

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 6/10/2024 11:55 AM
Reviewed By: R. Walker
Case #24CV432026
Envelope: 15589549**

Robert Drexler (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
Molly DeSario (SBN 230763)
Molly.DeSario@CapstoneLawyers.com
Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Justin Poor

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

JUSTIN POOR, individually, and on behalf
of other members of the general public
similarly situated, and as an aggrieved
employee pursuant to the Private Attorneys
General Act (“PAGA”),

Plaintiff,

vs.

MAJCO LLC, a California limited liability
company; ATV CANTER, LLC, a California
limited liability company; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 24CV432026

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;

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

- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Justin Poor, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

form a significant basis for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendants employ persons within the County of Santa Clara, and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least one (1) location within the County of Santa Clara, including Defendants' location in San Jose (1353 West San Carlos Street, San Jose, California 95126). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Santa Clara County and Plaintiff could bring this action to recover penalties in Santa Clara County, venue is proper.

THE PARTIES

4. Plaintiff Justin Poor is a resident of Lemoore, in Kings County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Service Advisor from approximately October 2022 to December 2023. Plaintiff worked for Defendants at their Big Brand Tire & Service location in Tulare, California, from his time of hire in October 2022 until approximately March 2023; at their American Tire Depot location in Tulare, California, from around March 2023 to approximately September 2023; at their Big Brand Tire & Service location in Tulare, California, from September 2023 to about October 2023; and at their American Tire Depot location in Hanford, California, from about October 2023 to approximately December 2023. During his employment, Plaintiff typically worked eight (8) hours or more per day and five (5) days per week. By the end of his employment, Plaintiff was compensated approximately \$17.00 per hour, plus commissions. Plaintiff's primary job duties included, without limitation, attending to customers, scheduling appointments, documenting vehicle issues and recommending repair solutions, conducting cash counts, and

1 completing store opening and closing procedures.

2 5. MAJCO LLC was and is, upon information and belief, a California limited
3 liability company, and at all times hereinafter mentioned, an employer whose employees are
4 engaged throughout this county and the State of California.

5 6. ATV CANTER, LLC was and is, upon information and belief, a California
6 limited liability company, and at all times hereinafter mentioned, an employer whose
7 employees are engaged throughout this county and the State of California.

8 7. Plaintiff is unaware of the true names or capacities of the Defendants sued
9 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
10 amend the complaint and serve such fictitiously named Defendants once their names and
11 capacities become known.

12 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
13 were the partners, agents, owners, or managers of MAJCO LLC and ATV CANTER, LLC at
14 all relevant times.

15 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
16 acts and omissions alleged herein was performed by, or is attributable to, MAJCO LLC; ATV
17 CANTER, LLC; and/or DOES 1 through 10 (collectively, "Defendants" or "MAJCO"), each
18 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
19 each of the other co-Defendants and was acting within the course and scope of such agency,
20 employment, joint venture, or concerted activity with legal authority to act on the others'
21 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
22 policy of Defendants.

23 10. At all relevant times, Defendants, and each of them, ratified each and every act
24 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
25 and abetted the acts and omissions of each and all the other Defendants in proximately causing
26 the damages herein alleged.

27 11. Plaintiff is informed and believes, and thereon alleges, that each of said
28 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,

omissions, occurrences, and transactions alleged herein.

12. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiff and class members. Each Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and class members to work and/or “engaged” Plaintiff and class members so as to create a common-law employment relationship. As joint employers of Plaintiff and class members, Defendants are jointly and severally liable for the civil penalties and all other relief available to Plaintiff and class members under the law.

13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class members because Defendants have:

- (a) jointly exercised meaningful control over the work performed by Plaintiff and class members;
- (b) jointly exercised meaningful control over Plaintiff’s and class members’ wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and class members;
- (c) jointly required that Plaintiff and class members perform work which is an integral part of Defendants’ businesses; and
- (d) jointly exercised control over Plaintiff and class members as a matter of economic reality in that Plaintiff and class members were dependent on Defendants, who shared the power to set the wages of Plaintiff and class members and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their

employment.

14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

15. MAJCO LLC; ATV CANTER, LLC; and DOES 1 through 10 are therefore alter egos of each other.

16. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name MAJCO.

17. Plaintiff further alleges, upon information and belief, that Defendants MAJCO LLC and ATV CANTER, LLC are alter egos of each other for the following reasons:

- (a) On the California Secretary of State's website (<https://bizfileonline.sos.ca.gov/>), MAJCO LLC and ATV CANTER, LLC share the same principal address and mailing address of "14401 PRINCETON AVE MOORPARK, CA 93021";
- (b) On the California Secretary of State's website, MAJCO LLC and ATV CANTER, LLC share the same agent for service of process, "C T CORPORATION SYSTEM";
- (c) According to their most recent "Statement of Information" forms filed with the California Secretary of State, MAJCO LLC and ATV CANTER, LLC share the same officers, including, but not limited to: Joseph R. Buscaglia, who serves as Chief Executive Officer for MAJCO LLC and ATV CANTER, LLC; and
- (d) On information and belief, MAJCO LLC and ATV CANTER, LLC utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

18. Defendants are a leading independent tire and automotive service provider,

1 with over 140 locations across California. Upon information and belief, Defendants maintain
2 a single, centralized Human Resources (“HR”) department at their company headquarters in
3 Moorpark, California, which is responsible for the recruiting and hiring of new employees,
4 and communicating and implementing Defendants’ company-wide policies, including
5 timekeeping policies and meal and rest period policies, to employees throughout California.

6 19. In particular, Plaintiff and class members, on information and belief, received
7 the same standardized documents and/or written policies. Upon information and belief, the
8 usage of standardized documents and/or written policies, including new-hire documents,
9 indicate that Defendants dictated policies at the corporate level and implemented them
10 company-wide, regardless of their employees’ assigned locations or positions. Upon
11 information and belief, Defendants set forth uniform policies and procedures in several
12 documents provided at an employee’s time of hire.

13 20. Upon information and belief, Defendants maintain a centralized Payroll
14 department at their company headquarters in Moorpark, California, which processes payroll
15 for all non-exempt, hourly paid employees working for Defendants at their various locations
16 in California, including Plaintiff and class members. Based upon information and belief,
17 Defendants issue the same formatted wage statements to all non-exempt, hourly paid
18 employees in California, irrespective of their work locations. Upon information and belief,
19 Defendants process payroll for departing employees in the same manner throughout the State
20 of California, regardless of the manner in which each employee’s employment ends.

21 21. Defendants continue to employ non-exempt or hourly paid employees in
22 California.

23 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
25 and advisors knowledgeable about California labor and wage law, employment and personnel
26 practices, and about the requirements of California law.

27 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
28 members were not paid for all hours worked because all hours worked were not recorded.

1 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive certain wages for
3 overtime compensation and that they were not receiving certain wages for overtime
4 compensation.

5 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to be paid at a regular rate
7 of pay, and corresponding rates of pay, for overtime wages and/or meal and rest period
8 premiums, that included as eligible income all remuneration required by law, including but not
9 limited to, all income derived from commissions, incentive pay, nondiscretionary bonuses,
10 and/or other forms of compensation, but failed to include all forms of remuneration in
11 calculating the regular rate of pay for Plaintiff and class members.

12 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to receive at least minimum
14 wages for compensation and that they were not receiving at least minimum wages for work
15 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
16 and class members were not paid at least minimum wages for work done off-the-clock.

17 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to meal periods in
19 accordance with the California Labor Code and applicable IWC Wage Order or payment of
20 one (1) additional hour of pay at their regular rates of pay when they were not provided with
21 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
22 were not provided with all meal periods or payment of one (1) additional hour of pay at their
23 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
24 period.

25 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to rest periods in
27 accordance with the California Labor Code and applicable IWC Wage Order or payment of
28 one (1) additional hour of pay at their regular rates of pay when they were not authorized and

1 permitted to take a compliant rest period and that Plaintiff and class members were not
2 authorized and permitted to take compliant rest periods or provided with payment of one (1)
3 additional hour of pay at their regular rates of pay when they were not authorized and
4 permitted to take a compliant rest period.

5 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to receive complete and
7 accurate wage statements in accordance with California law. In violation of the California
8 Labor Code, Plaintiff and class members were not provided complete and accurate wage
9 statements.

10 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that they had a duty to maintain accurate and complete payroll records in
12 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
13 knowingly, and intentionally failed to do so.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to timely payment of all
16 wages earned upon termination of employment. In violation of the California Labor Code,
17 Plaintiff and class members did not receive payment of all wages due, including, but not
18 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick
19 leave pay, within permissible time periods.

20 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to timely payment of wages
22 during their employment. In violation of the California Labor Code, Plaintiff and class
23 members did not receive payment of all wages, including, but not limited to, overtime wages,
24 minimum wages, meal and rest period premiums, and/or sick leave pay, within permissible
25 time periods.

26 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to receive sick leave
28 benefits to be paid at a regular rate of pay, that included, as eligible income, all income

1 derived from commissions, incentive pay, nondiscretionary bonuses, and/or other forms of
2 compensation. In violation of the California Labor Code, Defendants failed to include all
3 forms of remuneration in calculating the regular rate of pay for sick leave pay.

4 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to suitable seating and/or
6 were entitled to sit when it did not interfere with the performance of their duties and also have
7 seats nearby to use during a lull in tasks that do require moving about or standing. In
8 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to
9 provide Plaintiff and class members with suitable seating.

10 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive reimbursement
12 for all business-related expenses and costs they incurred during the course and scope of their
13 employment and that they did not receive reimbursement of applicable business-related
14 expenses and costs incurred.

