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SUPERIOR COURT

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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13
14 FOR THE COUNTY OF SAN JOAQUIN

15 ROBERT JONES, as an aggrieved
16 employee pursuant to the Private
17 Attorneys General Act ("PAGA"), on
18 behalf of the State of California and
19 other non-party Aggrieved
20 Employees,

21 Plaintiff,

22 vs.

23 UTILITY TRAILER SALES OF
24 CENTRAL CALIFORNIA, INC., a
25 California corporation; UTILITY
26 TRAILER OF CALIFORNIA, LLC, a
27 California limited liability company;
28 and DOES 1 through 10, inclusive,

Defendants.

Case No.:

STK-CV-WOF-2024-10957

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Robert Jones, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on June 27, 2024, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants filed Statement of Information forms with the California Secretary of State designating a principal place of business in Lathrop, County of San Joaquin, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Robert Jones is a resident of Fresno, in Fresno County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately October 2023 to March 2024. Plaintiff worked for Defendants as a Service Clerk and Aftermarket Counter Sales Representative at their dealership location in Fresno, California. During his employment, Plaintiff typically worked eight (8) or more hours per day and five (5) days per week. At the time his employment ended, Plaintiff was compensated approximately \$28.00 per hour. His job duties included, without limitation, checking in customers, recording customers' information, scheduling customers' appointments, calling and billing customers, ringing up customers, and cold-calling customers to facilitate sales.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented employees with a "MUTUAL AGREEMENT FOR INDIVIDUAL ARBITRATION" ("Arbitration Agreement") during the onboarding process, which had to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was one of several documents presented to new employees for signature during the orientation process, including

1 the Discrimination, Harassment and Retaliation Free Workplace Policy; Equal Employment
2 Opportunity and Non-Discrimination Policy; Meal Period Waiver Agreement; Employee
3 Receipt of Injury & Illness Prevention Policy, among other documents. Also, employees did
4 not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement.
5 Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it
6 basis at the time they were hired, along with all of the other on-boarding documents.

7 8. UTILITY TRAILER SALES OF CENTRAL CALIFORNIA, INC. was and is,
8 upon information and belief, a California corporation, and at all times hereinafter mentioned,
9 an employer whose employees are engaged throughout this county and the State of California.

10 9. UTILITY TRAILER OF CALIFORNIA, LLC was and is, upon information and
11 belief, a California limited liability company, and at all times hereinafter mentioned, an
12 employer whose employees are engaged throughout this county and the State of California.

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

17 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
18 were the partners, agents, owners, or managers of UTILITY TRAILER SALES OF CENTRAL
19 CALIFORNIA, INC. and UTILITY TRAILER OF CALIFORNIA, LLC at all relevant times.

20 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
21 acts and omissions alleged herein was performed by, or is attributable to, UTILITY TRAILER
22 SALES OF CENTRAL CALIFORNIA, INC. and UTILITY TRAILER OF CALIFORNIA,
23 LLC, and/or DOES 1 through 10 (collectively, "Defendants" or "UTILITY TRAILER"), each
24 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
25 each of the other co-Defendants and was acting within the course and scope of such agency,
26 employment, joint venture, or concerted activity with legal authority to act on the others'
27 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
28 policy of Defendants.

1 13. At all relevant times, Defendants, and each of them, ratified each and every act
2 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
3 and abetted the acts and omissions of each and all the other Defendants in proximately causing
4 the damages herein alleged.

5 14. Plaintiff is informed and believes, and thereon alleges, that each of said
6 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
7 omissions, occurrences, and transactions alleged herein.

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

19 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
20 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
21 non-party Aggrieved Employees because Defendants have:

- 22 (a) jointly exercised meaningful control over the work performed by
23 Plaintiff and other non-party Aggrieved Employees;
24 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
25 Aggrieved Employees’ wages, hours, and working conditions, including
26 the quantity, quality standards, speed, scheduling, and operative details
27 of the tasks performed by Plaintiff and other non-party Aggrieved
28 Employees;

- 1 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
2 perform work which is an integral part of Defendants' businesses; and
3 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
4 Employees as a matter of economic reality in that Plaintiff and other
5 non-party Aggrieved Employees were dependent on Defendants, who
6 shared the power to set the wages of Plaintiff and other non-party
7 Aggrieved Employees and determined their working conditions, and
8 who jointly reaped the benefits from the underpayment of their wages
9 and noncompliance with other statutory provisions governing their
10 employment.

