likewise, as Defendant failed to pay all minimum wages in those pay periods in which Plaintiff or another similarly aggrieved employee worked a shift of less than 8 hours in a day or 40 hours in a week, Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period and \$200 per pay period for each subsequent violation.

Meal and Rest Period Violations

Missed Meal and Rest Period Premiums Regular Rate Calculation

Wage Order 1-2001(11) provides, “If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s **regular rate of compensation** for each workday that the meal period is not provided.” Wage Order 1-2001(11)(D), (12)(B) (same re rest periods) (emphasis added); *see also* Labor Code § 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, ..., the employer shall pay the employee one additional hour of pay at the employee’s **regular rate of compensation** for each work day that the meal or rest period is not provided.” (Emphasis added)).

Defendant paid aggrieved employees one hour of pay at the employee’s base hourly rate when compensating those employees for acknowledged violations of the meal and rest period requirements, including during periods when the employee earned a performance-based bonus (or other form of incentive pay such as the “1ST CAR ALLOW”) required to be factored into an employee’s regular rate of compensation. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 489 P.3d 1166, 1178 (2021) (“we hold that the term “regular rate of compensation” in section 226.7(c) has the same meaning as “regular rate of pay” in section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee.”).

Defendant’s violation of the applicable IWC Wage Orders, including Wage Order 1-2001, constitutes a violation of Labor Code Section 558, which imposes civil penalties upon an employer for a violation to any provision regulating hour and days of work in any order of the IWC. Lab. Code § 558(a)(1), (2).

As Defendant failed to provide lawful meal breaks and to pay meal period premiums as required by California law when such violations occurred, Defendant is liable for civil penalties in the amount of \$100 per aggrieved employee per pay period for the first meal period violation and \$200 per aggrieved employee per pay period for each subsequent meal period violation

Violation of Labor Code § 246(l)

During their employment with Defendant, Plaintiff and other similarly aggrieved employees were entitled to “paid sick days” pursuant to the California Healthy Workplaces, Healthy

Families Act of 2014, California Labor Code Section 245, *et seq.*

Labor Code Section 246(l) requires that employers pay sick time to non-exempt employees at the employee's "regular rate of pay." Employers may either calculate "paid sick days" for non-exempt employees in California at the regular rate of pay for the workweek in which the employee uses paid sick time or by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment paid to the employee and includes performance-based bonuses and other forms of incentive pay such as the "1ST CAR ALLOW".

During the relevant periods, Plaintiff and similarly aggrieved employees accrued and took paid sick leave. However, Defendant failed to include such incentive pay when determining the "regular rate of pay" for these employees for the purposes of sick leave pay when they were paid sick leave and incentive pay in the same pay period. Instead, Defendant only paid these aggrieved employees paid sick leave wages at their base hourly rate, rather than at their "regular rate of pay."

For example, Plaintiff earned a "BONUS" in the sum of \$1,311.67 and a "1ST CAR ALLOW" in the sum of \$221.08 in May 2023. Defendant paid all of the paid sick leave Plaintiff took during the relevant time period at his base hourly rate and did not factor in the "BONUS" or "1ST CAR ALLOW" Plaintiff earned during the relevant period when determining his regular rate of pay for the purposes of paid sick leave wages.

As a result of Defendant's failure to factor non-discretionary pay into its employees' regular rate of pay for the payment of paid sick leave wages, Defendant is liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Inaccurate Wage Statements

Labor Code Section 226(a) requires employers to furnish accurate itemized wage statements in writing that show, inter alia, "(1) gross wages earned, ... (9) applicable hourly rates..."

Plaintiff and similarly aggrieved California employees of Defendant received wage statements that did not list all wages earned, including the minimum, overtime, and premium wages discussed above. As the above infractions explain, Plaintiff and similarly aggrieved California employees were entitled to overtime, minimum or premium wages that were not paid and, therefore, are entitled to penalty payments pursuant to Labor Code Section 226.

As Defendant violated Labor Code Section 226(a), Defendant is liable for civil penalties in the

amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Unpaid Final Wages

Plaintiff and others similarly aggrieved have ceased their employment with Defendant. Upon the cessation of that employment relationship (and as prescribed by statute), they did not receive all wages owed. Namely, said former employees did not receive all minimum, overtime and premium wages owed to them on the date of termination. Therefore, Defendant has violated and continues to violate Labor Code Sections 201, 201.3 and 202, because even if they pay employees timely, they have not paid the aforementioned wages.

Likewise, Defendant has violated Section 203 by not paying the waiting time penalties for failure to comply with Sections 201, 201.3 and 202. Pursuant to Labor Code Section 203, Plaintiff and other similarly aggrieved individuals are entitled to continuation of their wages, from the day of each discharge they experienced until the wages were paid, up to a maximum of thirty (30) days per discharge.

Civil Penalties

As a result of the foregoing, Defendant is liable for civil penalties as provided for by California law. Consequently, Plaintiff and all other similarly aggrieved vehicle distribution center employees of Defendant in California are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Defendant violated and continues to violate the California law as described above. Plaintiff requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. If Defendant fails to cure those alleged curable violations, Plaintiff requests that the agency inform him if it does not intend to investigate these violations so that he may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,
MOSS BOLLINGER, LLP

A handwritten signature in black ink, appearing to read 'J. Bollinger'.

Jeremy F. Bollinger

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