15 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants knew or should have known that Defendants had a duty to provide
17 Plaintiff and class members with written notice of the material terms of their employment with
18 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

19 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that they had a duty to compensate
21 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
22 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
23 falsely represented to Plaintiff and class members that they were properly denied wages, all in
24 order to increase Defendants' profits.

25 **PAGA REPRESENTATIVE ALLEGATIONS**

26 38. At all times herein set forth, PAGA provides that any provision of law under
27 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
28 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for

1 violations of the California Labor Code and applicable IWC Wage Order may, as an
2 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
3 themselves and other current or former employees pursuant to procedures outlined in
4 California Labor Code section 2699.3.

5 39. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
6 person who was employed by the alleged violator and against whom one or more of the
7 alleged violations was committed.”

8 40. Plaintiff and other current and former employees of Defendants are “aggrieved
9 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
10 or former employees and one or more of the alleged violations were committed against them.

11 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
12 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
13 following requirements have been met:

- 14 (a) The aggrieved employee or representative shall give written notice by
15 online filing with the LWDA and by certified mail to the employer of
16 the specific provisions of the California Labor Code alleged to have
17 been violated, including the facts and theories to support the alleged
18 violation.
- 19 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
20 2699.3(a) and any employer response to that notice shall be
21 accompanied by a filing fee of seventy-five dollars (\$75).
- 22 (c) The LWDA shall notify the employer and the aggrieved employee or
23 representative by certified mail that it does not intend to investigate the
24 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
25 the postmark date of the aggrieved employee’s notice. Upon receipt of
26 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
27 (65) calendar days of the postmark date of the aggrieved employee’s
28 notice, the aggrieved employee may commence a civil action pursuant

1 to California Labor Code section 2699 to recover civil penalties.

2 42. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
3 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
4 provision other than those listed in Section 2699.5 after the following requirements have been
5 met:

6 (a) The aggrieved employee or representative shall give written notice by
7 online filing with the LWDA and by certified mail to the employer of
8 the specific provisions of the California Labor Code alleged to have
9 been violated (other than those listed in Section 2699.5), including the
10 facts and theories to support the alleged violation.

11 (b) An aggrieved employee's notice filed with the LWDA pursuant to
12 2699.3(c) and any employer response to that notice shall be
13 accompanied by a filing fee of seventy-five dollars (\$75).

14 (c) The employer may cure the alleged violation within thirty-three (33)
15 calendar days of the postmark date of the notice sent by the aggrieved
16 employee or representative. The employer shall give written notice
17 within that period of time by certified mail to the aggrieved employee or
18 representative and by online filing with the LWDA if the alleged
19 violation is cured, including a description of actions taken, and no civil
20 action pursuant to Section 2699 may commence. If the alleged violation
21 is not cured within the 33-day period, the aggrieved employee may
22 commence a civil action pursuant to Section 2699.

23 43. On March 20, 2024, Plaintiff provided written notice by online filing to the
24 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
25 Code alleged to have been violated, including facts and theories to support the alleged
26 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
27 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
28 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned

1 Plaintiff PAGA Case Number LWDA-CM-1017754-24. A true and correct copy of Plaintiff's
2 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

3 44. As of the filing date of this complaint, over 65 days have passed since Plaintiff
4 sent the notice described above to the LWDA, and the LWDA has not responded that it
5 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

6 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
7 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
8 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
9 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

10 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
11 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
12 provision regulating hours and days of work in any order of the Industrial Welfare
13 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
14 dollars (\$50) for each underpaid employee for each pay period for which the employee was
15 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
16 underpaid employee for each pay period for which the employee was underpaid" Labor
17 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
18 to any other civil or criminal penalty provided by law."

19 47. Defendants, at all times relevant to this complaint, were employers or persons
20 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
21 rights by violating various sections of the California Labor Code as set forth above.

22 48. As set forth below, Defendants have violated numerous provisions of both the
23 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
24 Order.

25 49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
26 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
27 private attorney general, seeks assessment and collection of civil penalties for himself, all
28 other aggrieved employees, and the State of California against Defendants for violations of

California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

50. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

51. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

52. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

53. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

54. Members of the Class and Subclass are referred to herein as "class members."

55. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

56. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class

- 1 members;
- 2 (c) Whether Defendants failed to pay Plaintiff and class members at least
- 3 minimum wages for all hours worked;
- 4 (d) Whether Defendants failed to provide Plaintiff and class members with
- 5 meal periods;
- 6 (e) Whether Defendants failed to authorize and permit Plaintiff and class
- 7 members to take rest periods;
- 8 (f) Whether Defendants provided Plaintiff and class members with
- 9 complete and accurate wage statements as required by California Labor
- 10 Code section 226(a);
- 11 (g) Whether Defendants maintained accurate payroll records as required by
- 12 California Labor Code section 1174(d);
- 13 (h) Whether Defendants failed to pay earned overtime wages, minimum
- 14 wages, meal and rest period premiums, and/or sick leave pay due to
- 15 Plaintiff and class members upon their discharge;
- 16 (i) Whether Defendants failed to timely pay overtime wages, minimum
- 17 wages, meal and rest period premiums, and/or sick leave pay due to
- 18 Plaintiff and class members during their employment;
- 19 (j) Whether Defendants failed to properly calculate the regular rate of pay
- 20 upon which Plaintiff's and class members' sick leave rate of pay was
- 21 based;
- 22 (k) Whether Defendants failed to provide Plaintiff and class members with
- 23 suitable seating;
- 24 (l) Whether Defendants failed to reimburse Plaintiff and class members for
- 25 necessary and required business-related expenditures and/or losses
- 26 incurred by them in the scope of their employment;
- 27 (m) Whether Defendants failed to provide written notice of information
- 28 material to Plaintiff's and class members' employment with Defendants;

- 1 (n) Whether Defendants engaged in unlawful and unfair business practices
2 in violation of California Business & Professions Code sections 17200,
3 *et seq.*; and
4 (o) The appropriate amount of damages, restitution, or monetary penalties
5 resulting from Defendants' violations of California law.

6 57. There is a well-defined community of interest in the litigation and the class
7 members are readily ascertainable:

- 8 (a) Numerosity: The class members are so numerous that joinder of all
9 members would be unfeasible and impractical. The membership of the
10 entire class is unknown to Plaintiff at this time; however, the class is
11 estimated to be greater than one hundred (100) individuals and the
12 identity of such membership is readily ascertainable by inspection of
13 Defendants' employment records.
14 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
15 protect the interests of each class member with whom he has a well-
16 defined community of interest, and Plaintiff's claims (or defenses, if
17 any) are typical of all class members as demonstrated herein.
18 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
19 protect the interests of each class member with whom he has a well-
20 defined community of interest and typicality of claims, as demonstrated
21 herein. Plaintiff acknowledges that he has an obligation to make known
22 to the Court any relationship, conflicts or differences with any class
23 member. Plaintiff's attorneys, the proposed class counsel, are versed in
24 the rules governing class action discovery, certification, and settlement.
25 Plaintiff has incurred, and throughout the duration of this action, will
26 continue to incur costs and attorneys' fees that have been, are, and will
27 be necessarily expended for the prosecution of this action for the
28 substantial benefit of each class member.

1 (d) Superiority: The nature of this action makes the use of class action
2 adjudication superior to other methods. A class action will achieve
3 economies of time, effort, and expense as compared with separate
4 lawsuits, and will avoid inconsistent outcomes because the same issues
5 can be adjudicated in the same manner and at the same time for the
6 entire class.

7 (e) Public Policy Considerations: Employers in the State of California
8 violate employment and labor laws every day. Current employees are
9 often afraid to assert their rights out of fear of direct or indirect
10 retaliation. Former employees are fearful of bringing actions because
11 they believe their former employers might damage their future
12 endeavors through negative references and/or other means. Class
13 actions provide the class members who are not named in the complaint
14 with a type of anonymity that allows for the vindication of their rights
15 while simultaneously protecting their privacy.

16 **FIRST CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 18 **(Against all Defendants)**

19 58. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 59. Labor Code section 1198 makes it illegal to employ an employee under
22 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
23 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
24 shall be the . . . standard conditions of labor for employees. The employment of any employee
25 . . . under conditions of labor prohibited by the order is unlawful.”

26 60. California Labor Code section 1198 and the applicable IWC Wage Order
27 provide that it is unlawful to employ persons without compensating them at a rate of pay
28 either time-and-one-half or two-times that person’s regular rate of pay, depending on the

1 number of hours worked by the person on a daily or weekly basis.

2 61. Specifically, the applicable IWC Wage Order provides that Defendants are and
3 were required to pay Plaintiff and class members working more than eight (8) hours in a day
4 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
5 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
6 workweek.

7 62. The applicable IWC Wage Order further provides that Defendants are and were
8 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
9 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
10 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
11 employee, including nondiscretionary bonuses and incentive pay.

12 63. California Labor Code section 510 codifies the right to overtime compensation
13 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
14 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
15 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
16 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
17 in a day on the seventh (7th) day of work.

18 64. During the relevant time period, Defendants willfully failed to pay all overtime
19 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
20 class members were not paid overtime premiums for all of the hours they worked in excess of
21 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
22 hours in a week, because all hours worked were not recorded.

23 65. First, Defendants had, and continue to have, a company-wide policy and/or
24 practice of requiring Plaintiff and class members to perform work off-the-clock before and
25 after their scheduled shifts. For example, about twice per week, Plaintiff was required to
26 perform store opening duties before clocking in for his shifts, including unlocking doors,
27 deactivating the security alarm, and starting up the computer, which would take at least a few
28 minutes. Moreover, on information and belief, Defendants' timekeeping system prevented

1 employees from clocking in more than five (5) minutes earlier than their scheduled shift times
2 so that they were prohibited from recording all time worked prior to the start of their
3 scheduled shifts. As another example, because Defendants' timekeeping system was
4 integrated with the company's point-of-sale ("POS") system, Plaintiff and class members
5 would often have to spend time waiting to clock in for the start of their shifts, because other
6 employees were using the POS system to handle customer transactions and prepare invoices.
7 For instance, Plaintiff and class members were required to wait several minutes under
8 Defendants' control until a POS machine was available for clocking-in, time for which they
9 were not paid. Further, approximately once per week, and often while Plaintiff waited to
10 clock in for the start of his shift, Plaintiff was required to attend to customers, in order to
11 reduce the number of customers waiting in line, which could take up to 15 minutes.