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

14 18. UTILITY TRAILER SALES OF CENTRAL CALIFORNIA, INC.; UTILITY
15 TRAILER OF CALIFORNIA, LLC; and/or DOES 1 through 10 are therefore alter egos of
16 each other.

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

20 20. Plaintiff further alleges, upon information and belief, that the Defendants
21 UTILITY TRAILER SALES OF CENTRAL CALIFORNIA, INC. and UTILITY TRAILER
22 OF CALIFORNIA, LLC are alter egos of each other for the following reasons:

- 23 (a) On the California Secretary of State's website
24 (<https://bizfileonline.sos.ca.gov/>), UTILITY TRAILER SALES OF
25 CENTRAL CALIFORNIA, INC. and UTILITY TRAILER OF
26 CALIFORNIA, LLC share the same agent for service of process,
27 Cortney Pasek;
28 (b) According to their most recent "Statement of Information" forms filed

1 with the California Secretary of State, UTILITY TRAILER SALES OF
2 CENTRAL CALIFORNIA, INC. and UTILITY TRAILER OF
3 CALIFORNIA, LLC both list their “business type” as engaging in
4 trailer sales; and

5 (c) On information and belief, UTILITY TRAILER SALES OF CENTRAL
6 CALIFORNIA, INC. and UTILITY TRAILER OF CALIFORNIA, LLC
7 utilize the same standardized employment forms and issue the same
8 employment policies.

9 **PAGA REPRESENTATIVE ALLEGATIONS**

10 21. Defendants are a trailer dealer group specializing in local and national fleet
11 designs and aftermarket distribution, with three (3) locations in California. Upon information
12 and belief, Defendants maintain a single, centralized Human Resources (HR) department at
13 their corporate headquarters in Lathrop, California, for all non-exempt, hourly paid employees
14 working for Defendants in California, which is responsible for the recruiting and hiring of new
15 employees, and communicating and implementing Defendants’ company-wide policies,
16 including timekeeping policies and meal and rest period policies, to employees throughout
17 California.

18 22. In particular, Plaintiff and other non-party Aggrieved Employees, on
19 information and belief, received the same standardized documents and/or written policies.
20 Upon information and belief, the usage of standardized documents and/or written policies,
21 including new-hire documents, indicate that Defendants dictated policies at the corporate level
22 and implemented them company-wide, regardless of their employees’ assigned locations or
23 positions. Upon information and belief, Defendants set forth uniform policies and procedures
24 in several documents provided at an employee’s time of hire.

25 23. Upon information and belief, Defendants maintain a centralized Payroll
26 department at their corporate headquarters in Lathrop, California, which processes payroll for
27 all non-exempt, hourly paid employees working for Defendants at their various locations in
28 California, including Plaintiff and other non-party Aggrieved Employees. Based upon

1 information and belief, Defendants issue the same formatted wage statements to all non-
2 exempt, hourly paid employees in California, irrespective of their work locations. Upon
3 information and belief, Defendants process payroll for departing employees in the same
4 manner throughout the State of California, regardless of the manner in which each employee's
5 employment ends.

6 24. Defendants continue to employ non-exempt or hourly paid employees in
7 California.

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

12 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
13 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
14 were not recorded.

15 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 receive certain wages for overtime compensation and that they were not receiving certain
18 wages for overtime compensation.

19 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or
22 meal and rest period premiums, that included as eligible income all remuneration required by
23 law, including but not limited to, all income derived from incentive pay, nondiscretionary
24 bonuses, and/or other forms of compensation, but failed to include all forms of remuneration
25 in calculating the regular rate of pay for Plaintiff and other non-party Aggrieved Employees.

26 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 receive at least minimum wages for compensation and that they were not receiving at least

1 minimum wages for work that was required to be done off-the-clock. In violation of the
2 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
3 least minimum wages for work done off-the-clock.

4 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
7 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
8 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
9 other non-party Aggrieved Employees were not provided with all meal periods or payment of
10 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
11 uninterrupted, thirty (30) minute meal period.

12 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
15 payment of one (1) additional hour of pay at their regular rates of pay when they were not
16 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
17 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
18 provided with payment of one (1) additional hour of pay at their regular rates of pay when
19 they were not authorized and permitted to take a compliant rest period.

20 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 receive complete and accurate wage statements in accordance with California law. In
23 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
24 were not provided complete and accurate wage statements.

25 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that they had a duty to maintain accurate and complete payroll records in
27 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
28 and intentionally failed to do so.

1 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 timely payment of wages during their employment. In violation of the California Labor Code,
4 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
5 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
6 premiums, within permissible time periods.

7 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 timely payment of all wages earned upon termination of employment. In violation of the
10 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
11 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
12 and/or meal and rest period premiums, within permissible time periods.

13 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 receive reimbursement for all business-related expenses and costs they incurred during the
16 course and scope of their employment and that they did not receive reimbursement of
17 applicable business-related expenses and costs incurred.

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

24 38. At all times herein set forth, PAGA provides that any provision of law under
25 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
26 assessed and collected by the LWDA for violations of the California Labor Code and
27 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
28 civil action brought on behalf of themselves and other current or former employees pursuant

1 to procedures outlined in California Labor Code section 2699.3.

2 39. PAGA defines an “aggrieved employee” in Labor Code section 2699(c)(1) as
3 “any person who was employed by the alleged violator and personally suffered each of the
4 violations alleged.”

5 40. Plaintiff and other current and former employees of Defendants are “aggrieved
6 employees” as defined by Labor Code section 2699(c)(1) in that they are all Defendants’
7 current or former employees and each of the alleged violations were committed against them.

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

- 11 (a) The aggrieved employee shall give written notice by online filing
12 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
13 to the employer of the specific provisions of the California Labor Code
14 alleged to have been violated, including the facts and theories to support
15 the alleged violations.
- 16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
17 2699.3(a) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).
- 19 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
20 employer and the aggrieved employee by certified mail that it does not
21 intend to investigate the alleged violation within sixty (60) calendar
22 days of the postmark date of the Employee’s Notice. Upon receipt of
23 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
24 five (65) calendar days of the postmark date of the Employee’s Notice,
25 the aggrieved employee may commence a civil action pursuant to
26 California Labor Code section 2699 to recover civil penalties in addition
27 to any other penalties to which the employee may be entitled.

28 42. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,

1 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
2 provision other than those listed in Section 2699.5 after the following requirements have been
3 met:

- 4 (a) The aggrieved employee or representative shall give written notice by
5 online filing to the LWDA and by certified mail to the employer of the
6 specific provisions of the California Labor Code alleged to have been
7 violated (other than those listed in Section 2699.5), including the facts
8 and theories to support the alleged violation.
- 9 (b) An aggrieved employee's notice filed with the LWDA pursuant to
10 2699.3(c) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).
- 12 (c) The employer may cure the alleged violation within thirty-three (33)
13 calendar days of the postmark date of the notice. The employer shall
14 give written notice by certified mail within that period of time to the
15 aggrieved employee or representative and the agency if the alleged
16 violation is cured, including a description of actions taken, and no civil
17 action pursuant to Section 2699 may commence. If the alleged violation
18 is not cured within the 33-day period, the employee may commence a
19 civil action pursuant to Section 2699.

20 43. On June 27, 2024, Plaintiff provided written notice by online filing to the
21 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
22 Code alleged to have been violated, including facts and theories to support the alleged
23 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
24 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
25 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
26 Plaintiff PAGA Case Number LWDA-CM-1036839-24. A true and correct copy of Plaintiff's
27 written notice to the LWDA and Defendants dated June 27, 2024, is attached hereto as
28 "Exhibit 1."

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

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

8 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
9 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provision regulating hours and days of work in any order of the Industrial Welfare
11 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
12 dollars (\$50) for each underpaid employee for each pay period for which the employee was
13 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid" Labor
15 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
16 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
17 as a private attorney general, seeks assessment and collection of civil penalties under Labor
18 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
19 California against Defendants for violations of Labor Code sections 510, 512(a), 516, and
20 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
21 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
22 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
23 applicable IWC Wage Order.

24 47. Defendants, at all times relevant to this complaint, were employers or persons
25 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
26 Employees' rights by violating various sections of the California Labor Code as set forth
27 above.