12 66. As another example, Plaintiff sometimes continued working past his scheduled
13 shift end-time. However, on information and belief, Defendants' timekeeping system
14 prevented employees from clocking out after a certain amount of time past the stores' regular
15 business hours, which in turn required Defendants' managers to manually enter clock-out
16 times for Plaintiff and class members. But, upon information and belief, Defendants'
17 management would subsequently shave off some of the time Plaintiff and class members spent
18 completing assigned duties after their scheduled shifts to avoid payment of additional wages.
19 As a result, when Plaintiff was required to remain at work later than his usual shift end-time,
20 he was not paid for all of his hours actually worked because Defendants' managers did not
21 accurately record all hours worked.

22 67. Furthermore, Defendants had, and continue to have, a company-wide security
23 policy and/or practice of requiring employees to leave the store premises together in groups.
24 After clocking out at the end of their closing shifts, Plaintiff and class members were required
25 to wait for all other employees to complete their own duties before they could leave
26 Defendants' premises together. For example, Plaintiff would often clock out at his scheduled
27 shift-end time, and then have wait up to 10 minutes until all other employees completed their
28 duties and clocked out, before being able to leave the premises. As a result, Plaintiff and class

1 members were subject to Defendants' control after they had clocked out from their shifts, but
2 were not compensated for this time.

3 68. Second, Defendants' managers contacted Plaintiff on his personal cellular
4 phone about work-related matters when he was not scheduled to work, but did not compensate
5 him for this time. For example, about twice per week, Defendants' managers communicated
6 with Plaintiff off-the clock for up to five (5) minutes regarding work details such as store
7 operations and tasks. Additionally, Plaintiff and class members were required to complete
8 mandatory online training sessions, but Defendants did not permit them to complete the
9 training sessions during their shifts. For example, Plaintiff was required to complete the
10 training sessions while he was at home, which consisted of watching videos on Defendants'
11 company policies, which could take up to one (1) hour to complete. Thus, Defendants failed
12 to track the time Plaintiff and class members spent working outside of their shifts, and
13 Plaintiff and class members received no compensation for this time.

14 69. Third, Defendants had, and continue to have, a company-wide policy and/or
15 practice of strictly staffing their locations based on the labor hours allocated by each
16 location's labor or payroll budget set by the corporate office. Defendants' uniform use of
17 labor budgeting resulted in chronic understaffing, such there were too few employees on duty
18 to handle the workload and attend to customers. Also, Defendants have systematically, and on
19 a company-wide basis, understaffed their locations by adopting a single-staffing model for
20 some shifts, whereby only one (1) employee was scheduled to work at certain times, thereby
21 failing to provide adequate meal period coverage to permit those employees to take compliant
22 meal periods. Defendants also had a practice of failing to adhere to a schedule for meal
23 periods, which further caused Plaintiff and class members to not be relieved of their duties for
24 compliant meal periods. For example, when working at Defendants' American Tire Depot
25 location in Tulare, California, Plaintiff worked through his meal periods approximately twice
26 per week to meet the demands of his heavy workload, which included attending to scheduled
27 and walk-in appointments. Additionally, when working at Defendants' American Tire Depot
28 locations in Tulare and Hanford, California, Plaintiff's meal periods were interrupted because

1 he was required to answer customer phone calls and attend to walk-in customers during his
2 meal periods, due to the lack of coverage. However, Defendants did not compensate Plaintiff
3 and class members for the time they spent working off the clock during unpaid meal periods.

4 70. Further, Defendants' company-wide timekeeping system prevented Plaintiff
5 and class members from recording all hours worked when their meal periods were shortened
6 or interrupted, because the system locked out Plaintiff and class members once they clocked
7 out for a meal period, and would not permit them to clock back in from a meal period before
8 30 minutes had elapsed. Thus, Defendants did not record all hours worked during meal
9 periods, and Plaintiff and class members performed work during meal periods for which they
10 were not paid.

11 71. Defendants knew or should have known that, as a result of these company-wide
12 practices and/or policies, Plaintiff and class members were performing their assigned duties
13 off-the-clock before and after their shifts and during meal periods, and were suffered or
14 permitted to perform work for which they were not paid. Because Plaintiff and class members
15 worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of
16 this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
17 members were not paid overtime wages for all of the overtime hours they actually worked.

18 72. Moreover, Defendants did not pay Plaintiff and class members the correct
19 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
20 wage, Defendants paid Plaintiff and class members commissions, incentive pay,
21 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
22 California Labor Code, Defendants failed to incorporate all compensation, including
23 commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration,
24 into the calculation of the regular rate of pay for purposes of calculating the overtime wage
25 rate. Therefore, during times when Plaintiff and class members worked overtime and received
26 these other forms of pay, Defendants failed to pay all overtime wages by paying a lower
27 overtime rate than required.

28 73. For example, Defendants paid Plaintiff and class members commissions and/or

1 incentive pay which were listed on Plaintiff's and class members' wage statements as
2 "Commissio[n]." During pay periods that Plaintiff and class members were paid overtime
3 wages, Defendants did not incorporate the commissions and/or incentive pay into Plaintiff's
4 and class members' regular rate of pay and, as a result, paid them at incorrect and lower rates
5 of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and class members
6 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants'
7 failure to properly calculate the overtime rates of pay based on all remuneration paid has
8 resulted in an underpayment of overtime wages to Plaintiff and class members on a company-
9 wide basis.

10 74. Defendants' failure to pay Plaintiff and class members the balance of overtime
11 compensation, as required by California law, violates the provisions of California Labor Code
12 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
13 members are entitled to recover from Defendants their unpaid overtime compensation, as well
14 as interest, costs, and attorneys' fees.

15 **SECOND CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 17 **Minimum Wages** 18 **(Against all Defendants)**

19 75. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 76. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
22 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
23 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
24 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the
25 time during which an employee is subject to the control of an employer, and includes all the
26 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
27 Code Regs. Tit. 8, § 11070(2)(G) (defining "Hours Worked").

28 77. First, as set forth above, Defendants had a company-wide policy and/or practice

1 requiring Plaintiff and class members to perform work-related tasks while off-the-clock before
2 and after their shifts, including completing store opening duties, waiting to clock in for the
3 start of their shifts because other employees were using the POS system, attending to
4 customers waiting in line, communicating with management, completing mandatory online
5 training sessions, and waiting to leave the store premises in groups after closing. Moreover,
6 due to Defendants' implementation of a timekeeping system that prevented employees from
7 clocking in more than five (5) minutes before their scheduled shifts and from clocking out
8 after a certain amount of time after their scheduled shifts (which led to management altering
9 and/or falsifying time records to shave off time worked), Plaintiff and class members were
10 prevented from recording the entire time worked before and after their scheduled shifts, and
11 thus were not compensated for this time.

12 78. Second, as also stated above, due to Defendants' uniform practices and/or
13 policies of utilizing labor budgets, understaffing and/or single-staffing while assigning heavy
14 workloads, and failing to adhere to a schedule for meal periods, Plaintiff and class members
15 were impeded from taking all uninterrupted meal periods to which they were entitled and were
16 required to work off-the-clock during meal periods, have their meal periods interrupted,
17 and/or were otherwise not relieved of all duties during unpaid meal periods. Additionally, as
18 stated, Defendants' company-wide timekeeping system prevented Plaintiff and class members
19 from entering time worked during meal periods because the system locked out Plaintiff and
20 class members for a full 30 minutes. Thus, Defendants systematically failed to pay Plaintiff
21 and class members for actual hours worked during unpaid meal periods because these hours
22 were not always correctly recorded.

23 79. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
24 and class members. To the extent that these off-the-clock hours did not qualify for overtime
25 premium payment, Defendants did not pay at least minimum wages for those hours worked
26 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
27 1198.

28 80. As result, Defendants regularly failed to pay at least minimum wages to

1 Plaintiff and class members for all of the hours they worked in violation of California Labor
2 Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code
3 section 1194.2, Plaintiff and class members are entitled to recover from Defendants liquidated
4 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

5 **THIRD CAUSE OF ACTION**

6 **Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period**

7 **Violations**

8 **(Against all Defendants)**

9 81. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
10 and every allegation set forth above.

11 82. At all relevant times herein set forth, California Labor Code section 512(a)
12 provides that an employer may not require, cause, or permit an employee to work for a period
13 of more than five (5) hours per day without providing the employee with a meal period of not
14 less than thirty (30) minutes, except that if the total work period per day of the employee is
15 not more than six (6) hours, the meal period may be waived by mutual consent of both the
16 employer and the employee. Under California law, first meal periods must start after no more
17 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

18 83. At all relevant times herein set forth, California Labor Code sections 226.7,
19 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
20 meal period mandated by an applicable order of the IWC.

21 84. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
22 the applicable IWC Wage Order also require employers to provide a second meal period of
23 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
24 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
25 hours worked is no more than twelve (12) hours, the second meal period may be waived by
26 mutual consent of the employer and the employee only if the first meal period was not waived.