28 48. As set forth below, Defendants have violated numerous provisions of both the

1 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
2 Order.

3 49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
4 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
5 private attorney general, seeks assessment and collection of civil penalties for himself, all
6 other non-party Aggrieved Employees, and the State of California against Defendants for
7 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
8 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

9 **FIRST CAUSE OF ACTION**

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

11 **(Against all Defendants)**

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

14 51. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
15 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
16 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and
17 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to
18 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
19 including sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, and 2802.

20 52. Defendants’ conduct, as alleged herein, violates numerous sections of the
21 California Labor Code, including, but not limited to, the following:

- 22 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
23 Wage Order for Defendants’ failure to compensate Plaintiff and other
24 non-party Aggrieved Employees with all required overtime pay, as set
25 forth below;
- 26 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
27 applicable IWC Wage Order for Defendants’ failure to include all forms
28 of remuneration in the regular rate of pay as required by law for

1 purposes of paying overtime wages and/or meal and rest period
2 premiums to Plaintiff and other non-party Aggrieved Employees, as set
3 forth below;

4 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
5 the applicable IWC Wage Order for Defendants' failure to compensate
6 Plaintiff and other non-party Aggrieved Employees with at least
7 minimum wages for all hours worked, as set forth below;

8 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
9 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
10 and other non-party Aggrieved Employees with meal periods, as set
11 forth below;

12 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
13 applicable IWC Wage Order for Defendants' failure to authorize and
14 permit Plaintiff and other non-party Aggrieved Employees to take rest
15 periods, as set forth below;

16 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
17 IWC Wage Order for failure to provide accurate and complete wage
18 statements to Plaintiff and other non-party Aggrieved Employees, as set
19 forth below;

20 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
21 IWC Wage Order for failure to maintain payroll records, as set forth
22 below;

23 (h) Violation of Labor Code sections 204 for failure to pay all earned wages
24 during employment, as set forth below;

25 (i) Violation of Labor Code sections 201 and 202 for failure to pay all
26 earned wages upon termination, as set forth below; and

27 (j) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff
28 and other non-party Aggrieved Employees for all business expenses

necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

53. 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.”

54. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

55. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved 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) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

56. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved 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.

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

1 58. During the relevant time period, Defendants willfully failed to pay all overtime
2 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
3 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
4 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
5 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
6 not recorded.

7 59. First, Defendants had, and continue to have, a company-wide policy and/or
8 practice of requiring Plaintiff and other non-party Aggrieved Employees to perform work off-
9 the-clock before and after their scheduled shifts. For example, occasionally throughout his
10 employment, Plaintiff was required to perform tasks before clocking in for his shifts, such as
11 assisting customers in-store or over the phone to make sales. As a further example, Plaintiff
12 was sometimes required to drive to Defendants' location in Lathrop, California, to train new
13 employees, but Plaintiff was not paid for all of the time it took him to drive back to his
14 dealership location in Fresno, California, due to Defendants' management's practice of
15 clocking Plaintiff out from his shifts based on the estimated time of return as opposed to the
16 actual time. As a result, on information and belief, Defendants did not pay Plaintiff for
17 approximately 30 minutes of travel time on those days because Defendants' management
18 clocked him out early.

19 60. Additionally, Defendants required Plaintiff and other non-party Aggrieved
20 Employees to communicate with management, on their personal cellular phones, outside of
21 scheduled shifts to discuss work-related issues, such as the location of parts/inventory and
22 status of orders, time for which they were not paid. These phone calls occurred approximately
23 3-4 times per week and would take 15 minutes each time. Finally, Defendants had, and
24 continue to have, a company-wide security policy of allowing only certain employees to carry
25 keys to Defendants' dealership. Specifically, only managerial employees were issued keys to
26 access the dealership at any given time. In adherence with this policy, Plaintiff and other non-
27 party Aggrieved Employees had to wait up to 15 minutes for a managerial employee to arrive
28 at Defendants' premises and unlock the door in the mornings before they could clock in for

1 their shifts. Thus, Plaintiff and other non-party Aggrieved Employees were subject to
2 Defendants' control before their shifts, time for which they were not paid.