27 85. During the relevant time period, as stated, Defendants had, and continue to
28 have, a company-wide policy and/or practice of strictly staffing their locations based on the

1 labor hours allocated by each location's labor or payroll budget set by the corporate office.
2 Defendants' use of labor budgets resulted in chronic understaffing, such that there were too
3 few employees on duty to handle the heavy workload and provide uninterrupted meal period
4 coverage. Also, as stated, Defendants systematically, and on a company-wide basis,
5 understaffed their locations by adopting a single-staffing model for certain shifts, pursuant to
6 their labor budget practices, which resulted in a lack of meal period coverage and prevented
7 Plaintiff and class members from taking all timely, uninterrupted meal periods to which they
8 were entitled. Additionally, as stated, Defendants maintained and implemented a company-
9 wide practice of failing to adhere to a schedule for meal periods, which further caused
10 Plaintiff and class members to not be relieved of their duties for compliant meal periods.

11 86. As a result, Plaintiff and class members had to work through all or part of their
12 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
13 before taking meal periods. For example, as stated, Plaintiff missed meal breaks in order to
14 meet customer demand and had his meal periods interrupted because he was required to
15 answer customer phone calls and attend to walk-in customers during his meal periods.
16 Additionally, Plaintiff sometimes took his meal periods late, after the fifth hour of work, due
17 to the lack of coverage

18 87. As also stated, Defendants' company-wide timekeeping system prevented
19 Plaintiff and class members from recording when their meal periods were shortened or
20 interrupted, because the system locked out Plaintiff and class members once they clocked out
21 for a meal period, and would not permit them to clock back in from a meal period before 30
22 minutes had elapsed.

23 88. Additionally, Plaintiff and class members worked shifts in excess of ten (10)
24 hours without receiving an uninterrupted second 30-minute meal period. For example, during
25 his employment, Plaintiff sometimes worked shifts in excess of ten (10) or more hours per
26 day, but was not provided a second 30-minute meal period. Plaintiff and class members did
27 not sign valid meal period waivers on days that they were entitled to meal periods and were
28 not relieved of all duties.

1 89. Moreover, Defendants had a company-wide policy of requiring all newly hired
2 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
3 the position that non-exempt, hourly paid employees had waived their rights to first and/or
4 second meal periods for the entirety of their employment and, on that basis, did not provide
5 them with all meal periods to which they were entitled. Further, Defendants’ “Meal Break
6 Waiver Agreement” form requires employees to provide written notice should they wish to
7 revoke the waiver. Defendants’ presumption that meal periods would not be provided for
8 shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10)
9 hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the
10 time of hire, and imposition on employees to revoke the waivers in writing, discouraged and
11 impeded Plaintiff and class members from taking all meal periods to which they were entitled.

12 90. Furthermore, an employer’s obligation to provide a meal period is only
13 “triggered” when the employer “employs an employee for a work period of more than five
14 hours per day.” *Brinker*, 53 Cal. 4th at 1039 (“If an employer engages, suffers, or permits
15 anyone to work for a full five hours, its meal break obligation is triggered.”).

16 [A]fter the meal break obligation is triggered . . . an employer is put to a
17 choice: it must (1) afford an off-duty meal period; (2) consent to a
18 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
19 obtain written agreement to an on-duty meal period if circumstances
permit. Failure to do one of these will render the employer liable for
premium pay.

20 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
21 required Plaintiff and class members to sign meal period waivers simultaneously at or near
22 their time of hire (as opposed to on a specific work day) renders them invalid and
23 unenforceable, because Defendants’ obligation to provide Plaintiff and class members with
24 meal periods did not arise until Defendants had employed them for a full five (5) hours.

25 91. At all times mentioned herein, Defendants knew or should have known that as a
26 result of their policies, Plaintiff and class members were not actually relieved of all duties to
27 take timely, uninterrupted meal periods. Defendants further knew or should have known that
28 they did not pay Plaintiff and class members meal period premiums when meal periods were

late, missed, shortened, or interrupted.

92. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants did pay Plaintiff and class members premium pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for premiums because Defendants systematically failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants failed to provide Plaintiff and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

93. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations (Against all Defendants)

94. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

95. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class members' employment by Defendants.

96. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

97. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

98. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ policies and/or practices including labor budgeting, understaffing and/or single-staffing, and assigning heavy workloads, prevented Plaintiff and class members from being relieved of all duty to take their rest periods. Defendants also failed to adhere to a schedule for rest periods, which, coupled with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and class members not being authorized and permitted to take compliant rest periods.

99. Furthermore, upon information and belief, during the relevant time period, Defendants maintained a company-wide on-premises rest period policy, which effectively required that Plaintiff and/or class members remain on Defendants’ premises during their rest periods. Because Plaintiff and/or class members were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiff and/or class members during rest periods.

100. As a result of Defendants' practices and policies, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Plaintiff regularly had to forego his rest periods because of the heavy workload and Defendants' failure to adhere to a schedule for rest periods for employees.

101. Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for all missed rest periods. Alternatively, to the extent that Defendants did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for premium wages because Defendants failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

102. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records (Against all Defendants)

103. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

104. At all relevant times herein set forth, California Labor Code section 226(a)

1 provides that every employer shall furnish each of his or her employees an accurate and
2 complete itemized wage statement in writing, including, but not limited to, the name and
3 address of the legal entity that is the employer, the inclusive dates of the pay period, total
4 hours worked, and all applicable rates of pay.

5 105. At all relevant times, Defendants have knowingly and intentionally provided
6 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
7 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
8 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
9 applicable hourly rates in effect during the pay period, including rates of pay for overtime
10 wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number
11 of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
12 226(a)(2), 226(a)(5), and 226(a)(9).

13 106. Because Defendants did not accurately record the time Plaintiff and Subclass
14 members spent working off-the-clock and deducted time from their records for meal periods
15 that were interrupted and/or missed (and therefore time for which they should have been paid),
16 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
17 and Subclass members in compliance with section 226(a)(1) and section 226(a)(5),
18 respectively. For the same reason, Defendants failed to accurately list the total number of
19 hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2), and failed
20 to list the applicable hourly rates of pay in effect during the pay period and the corresponding
21 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

22 107. Moreover, Defendants did not calculate Plaintiff's and Subclass members'
23 regular rate of pay correctly for purposes of paying overtime wages, meal and rest period
24 premiums, and/or paid sick leave, Defendants did not list the correct amount of gross wages in
25 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct
26 amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly list
27 all applicable hourly rates in effect during the pay period, namely, correct rates of pay for
28 overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section

1 226(a)(9).

2 108. The wage statement deficiencies also include, among other things, failing to list
3 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
4 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
5 for which employees were paid; failing to list the name of the employee and only the last four
6 digits of his or her social security number or an employee identification number other than a
7 social security number; failing to list the name and address of the legal entity that is the
8 employer; and/or failing to state all hours worked as a result of not recording or stating hours
9 worked off-the-clock.

10 109. California Labor Code section 1174(d) provides that “[e]very person employing
11 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
12 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
13 plants or establishments at which employees are employed, payroll records showing the hours
14 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
15 applicable piece rate paid to, employees employed at the respective plants or
16 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
17 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
18 members showing the daily hours they worked and the wages paid thereto as a result of failing
19 to record the off-the-clock hours that they worked.

20 110. California Labor Code section 1198 provides that the maximum hours of work
21 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
22 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
23 employment of any employees for longer hours than those fixed by the order or under
24 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
25 Wage Order, employers are required to keep accurate time records showing when the
26 employee begins and ends each work period. During the relevant time period, Defendants
27 engaged in company-wide practices and/or policies of failing to record actual hours worked,
28 and thereby failed to keep accurate records of work period and meal period start and end times

1 for Plaintiff and Subclass members, in violation of section 1198. Furthermore, in light of
2 Defendants' failure to provide Plaintiff and Subclass members with second 30-minute meal
3 periods to which they were entitled, Defendants kept no records of meal start and end times
4 for second meal periods.

5 111. Plaintiff and Subclass members are entitled to recover from Defendants the
6 greater of their actual damages caused by Defendants' failure to comply with California Labor
7 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
8 employee.

9 **SIXTH CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 11 **Termination** 12 **(Against all Defendants)**

13 112. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 113. This cause of action is dependent upon, and wholly derivative of, the overtime
16 wages, minimum wages, meal and rest period premiums, and/or sick leave pay that were not
17 timely paid to Plaintiff and those class members no longer employed by Defendants upon their
18 termination.

19 114. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
20 that if an employer discharges an employee, the wages earned and unpaid at the time of
21 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
22 her employment, his or her wages shall become due and payable not later than seventy-two
23 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
24 his or her intention to quit, in which case the employee is entitled to his or her wages at the
25 time of quitting.

26 115. During the relevant time period, Defendants willfully failed to pay Plaintiff and
27 class members who are no longer employed by Defendants the earned and unpaid wages set
28 forth above, including but not limited to, overtime wages, minimum wages, meal and rest

1 period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two
2 (72) hours of their leaving Defendants' employ.

3 116. Defendants' failure to pay Plaintiff and class members who are no longer
4 employed by Defendants their wages earned and unpaid at the time of discharge, or within
5 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
6 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
7 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
8 thirty (30) day maximum pursuant to California Labor Code section 203.

9 **SEVENTH CAUSE OF ACTION**

10 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 11 **Employment** 12 **(Against all Defendants)**

13 117. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 118. This cause of action is dependent upon, and wholly derivative of, the overtime
16 wages, minimum wages, meal and rest period premiums, and/or sick leave pay that were not
17 timely paid to Plaintiff and class members during their employment.

18 119. At all times relevant herein set forth, Labor Code section 204 provides that all
19 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
20 days, inclusive, of any calendar month, other than those wages due upon termination of an
21 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
22 the month during which the labor was performed. Labor Code section 204 further provides
23 that all wages earned by any person in any employment between the sixteenth (16th) and the
24 last day, inclusive, of any calendar month, other than those wages due upon termination of an
25 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
26 month.