3 61. Second, during the relevant time period, Defendants had, and continue to have,
4 a company-wide policy and/or practice of failing to staff and employ sufficiently trained
5 workers, such that there were too few employees on duty capable of handling the heavy
6 workload and attending to customers. Because Defendants did not employ sufficiently trained
7 employees to meet customer demand, there was no one available to relieve employees like
8 Plaintiff who needed meal period coverage. This practice resulted in a lack of meal period
9 coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all
10 uninterrupted meal periods to which they were entitled. Moreover, Defendants also failed to
11 adhere to a schedule for meal periods, which further caused Plaintiff and other non-party
12 Aggrieved Employees to not be relieved of their duties for compliant meal periods. For
13 example, Defendants' management would interrupt Plaintiff during his meal periods to ask
14 him work-related questions regarding parts, inventory, and customer orders, or other
15 employees' work assignments for five (5) minutes at a time, as there was not anyone else
16 sufficiently trained to handle these questions. As a result, Plaintiff and other non-party
17 Aggrieved Employees had to work through all or part of their meal periods and/or had their
18 meal periods interrupted, time for which they were not paid.

19 62. Furthermore, on information and belief, because Defendants frowned upon
20 employees accruing meal period penalties, Defendants' management adjusted Plaintiff's and
21 other non-party Aggrieved Employees' time records to reflect compliant meal periods,
22 regardless of whether they had received a compliant meal period or not, in order to strictly
23 limit the meal penalties that would need to be paid by Defendants. Additionally, Defendants'
24 company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved
25 Employees from recording all hours worked when their meal periods were shortened or
26 interrupted, because the system locked out Plaintiff and other non-party Aggrieved Employees
27 once they clocked out for a meal period, and would not permit them to clock back in from a
28 meal period before 30 minutes had elapsed. Thus, Defendants did not record all hours worked

1 during meal periods, and Plaintiff and other non-party Aggrieved Employees performed work
2 during meal periods for which they were not paid.

3 63. Defendants knew or should have known that as a result of these company-wide
4 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
5 their assigned duties off-the-clock outside of their shifts and during meal periods, and were
6 suffered or permitted to perform work for which they were not paid. Because Plaintiff and
7 other non-party Aggrieved Employees sometimes worked shifts of eight (8) hours a day or
8 more or forty (40) hours a week or more, some of this off-the-clock work qualified for
9 overtime premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were
10 not paid overtime wages for all of the overtime hours they actually worked.

11 64. Moreover, Defendants did not pay Plaintiff and other non-party Aggrieved
12 Employees the correct overtime rate for the recorded overtime hours that they generated. In
13 addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved
14 Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
15 However, in violation of the California Labor Code, Defendants failed to incorporate all
16 compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of
17 remuneration, into the calculation of the regular rate of pay for purposes of calculating the
18 overtime wage rates. Therefore, during times when Plaintiff and other non-party Aggrieved
19 Employees worked overtime and received these other forms of pay, Defendants failed to pay
20 all overtime wages by paying a lower overtime rate than required.

21 65. For example, Defendants paid Plaintiff and other non-party Aggrieved
22 Employees incentive pay and/or bonuses which were listed on Plaintiff's and other non-party
23 Aggrieved Employees' wage statements as "Bonus." During pay periods that Plaintiff and
24 other non-party Aggrieved Employees were paid overtime wages, Defendants did not
25 incorporate the incentive pay and/or bonuses into Plaintiff's and other non-party Aggrieved
26 Employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay
27 for overtime hours worked. Specifically, Defendants paid Plaintiff and other non-party
28 Aggrieved Employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate

1 of pay. Defendants' failure to properly calculate the overtime rates of pay based on all
2 remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and other
3 non-party Aggrieved Employees on a company-wide basis.

4 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
5 the balance of overtime compensation as required by California law, violates the provisions of
6 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
7 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
8 558 and/or 2699(a), (f), and (k).

9 **FAILURE TO PAY MINIMUM WAGES**

10 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

11 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
12 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment
13 of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in
14 IWC Wage Order No. 7-2001 as "the time during which an employee is subject to the control
15 of an employer, and includes all the time the employee is suffered or permitted to work,
16 whether or not required to do so." Cal. Code Regs. tit. 8, § 11070(2)(H) (defining "Hours
17 Worked").