27 120. At all times relevant herein, Labor Code section 204 also requires that all
28 wages earned for labor in excess of the normal work period shall be paid no later than the

1 payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor
2 Code section 204 provides that the requirements of this section are deemed satisfied by the
3 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
4 more than seven (7) calendar days following the close of the payroll period.

5 121. During the relevant time period, Defendants willfully failed to pay Plaintiff and
6 class members all wages due including, but not limited to, overtime wages, minimum wages,
7 meal and rest period premiums, and/or sick leave pay, within the time periods specified by
8 California Labor Code section 204.

9 122. Defendants' failure to timely pay Plaintiff and class members all wages due
10 violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover
11 from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

12 **EIGHTH CAUSE OF ACTION**

13 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 14 **(Against all Defendants)**

15 123. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 124. At all times herein set forth, California Labor Code section 2802 provides that
18 an employer must reimburse employees for all necessary expenditures and losses incurred by
19 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
20 to prevent employers from passing off their cost of doing business and operating expenses on
21 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
22 (2014). The applicable wage order, IWC Wage Order No. 7-2001, "[w]hen tools or
23 equipment are required by the employer or are necessary to the performance of a job, such
24 tools and equipment shall be provided and maintained by the employer, except that an
25 employee whose wages are at least two (2) times the minimum wage provided herein may be
26 required to provide and maintain hand tools and equipment customarily required by the trade
27 or craft."

28 125. During the relevant time period, Defendants, on a company-wide basis,

1 required that Plaintiff and class members use their own personal mobile devices, including,
2 but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to
3 reimburse them for the costs of their work-related mobile device expenses. For example,
4 Plaintiff and class members would be contacted on their personal mobile devices by their
5 managers and/or supervisors to discuss work-related matters such as tasks that needed to be
6 completed. Additionally, Plaintiff was required to utilize his personal mobile phone for
7 communicating with outside laborers for customer wheel rim repairs, which included taking
8 and sending pictures of customer vehicles and obtaining quotes. Although Defendants
9 required Plaintiff and class members to utilize their personal mobile devices and/or mobile
10 data to carry out their work-related responsibilities, Defendants failed to reimburse them for
11 this cost.

12 126. Defendants could have provided Plaintiff and class members with company
13 mobile devices, or, Defendants could have reimbursed employees for the costs of their mobile
14 device usage. Instead, Defendants passed these operating costs off onto Plaintiff and class
15 members. At all relevant times, Plaintiff did not earn at least two (2) times the minimum
16 wage.

17 127. Defendants' company-wide policy and/or practice of not reimbursing
18 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
19 and class members violates California Labor Code section 2802. Defendants have
20 intentionally and willfully failed to reimburse Plaintiff and class members for necessary
21 business-related expenses and costs.

22 128. Plaintiff and class members are entitled to recover from Defendants their
23 business-related expenses incurred during the course and scope of their employment, plus
24 interest.

25 **NINTH CAUSE OF ACTION**

26 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

27 **(Against all Defendants)**

28 129. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 130. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
3 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
4 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
5 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
6 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
7 those Labor Code sections not found in section 2699.5, including sections 246, 516, 1182.12,
8 and 2810.5.

9 131. Defendants’ conduct, as alleged herein, violates numerous sections of the
10 California Labor Code, including, but not limited to, the following:

- 11 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
12 Wage Order for Defendants’ failure to compensate Plaintiff and other
13 aggrieved employees with all required overtime pay, as alleged herein;
- 14 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
15 applicable IWC Wage Order for Defendants’ failure to include all forms
16 of remuneration in the regular rate of pay as required by law for
17 purposes of paying overtime wages and/or meal and rest period
18 premiums to Plaintiff and other aggrieved employees, as alleged herein;
- 19 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
20 1198, and the applicable IWC Wage Order for Defendants’ failure to
21 compensate Plaintiff and other aggrieved employees with at least
22 minimum wages for all hours worked, as alleged herein;
- 23 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
24 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
25 and other aggrieved employees with meal periods, as alleged herein;
- 26 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
27 applicable IWC Wage Order for Defendants’ failure to authorize and
28 permit Plaintiff and other aggrieved employees to take rest periods, as

1 alleged herein;

- 2 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
3 IWC Wage Order for failure to provide accurate and complete wage
4 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 5 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
6 IWC Wage Order for failure to maintain payroll records, as alleged
7 herein;
- 8 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
9 earned wages upon termination, as alleged herein;
- 10 (i) Violation of Labor Code section 204 for failure to pay all earned wages
11 during employment, as alleged below;
- 12 (j) Violation of Labor Code section 246 for failure to properly calculate the
13 sick leave paid to Plaintiff and other aggrieved employees, as set forth
14 below;
- 15 (k) Violation of Labor Code section 1198 for failing to provide suitable
16 seating to Plaintiff and other aggrieved employees, as set forth below;
- 17 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
18 and/or other aggrieved employees for all business expenses necessarily
19 incurred, as alleged herein; and
- 20 (m) Violation of Labor Code section 2810.5 for failure to provide notice of
21 material terms of employment, as set forth below.

22 132. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
23 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
24 days from the commencement of employment with paid sick days, to be accrued at least one
25 hour for every 30 hours worked. California Labor Code section 246(l) provides that an
26 employer shall calculate paid sick leave by using one of two calculations: 1) “[p]aid sick time
27 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
28 the workweek in which the employee uses paid sick time, whether or not the employee

1 actually works overtime in that workweek[;]” or 2) “[p]aid sick time for nonexempt
2 employees shall be calculated by dividing the employee’s total wages, not including overtime
3 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
4 days of employment.”

5 133. During the relevant time period, Defendants did not pay Plaintiff and other
6 aggrieved employees the correct sick leave rates of pay. Defendants failed to correctly use
7 either method of calculation under Labor Code section 246(l) to determine Plaintiff’s and
8 other aggrieved employees’ sick leave rates of pay. As stated, in addition to an hourly wage,
9 Defendants paid Plaintiff and other aggrieved employees commissions, incentive pay,
10 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
11 California Labor Code, Defendants failed to incorporate all remunerations, including
12 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the
13 regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times
14 when Plaintiff and other aggrieved employees took sick leave and received these other forms
15 of pay, Defendants failed to pay all sick leave benefits by paying a lower sick leave pay rate
16 than required. Specifically, Defendants paid Plaintiff and other aggrieved employees sick
17 leave based on their hourly rate of pay instead of their regular rate of pay.

18 134. Defendants’ failure to properly calculate the sick leave rates of pay based on all
19 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other
20 aggrieved employees on a company-wide basis in violation of California Labor Code section
21 246(l). Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties
22 pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

23 135. At all relevant times herein, California Labor Code section 1198 makes it
24 illegal to employ an employee under conditions of labor that are prohibited by the applicable
25 IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard
26 conditions of labor fixed by the commission shall be the . . . standard conditions of labor for
27 employees. The employment of any employee . . . under conditions of labor prohibited by the
28 order is unlawful.”

1 136. California Code of Regulations, Title 8, section 11070(14)(A) provides that
2 “[a]ll working employees shall be provided with suitable seats when the nature of the work
3 reasonably permits the use of seats.”

4 137. Plaintiff alleges that Defendants’ California stores are generally similar in their
5 layout and design and there was, and continues to be space service desks and counters to allow
6 for the presence and use of a seat or stool by Plaintiff and other aggrieved employees (with
7 reasonable or no modification to these work areas) during the performance of their work
8 duties. Defendants could have provided Plaintiff and other aggrieved employees with a seat
9 or stool at their service desks and counters, but instead denies employees seating and forces
10 Plaintiff and other aggrieved employees to stand throughout the day.

11 138. Plaintiff and other aggrieved employees spent a substantial portion of their day
12 behind or at these service desks and counters. The nature of the work of an employee
13 performing customer service duties can reasonably be accomplished from a seated position.
14 However, Defendants systematically, and on a company-wide basis, did not provide seats or
15 stools at or near the service desks and counters, forcing Plaintiff and other aggrieved
16 employees to stand throughout their work shifts.

17 139. During the relevant time period, Defendants violated California Labor Code
18 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
19 Plaintiff and other aggrieved employees were not allowed to sit, even when the nature of the
20 work would reasonably permit the use of seats, nor were they provided with suitable seats.
21 Defendants’ management did not inform Plaintiff and other aggrieved employees that they
22 were allowed to sit down, provide any means for them to sit down, or mention any policy
23 regarding sitting.

24 140. As a result of Defendants’ company-wide policy and/or practice of prohibiting
25 employees from sitting during their shifts and failure to provide suitable seating, Plaintiff and
26 other aggrieved employees were forced to stand during shifts and denied seats. Defendants’
27 failure to provide suitable seating to Plaintiff and other aggrieved employees violated and
28 continues to violate California Labor Code section 1198 and IWC Wage Order No. 7-2001,

subdivision 14(A). Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

141. California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

142. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because Plaintiff and other aggrieved employees were not allowed to sit, even during lulls in their work duties, nor were they provided with suitable seats in reasonable proximity to their work areas.

143. As stated, Plaintiff alleges that Defendants’ California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Plaintiff and other aggrieved employees during lulls in operation. Defendants could have provided Plaintiff and other aggrieved employees with a seat or stool in their work areas, but instead denied Plaintiff and other aggrieved employees suitable seating altogether and effectively forced Plaintiff and other aggrieved employees to stand throughout the day.

144. Defendants did not provide Plaintiff and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Plaintiff and other aggrieved employees engaged in duties in which the nature of the work required standing, Defendants denied them the use of seats nearby during lulls in their work duties. Moreover, Defendants did not inform Plaintiff and other aggrieved employees of their rights to a seat or stool under California law.

1 145. As a result of Defendants' company-wide policy and/or practice prohibiting
2 employees from sitting at any time, even when they were not engaged in active duties
3 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
4 work areas, Plaintiff and other aggrieved employees were forced to stand during shifts and
5 denied seats. Defendants' failure to provide suitable seating to Plaintiff and other aggrieved
6 employees violated and continues to violate California Labor Code section 1198 and IWC
7 Wage Order No. 7-2001, subdivision 14(B). Plaintiff and other aggrieved employees are
8 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
9 (g).

10 146. At all relevant times herein, California's Wage Theft Prevention Act was
11 enacted to ensure that employers provide employees with basic information material to their
12 employment relationship at the time of hiring, and to ensure that employees are given written
13 and timely notice of any changes to basic information material to their employment. Codified
14 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
15 time of hiring, an employer must provide written notice to employees containing basic and
16 material payroll information, including, among other things, the rate(s) of pay and basis
17 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
18 including any rates for overtime, the regular payday designated by the employer, and any
19 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
20 Code § 2810.5(a)(1)(A)-(C).

21 147. At all relevant times, on information and belief, Defendants failed, on a
22 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
23 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
24 Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of
25 basic information regarding their employment with Defendants is in violation of California
26 Labor Code section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to
27 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

28 //

1 **TENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

5 148. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 149. Defendants are “persons” as defined by California Business & Professions
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 150. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
12 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
13 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 151. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

18 152. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (b) Failing to include all forms of remuneration in the regular rate of pay as
26 required by law for purposes of paying overtime wages and/or meal and
27 rest period premiums to Plaintiff and class members, in violation of
28 California Labor Code sections 226.7, 510, and 1198, and the applicable

IWC Wage Order, as alleged herein;

- (c) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to provide all meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to authorize and permit Plaintiff and class members to take all rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (f) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;
- (g) Failing to timely pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;
- (h) Failing to properly calculate the sick leave paid to Plaintiff and class members in violation of California Labor Code section 246(l), as set forth below;
- (i) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein; and
- (j) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

153. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more

1 days from the commencement of employment with paid sick days, to be accrued at least one
2 hour for every 30 hours worked. California Labor Code section 246(l) provides that an
3 employer shall calculate paid sick leave by using one of two calculations: 1) “[p]aid sick time
4 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
5 the workweek in which the employee uses paid sick time, whether or not the employee
6 actually works overtime in that workweek[;]” or 2) “[p]aid sick time for nonexempt
7 employees shall be calculated by dividing the employee’s total wages, not including overtime
8 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
9 days of employment.”

10 154. During the relevant time period, Defendants did not pay Plaintiff and class
11 members the correct sick leave rates of pay. Defendants failed to correctly use either method
12 of calculation under Labor Code section 246(l) to determine Plaintiff’s and class members’
13 sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiff and
14 class members commissions, incentive pay, nondiscretionary bonuses, and/or other forms of
15 remuneration. However, in violation of the California Labor Code, Defendants failed to
16 incorporate all remunerations, including commissions, incentive pay, and/or nondiscretionary
17 bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick
18 leave pay rate. Therefore, during times when Plaintiff and class members took sick leave and
19 received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a
20 lower sick leave pay rate than required. Specifically, Defendants paid Plaintiff and class
21 members sick leave based on their hourly rate of pay instead of their regular rate of pay.

22 155. Defendants’ failure to properly calculate the sick leave rates of pay based on all
23 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and class
24 members on a company-wide basis in violation of California Labor Code section 246(l).

25 156. At all relevant times herein, California’s Wage Theft Prevention Act was
26 enacted to ensure that employers provide employees with basic information material to their
27 employment relationship at the time of hiring, and to ensure that employees are given written
28 and timely notice of any changes to basic information material to their employment. Codified

1 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
2 time of hiring, an employer must provide written notice to employees containing basic and
3 material payroll information, including, among other things, the rate(s) of pay and basis
4 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
5 including any rates for overtime, the regular payday designated by the employer, and any
6 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
7 Code § 2810.5(a)(1)(A)-(C).

8 157. At all relevant times, on information and belief, Defendants failed, on a
9 company-wide basis, to provide written notice to Plaintiff and class members that lists the
10 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
11 to provide Plaintiff and class members with written notice of basic information regarding their
12 employment with Defendants is in violation of California Labor Code section 2810.5.

13 158. As a result of the violations of California law herein described, Defendants
14 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
15 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
16 herein.

17 159. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
18 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
19 Defendants during a period that commences four years prior to the filing of the initial
20 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
21 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of
22 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

23 **ELEVENTH CAUSE OF ACTION**

24 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

25 **Unfair Business Practices**

26 **(Against all Defendants)**

27 160. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 161. Defendants are “persons” as defined by California Business & Professions
2 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
3 and/or associations.

4 162. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
5 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
6 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
7 seeks to enforce important rights affecting the public interest within the meaning of Code of
8 Civil Procedure section 1021.5.

9 163. Defendants’ activities, namely Defendants’ company-wide practice and/or
10 policy of not paying Plaintiff and class members all meal and rest period premiums due to
11 them under California Labor Code section 226.7, deprived Plaintiff and class members of the
12 compensation guarantee and enhanced enforcement implemented by section 226.7. The
13 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
14 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
15 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
16 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
17 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
18 unfair business practice in violation of California Business & Professions Code sections
19 17200, *et seq.* (*Id.*)

20 164. A violation of California Business & Professions Code sections 17200, *et seq.*
21 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
22 and practices have violated the spirit of California’s meal and rest period laws and constitute
23 acts against the public policy behind these laws.

24 165. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
25 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
26 benefits implemented by section 226.7 withheld and retained by Defendants during a period
27 that commences four years prior to the filing of the initial complaint; a permanent injunction
28 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to

1 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
2 Procedure section 1021.5 and other applicable laws; and an award of costs.

3 **REQUEST FOR JURY TRIAL**

4 Plaintiff requests a trial by jury.

5 **PRAYER FOR RELIEF**

6 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
7 against Defendants, jointly and severally, as follows:

8 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
9 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
10 reserves the right to amend his prayer for relief to seek a different amount.

11 **Class Certification**

12 2. That this case be certified as a class action;

13 3. That Plaintiff be appointed as the representative of the Class and Subclass;

14 4. That counsel for Plaintiff be appointed as class counsel.

15 **As to the First Cause of Action**

16 5. That the Court declare, adjudge, and decree that Defendants violated California
17 Labor Code sections 510 and 1198 and the applicable IWC Wage Order by willfully failing to
18 pay all overtime wages due to Plaintiff and class members;

19 6. For general unpaid wages at overtime wage rates and such general and special
20 damages as may be appropriate;

21 7. For pre-judgment interest on any unpaid overtime compensation commencing
22 from the date such amounts were due, or as otherwise provided by law;

23 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
24 California Labor Code section 1194(a); and

25 9. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Second Cause of Action**

28 10. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage
2 Order by willfully failing to pay minimum wages to Plaintiff and class members;

3 11. For general unpaid wages and such general and special damages as may be
4 appropriate;

5 12. For pre-judgment interest on any unpaid compensation from the date such
6 amounts were due, or as otherwise provided by law;

7 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
8 California Labor Code section 1194(a);

9 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

10 15. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 **As to the Third Cause of Action**

13 16. That the Court declare, adjudge, and decree that Defendants violated California
14 Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by
15 willfully failing to provide all meal periods to Plaintiff and class members;

16 17. That the Court make an award to the Plaintiff and class members of one (1)
17 hour of pay at each employee's regular rate of pay for each workday that a meal period was
18 not provided;

19 18. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 19. For premiums pursuant to California Labor Code section 226.7(c);

22 20. For pre-judgment interest on any unpaid meal period premiums from the date
23 such amounts were due, or as otherwise provided by law;

24 21. For attorneys' fees pursuant to California Code of Civil Procedure section
25 1021.5, or as otherwise provided by law; and

26 22. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 //

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section

1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during

employment); 246 (by failing to properly calculate sick leave pay); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide notice of material terms of employment);

55. For civil penalties pursuant to the California Labor Code, including sections 210, 248.5, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

57. For pre-judgment and post-judgment interest as provided by law; and

58. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to properly calculate Plaintiff's and class members' sick leave rates of pay, failing to reimburse Plaintiff and class members for business-related expenses, and failing to provide written notice of material terms of employment, constitutes an unlawful business practice in violation

of California Business and Professions Code sections 17200, *et seq.*;

60. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

61. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

63. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

64. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under California Labor Code section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

65. For restitution of the statutory benefits under California Labor Code section 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the day such amounts were due and payable;

66. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

68. For pre-judgment and post-judgment interest as provided by law; and

//

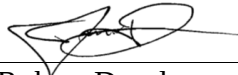
//

1 69. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: June 10, 2024

Respectfully submitted,

5
6 Capstone Law APC

7 By: 
8 Robert Drexler
9 Molly DeSario
Jonathan Lee

10 Attorneys for Plaintiff Justin Poor
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “1”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

March 20, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Justin Poor v. Majco LLC, et al.*

Dear PAGA Administrator:

This office represents Justin Poor in connection with his claims under the California Labor Code. Mr. Poor was an employee of MAJCO LLC and/or ATV CANTER, LLC. For the purpose of this letter, Mr. Poor collectively refers to these entities as "MAJCO."