18 68. First, as set forth above, Defendants had a company-wide policy and/or practice
19 of requiring Plaintiff and other non-party Aggrieved Employees to perform work-related tasks
20 while off-the-clock before and after their shifts, including assisting customers, traveling
21 to/from other locations, communicating with Defendants' management regarding work-related
22 issues, and waiting for a managerial employee to arrive and unlock the premises in the
23 morning. Defendants failed to track this time Plaintiff and other non-party Aggrieved
24 Employees spent working off-the-clock, and Plaintiff and other non-party Aggrieved
25 Employees received no compensation for this time.

26 69. Second, as also stated, due to Defendants' policies and/or practices of assigning
27 heavy workloads and failing to adhere to a schedule for meal periods, Plaintiff and other non-
28 party Aggrieved Employees were impeded from taking all uninterrupted meal periods to

1 which they were entitled and were required to work off-the-clock during meal periods, have
2 their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid
3 meal periods. Moreover, as stated, in order to prevent employees from accruing meal period
4 penalties, upon information and belief, Defendants' management adjusted Plaintiff's and other
5 non-party Aggrieved Employees' time records to reflect compliant meal periods, even when
6 meal periods were missed, short, and/or interrupted. Additionally, as stated, Defendants'
7 company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved
8 Employees from entering time worked during meal periods because the system locked out
9 Plaintiff and other non-party Aggrieved Employees for a full 30 minutes. Thus, Defendants
10 systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual
11 hours worked during unpaid meal periods because these hours were not always correctly
12 recorded.

13 70. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
14 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
15 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
16 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
17 1194, 1197, and 1198.

18 71. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
19 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
20 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
21 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

22 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

23 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

24 72. At all relevant times herein set forth, the applicable IWC Wage Order and
25 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
26 non-party Aggrieved Employees' employment by Defendants.

27 73. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

1 of more than five (5) hours per day without providing the employee with a meal period of not
2 less than thirty (30) minutes, except that if the total work period per day of the employee is
3 not more than six (6) hours, the meal period may be waived by mutual consent of both the
4 employer and the employee. Under California law, first meal periods must start after no more
5 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

6 74. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

9 75. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
10 and the applicable IWC Wage Order also require employers to provide a second meal period
11 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
12 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
13 total hours worked is no more than twelve (12) hours, the second meal period may be waived
14 by mutual consent of the employer and the employee only if the first meal period was not
15 waived.

16 76. First, as stated, Defendants had, and continue to have, a company-wide policy
17 and/or practice of assigning heavy workloads, which has resulted in a lack of meal period
18 coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all
19 timely, uninterrupted meal periods to which they were entitled. Further, as stated, Defendants
20 had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods,
21 which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of
22 their duties for compliant meal periods. As a result, Plaintiff and other non-party Aggrieved
23 Employees had to work through all or part of their meal periods, had their meal periods
24 interrupted, and/or had to wait extended periods of time before taking meal periods. For
25 example, as stated, Defendants' management often interrupted Plaintiff's meal periods by
26 asking him questions about parts, trailers, and work assignments. Additionally, Plaintiff
27 frequently took his meal periods late, after the fifth hour of work, due to the heavy workload.

28 77. Second, as stated, on information and belief, because Defendants frowned upon

1 employees accruing meal period penalties, Defendants' management adjusted Plaintiff's and
2 other non-party Aggrieved Employees' time records to reflect compliant meal periods, even
3 when they did not receive a compliant meal period, in order to strictly limit the meal penalties
4 that Defendants would otherwise owe. As also stated, Defendants' company-wide
5 timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from
6 recording when their meal periods were shortened or interrupted, because the system locked
7 out Plaintiff and other non-party Aggrieved Employees once they clocked out for a meal
8 period, and would not permit them to clock back in from a meal period before 30 minutes had
9 elapsed. As a result of these policies, Defendants falsified and deducted meal periods from
10 Plaintiff's and other non-party Aggrieved Employees' time records even when meal periods
11 were missed, short, interrupted, and/or late, and thus systematically failed to correctly record
12 meal periods.