The employers may be contacted directly at the addresses below:

MAJCO LLC
14001 PRINCETON AVE
MOORPARK, CA 93021

ATV CANTER, LLC
14001 PRINCETON AVE
MOORPARK, CA 93021

Mr. Poor intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Poor seeks relief on behalf of himself, the State of California, and other persons who are or were employed by MAJCO in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

MAJCO employed Mr. Poor as a non-exempt Service Advisor from approximately October 2022 to December 2023. Mr. Poor worked for MAJCO at its Big Brand Tire & Service location in Tulare, California, from his time of hire in October 2022 until approximately March 2023; at MAJCO's American Tire Depot location in Tulare, California, from around March 2023 to approximately September 2023; at MAJCO's Big Brand Tire & Service location in Tulare, California, from September 2023 to about October 2023; and at MAJCO's American Tire Depot location in Hanford, California, from about October 2023 to approximately December 2023. During his employment, Mr. Poor typically worked eight (8) hours or more per day and five (5) days per week. By the end of his employment, Mr. Poor was compensated approximately \$17.00 per hour, plus commissions. Mr. Poor's job duties included, without limitation, attending to customers, scheduling appointments,

documenting vehicle issues and recommending repair solutions, conducting cash counts, and completing store opening and closing procedures.

MAJCO has committed one or more of the following Labor Code violations against Mr. Poor, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

MAJCO’s Company-Wide and Uniform Payroll and HR Practices

MAJCO LLC and ATV CANTER, LLC are California limited liability companies. Together, MAJCO is a leading independent tire and automotive service provider, with over 140 locations across California. Upon information and belief, MAJCO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Moorpark, California, for all non-exempt, hourly paid employees working for MAJCO in California, including Mr. Poor and other aggrieved employees. At all relevant times, MAJCO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Poor and other aggrieved employees, regardless of their location or position.

Upon information and belief, MAJCO maintains a centralized Payroll department at its corporate headquarters in Moorpark, California, which processes payroll for all non-exempt, hourly paid employees working for MAJCO in California, including Mr. Poor and other aggrieved employees. Further, MAJCO issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Poor and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, MAJCO utilized the same methods and formulas when calculating wages due to Mr. Poor and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

MAJCO willfully failed to pay all overtime wages owed to Mr. Poor and other aggrieved employees. During the relevant time period, Mr. Poor and other aggrieved employees were not paid overtime

¹ These facts, theories, and claims are based on Mr. Poor’s experience and counsel’s review of those records currently available relating to Mr. Poor’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Poor reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, MAJCO had, and continues to have, a company-wide policy and/or practice of requiring Mr. Poor and other aggrieved employees to perform work off-the-clock before and after their scheduled shifts. For example, about twice per week, Mr. Poor was required to perform store opening duties before clocking in for his shifts, including unlocking doors, deactivating the security alarm, and starting up the computer, which would take at least a few minutes. Moreover, on information and belief, MAJCO's timekeeping system prevented employees from clocking in more than five (5) minutes earlier than their scheduled shift times so that they were prohibited from recording all time worked prior to the start of their scheduled shifts. As another example, because MAJCO's timekeeping system was integrated with the company's point-of-sale ("POS") system, Mr. Poor and other aggrieved employees would often have to spend time waiting to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions and prepare invoices. For instance, Mr. Poor and other aggrieved employees were required to wait several minutes under MAJCO's control until a POS machine was available for clocking-in, time for which they were not paid. Further, approximately once per week, and often while Mr. Poor waited to clock in for the start of his shift, Mr. Poor was required to attend to customers, in order to reduce the number of customers waiting in line, which could take up to 15 minutes.

As another example, Mr. Poor sometimes continued working past his scheduled shift end-time. However, on information and belief, MAJCO's timekeeping system prevented employees from clocking out after a certain amount of time past the stores' regular business hours, which in turn required MAJCO's managers to manually enter clock-out times for Mr. Poor and other aggrieved employees. But, upon information and belief, MAJCO's management would subsequently shave off some of the time Mr. Poor and other aggrieved employees spent completing assigned duties after their scheduled shifts to avoid payment of additional wages. As a result, when Mr. Poor was required to remain at work later than his usual shift end-time, he was not paid for all of his hours actually worked because MAJCO's managers did not accurately record all hours worked.

Furthermore, MAJCO had, and continues to have, a company-wide security policy and/or practice of requiring employees to leave the store premises together in groups. After clocking out at the end of their closing shifts, Mr. Poor and other aggrieved employees were required to wait for all other employees to complete their own duties before they could leave MAJCO's premises together. For example, Mr. Poor would often clock out at his scheduled shift-end time, and then have wait up to 10 minutes until all other employees completed their duties and clocked out, before being able to leave the premises. As a result, Mr. Poor and other aggrieved employees were subject to MAJCO's control after they had clocked out from their shifts, but were not compensated for this time.

Second, MAJCO's managers contacted Mr. Poor on his personal cellular phone about work-related matters when he was not scheduled to work, but did not compensate him for this time. For example, about twice per week, MAJCO's managers communicated with Mr. Poor off-the-clock for up to five (5) minutes regarding work details such as store operations and tasks. Additionally, Mr. Poor and other aggrieved employees were required to complete mandatory online training sessions, but MAJCO did not permit them to complete the training sessions during their shifts. For example, Mr. Poor was required to complete the training sessions while he was at home, which consisted of watching videos on MAJCO's company policies, which could take up to one (1) hour to complete. Thus, MAJCO failed to track the time Mr. Poor and other aggrieved employees spent working

outside of their shifts, and Mr. Poor and other aggrieved employees received no compensation for this time.

Third, MAJCO had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. MAJCO's uniform use of labor budgeting resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and attend to customers. Also, MAJCO has systematically, and on a company-wide basis, understaffed its locations by adopting a single-staffing model for some shifts, whereby only one (1) employee was scheduled to work at certain times, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. MAJCO also had a practice of failing to adhere to a schedule for meal periods, which further caused Mr. Poor and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, when working at MAJCO's American Tire Depot location in Tulare, California, Mr. Poor worked through his meal periods approximately twice per week to meet the demands of his heavy workload, which included attending to scheduled and walk-in appointments. Additionally, when working at MAJCO's American Tire Depot locations in Tulare and Hanford, California, Mr. Poor's meal periods were interrupted because he was required to answer customer phone calls and attend to walk-in customers during his meal periods, due to the lack of coverage. However, MAJCO did not compensate Mr. Poor and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Further, MAJCO's company-wide timekeeping system prevented Mr. Poor and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Poor and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, MAJCO did not record all hours worked during meal periods, and Mr. Poor and other aggrieved employees performed work during meal periods for which they were not paid.

MAJCO knew or should have known that as a result of these company-wide practices and/or policies, Mr. Poor and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Poor and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Poor and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, MAJCO did not pay Mr. Poor and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, MAJCO paid Mr. Poor and other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, MAJCO failed to incorporate all compensation, including commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Poor and other aggrieved employees worked overtime and received these other forms of pay, MAJCO failed to pay all overtime wages by paying a lower overtime rate than required.

For example, MAJCO paid Mr. Poor and other aggrieved employees commissions and/or incentive payments, which were listed on Mr. Poor's and other aggrieved employees' wage statements as "Commissio[n]." During pay periods that Mr. Poor and other aggrieved employees were paid overtime wages, MAJCO did not incorporate the commissions and/or incentive pay into Mr. Poor's

and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, MAJCO paid Mr. Poor and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. MAJCO's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Poor and other aggrieved employees on a company-wide basis.

MAJCO's failure to pay Mr. Poor and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Poor and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

First, as set forth above, MAJCO had a company-wide policy and/or practice requiring Mr. Poor and other aggrieved employees to perform work-related tasks while off-the-clock before and after their shifts, including completing store opening duties, waiting to clock in for the start of their shifts because other employees were using the POS system, attending to customers waiting in line, communicating with management, completing mandatory online training sessions, and waiting to leave the store premises in groups after closing. Moreover, due to MAJCO's implementation of a timekeeping system that prevented employees from clocking in more than five (5) minutes before their scheduled shifts and from clocking out after a certain amount of time after their scheduled shifts (which led to management altering and/or falsifying time records to shave off time worked), Mr. Poor and other aggrieved employees were prevented from recording the entire time worked before and after their scheduled shifts, and thus were not compensated for this time.

Second, as also stated above, due to MAJCO's uniform practices and/or policies of utilizing labor budgets, understaffing and/or single-staffing while assigning heavy workloads, and failing to adhere to a schedule for meal periods, Mr. Poor and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Additionally, as stated, MAJCO's company-wide timekeeping system prevented Mr. Poor and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Poor and other aggrieved employees for a full 30 minutes. Thus, MAJCO systematically failed to pay Mr. Poor and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, MAJCO did not pay minimum wages for all hours worked by Mr. Poor and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, MAJCO did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, MAJCO regularly failed to pay at least minimum wages to Mr. Poor and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Poor and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant period, as stated, MAJCO had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. MAJCO's use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload and provide uninterrupted meal period coverage. Also, as stated, MAJCO systematically, and on a company-wide basis, understaffed its locations by adopting a single-staffing model for certain shifts, pursuant to their labor budget practices, which resulted in a lack of meal period coverage and prevented Mr. Poor and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, as stated, MAJCO maintained and implemented a company-wide practice of failing to adhere to a schedule for meal periods, which further caused Mr. Poor and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Poor and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Mr. Poor missed meal breaks in order to meet customer demand and had his meal periods interrupted because he was required to answer customer phone calls and attend to walk-in customers during his meal periods. Additionally, Mr. Poor sometimes took his meal periods late, after the fifth hour of work, due to the lack of coverage.

As also stated, MAJCO's company-wide timekeeping system prevented Mr. Poor and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Poor and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Additionally, Mr. Poor and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, during his employment, Mr. Poor sometimes worked shifts in excess of ten (10) or more hours per day, but was not provided a second 30-minute meal period. Mr. Poor and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, MAJCO had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. MAJCO took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Further, MAJCO's "Meal Break Waiver Agreement" form requires employees to provide written notice should they wish to revoke the waiver. MAJCO's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Poor and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That MAJCO required Mr. Poor and other aggrieved employees to sign meal period waivers simultaneously at and/or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because MAJCO's obligation to provide Mr. Poor and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

At all times mentioned herein, MAJCO knew or should have known that as a result of its policies, Mr. Poor and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. MAJCO further knew or should have known that it did not pay Mr. Poor and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, MAJCO engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Poor and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that MAJCO did pay Mr. Poor and other aggrieved employees premium pay for missed, late, and interrupted meal periods, MAJCO did not pay Mr. Poor and other aggrieved employees at the correct rate of pay for premiums because

MAJCO systematically failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, MAJCO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Poor and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, MAJCO regularly failed to authorize and permit Mr. Poor and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, MAJCO's policies and/or practices including labor budgeting, understaffing and/or single-staffing, and assigning heavy workloads, prevented Mr. Poor and other aggrieved employees from being relieved of all duty to take their rest periods. MAJCO also failed to adhere to a schedule for rest periods, which, coupled with MAJCO's failure to provide adequate rest period coverage, further led to Mr. Poor and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, upon information and belief, during the relevant time period, MAJCO maintained a company-wide on-premises rest period policy, which effectively required that Mr. Poor and/or other aggrieved employees remain on MAJCO's premises during their rest periods. Because Mr. Poor and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, MAJCO effectively maintained control over Mr. Poor and/or other aggrieved employees during rest periods.

As a result of MAJCO's practices and policies, Mr. Poor and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Poor regularly had to forego his rest periods because of the heavy workload and MAJCO's failure to adhere to a schedule for rest periods for employees.

MAJCO has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Poor and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that MAJCO did pay Mr. Poor and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, MAJCO did not pay Mr. Poor and other aggrieved employees at the correct rate of pay for premiums because MAJCO failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, MAJCO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Poor and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. MAJCO has not provided Mr. Poor and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, MAJCO has knowingly and intentionally provided Mr. Poor and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, MAJCO issued uniform wage statements to Mr. Poor and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, MAJCO violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because MAJCO did not accurately record the time Mr. Poor and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), MAJCO did not list the correct amount of gross wages and net wages earned by Mr. Poor and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, MAJCO failed to accurately list the total number of the hours worked by Mr. Poor and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because MAJCO did not calculate Mr. Poor's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid

sick leave, MAJCO did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). MAJCO also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), MAJCO willfully failed to maintain accurate payroll records for Mr. Poor and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, MAJCO engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Poor and other aggrieved employees, in violation of section 1198. Furthermore, in light of MAJCO’s failure to provide Mr. Poor and other aggrieved employees with second 30-minute meal periods to which they were entitled, MAJCO kept no records of meal start and end times for second meal periods.

Because MAJCO failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Poor and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Poor and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Poor and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, MAJCO failed to pay Mr. Poor and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, sick leave pay, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Poor and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

MAJCO willfully failed to pay Mr. Poor and other aggrieved employees who are no longer employed by MAJCO the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, sick leave pay, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving MAJCO's employ.

Mr. Poor and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Effective January 1, 2024, California Labor Code section 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in

which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated 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."

During the relevant time period, on information and belief, MAJCO did not pay Mr. Poor and other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, MAJCO paid Mr. Poor and other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, MAJCO failed to incorporate all remunerations, including commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Plaintiff and other aggrieved employees took sick leave and received these other forms of pay, MAJCO failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, MAJCO paid Mr. Poor and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

MAJCO's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Poor and other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Mr. Poor and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* At 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

MAJCO's California stores are generally similar in their layout and design and there was, and continues to be, space behind service desks and counters to allow for the presence and use of a seat or stool by Mr. Poor and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. MAJCO could provide Mr. Poor and other

aggrieved employees with a seat or stool at its service desks and counters, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Mr. Poor and other aggrieved employees spent a substantial portion of their day behind or at these service desks and counters. The nature of the work of an employee performing customer service duties can reasonably be accomplished from a seated position. However, as set forth herein, MAJCO systematically, and on a company-wide basis, does not provide seats or stools at or near the service desks and counters, forcing Mr. Poor and other aggrieved employees to stand throughout their work shifts.

MAJCO violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Mr. Poor and other aggrieved employees were not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. MAJCO's management did not inform Mr. Poor and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of MAJCO's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Poor and other aggrieved employees were forced to stand during shifts and denied seats. MAJCO's failure to provide suitable seating to Mr. Poor and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Mr. Poor and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring MAJCO into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

MAJCO's California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas)

to allow for the presence and use of a seat or stool by Mr. Poor and other aggrieved employees during lulls in operation. MAJCO could have provided Mr. Poor and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

MAJCO did not provide Mr. Poor and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Poor and other aggrieved employees engaged in duties in which the nature of the work required standing, MAJCO denied them the use of seats nearby during lulls in their work duties. Moreover, MAJCO did not inform Mr. Poor and other aggrieved employees of their rights to a seat or stool under California law.

As a result of MAJCO's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Poor and other aggrieved employees were forced to stand during shifts and denied seats. MAJCO's failure to provide suitable seating to Mr. Poor and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Mr. Poor and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring MAJCO into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, MAJCO violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because MAJCO failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift, but were put to work for less than half of the usual or scheduled day's work.

MAJCO had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not

pay other aggrieved employees for half of their usual or scheduled shift. On information and belief, when this would occur, MAJCO did not pay other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay when they were subject to work for less than half of their usual or scheduled shift.

Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A). Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 7-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

During the relevant time period, MAJCO, on a company-wide basis, required that Mr. Poor and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Poor and other aggrieved employees would be contacted on their personal mobile devices by their managers and/or supervisors to discuss work-related matters such as tasks that needed to be completed. Additionally, Mr. Poor was required to utilize his personal cellular phone for communicating with outside laborers for customer wheel rim repairs, which included taking and sending pictures of customer vehicles and obtaining quotes. Although MAJCO required Mr. Poor and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, MAJCO failed to reimburse them for this cost.

Additionally, during the relevant time period, MAJCO required other aggrieved employees to wear uniforms, including uniform shirts and pants. However, because MAJCO failed to provide their employees with uniform pants, upon information and belief, other aggrieved employees were forced to pay out-of-pocket for some of their uniform items. For example, other aggrieved employees spent approximately \$7.80, bi-weekly, out-of-pocket to rent uniform pants from MAJCO. Since MAJCO did not provide uniform components to all employees, other aggrieved employees were required to purchase additional uniform items, such as pants, directly from MAJCO, and were not reimbursed for these costs.

MAJCO could have provided Mr. Poor and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, as well as uniform items; or MAJCO could have reimbursed employees for the costs of their mobile device usage and uniform items. Instead,

MAJCO passed these operating costs off onto Mr. Poor and/or other aggrieved employees. At all relevant times, Mr. Poor did not earn at least two (2) times the minimum wage.

Thus, MAJCO had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Poor and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

MAJCO failed to provide Mr. Poor and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). MAJCO's failure to provide Mr. Poor and other aggrieved employees with written notice of basic information regarding their employment with MAJCO is in violation of Labor Code section 2810.5.

Mr. Poor and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." MAJCO, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Poor's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Poor seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Poor,

acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against MAJCO for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Poor seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by a long horizontal flourish and three dots.

Alexander Lima

Copy: MAJCO LLC (via U.S. Certified Mail); ATV CANTER, LLC (via U.S. Certified Mail)

Capstone Law APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

MAJCO LLC
14001 Princeton Avenue
Moorpark, CA 93021

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS FIELD AT DOTTED LINE

CERTIFIED MAIL

7022 2410 0000 2264 7526
7022 2410 0000 2264 7526

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

born & wyle

MAJCO LLC
14001 Princeton Avenue
Moorpark, CA 93021

PS Form 3800, April 2015 PSN 7530-02-000-9053 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3.
■ Print your name and address on the reverse so that we can return the card to you.

MAJCO LLC
14001 Princeton Avenue
Moorpark, CA 93021

9590 9402 7690 2122 7180 41

2. Article Number (Transfer from service label)
7022 2410 0000 2264 7526

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) **C. Date of Delivery**

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature	☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery	☐ Registered Mail™
☒ Certified Mail®	☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery	☐ Signature Confirmation™
☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery Restricted Delivery	
☐ Restricted Delivery	

Domestic Return Receipt

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

ATV CANTER, LLC
14001 Princeton Avenue
Moorpark, CA 93021

PLACE TICKET AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

CERTIFIED MAIL

7022 2410 0000 2264 7533
7022 2410 0000 2264 7533

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee \$
Extra Services & Fees (check box, and fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail[®] \$
☐ Adult Sign. \$
Postmark
Postage \$
Total Postage \$
Sent to \$
Street #/Box \$
City, State, ZIP+4[®] \$

ATV CANTER, LLC
14001 Princeton Avenue
Moorpark, CA 93021

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for instructions

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3.
■ Print your name and address on the reverse so that we can return the card to you.

ATV CANTER, LLC
14001 Princeton Avenue
Moorpark, CA 93021

9590 9402 7690 2122 7180 34

2. Article Number (Transfer from service label)
7022 2410 0000 2264 7533

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent
☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

J. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail[®]
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Mail Restricted Delivery
☐ Priority Mail Express[®]
☐ Registered Mail[™]
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation[™]
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **June 10, 2024**, I served the document described as **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Jonathan Fraser Light
Michael H. Brody
Brier Miron Setlur
LightGabler LLP
760 Paseo Camarillo, Suite 300
Camarillo, CA 93010

Attorneys for Defendants
MAJCO LLC and ATV CANTER, LLC

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **June 10, 2024**, at Los Angeles, California.

Sophia Flores
Type/Print Name


Signature