13 78. Third, Defendants did not provide Plaintiff and other non-party Aggrieved
14 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
15 hours in one day. During his employment, Plaintiff worked shifts in excess of ten (10) or
16 more hours per day but was not provided a second 30-minute meal period. Plaintiff and other
17 non-party Aggrieved Employees did not sign valid meal period waivers on days that they were
18 entitled to meal periods and were not relieved of all duties.

19 79. Moreover, Defendants had a company-wide policy of requiring all newly hired
20 employees to sign blanket meal period waivers at or near their time of hire. Defendants took the
21 position that non-exempt, hourly paid employees had waived their rights to first and/or second
22 meal periods for the entirety of their employment and, on that basis, did not provide them with
23 all meal periods to which they were entitled. Furthermore, Defendants require employees to
24 provide one day's advance written notice should they wish to revoke the waiver. Defendants'
25 presumption that meal periods would not be provided for shifts in excess of five (5) hours but
26 less than six (6) hours and/or for shifts in excess of ten (10) hours but less than twelve (12)
27 hours, due to blanket meal period waivers signed at or near the time of hire, discouraged and
28 impeded Plaintiff and other non-party Aggrieved Employees from taking all meal periods to

1 which they were entitled.

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

6 [A]fter the meal break obligation is triggered . . . an employer is put to a
7 choice: it must (1) afford an off-duty meal period; (2) consent to a
8 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
9 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.

10 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
11 required Plaintiff and other non-party Aggrieved Employees to sign meal period waivers
12 simultaneously at or near their time of hire (as opposed to on a specific work day) renders them
13 invalid and unenforceable, because Defendants' obligation to provide Plaintiff and other non-
14 party Aggrieved Employees with meal periods did not arise until Defendants had employed
15 them for a full five (5) hours.

16 81. Additionally, the meal period waiver forms state that "Under the following
17 circumstances, an employee is allowed to waive the first or second meal periods: . . . **employer**
18 **and employee mutually consent to the waiver.**" (Emphasis added.) However, the blanket
19 meal period waiver forms are only signed by Plaintiff, the employee.

20 82. At all times herein mentioned, Defendants knew or should have known that, as
21 a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
22 from being relieved of all duties and required to perform some of their assigned duties during
23 meal periods. Defendants further knew or should have known that Defendants did not pay
24 Plaintiff and other non-party Aggrieved Employees meal period premiums when meal periods
25 were missed, shortened, interrupted, and/or late.

26 83. Moreover, Defendants engaged in a company-wide practice and/or policy of
27 not paying all meal period premiums owed when compliant meal periods are not provided.
28 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees

1 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
2 to the extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees for
3 missed, late, and interrupted meal periods, Defendants did not pay Plaintiff and other non-
4 party Aggrieved Employees at the correct rate of pay for premiums because Defendants
5 systematically failed to include all forms of compensation, such as incentive pay,
6 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.
7 Therefore, during times when Plaintiff and other non-party Aggrieved Employees received
8 meal period premiums and these other forms of pay, Defendants failed to pay full meal period
9 premiums by paying a lower rate than required.

10 84. Defendants' conduct violates the applicable IWC Wage Order, and California
11 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
12 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
13 558 and/or 2699(a), (f), and (k).

14 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
15 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

16 85. At all relevant times herein set forth, the applicable IWC Wage Order and
17 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
18 non-party Aggrieved Employees' employment by Defendants.

19 86. At all relevant times, the applicable IWC Wage Order provides that "[e]very
20 employer shall authorize and permit all employees to take rest periods, which insofar as
21 practicable shall be in the middle of each work period" and that the "rest period time shall be
22 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
23 hours or major fraction thereof" unless the total daily work time is less than three and one-half
24 (3 ½) hours.

25 87. At all relevant times, California Labor Code section 226.7 provides that no
26 employer shall require an employee to work during any rest period mandated by an applicable
27 order of the California IWC. To comply with its obligation to authorize and permit rest
28 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an

1 employer must “relinquish any control over how employees spend their break time, and
2 relieve their employees of all duties—including the obligation that an employee remain on
3 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
4 *Inc.*, 2 Cal. 5th 257, 273 (2016).

5 88. Pursuant to the applicable IWC Wage Order and California Labor Code section
6 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
7 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
8 required rest period was not authorized and permitted.

9 89. During the relevant time period, Defendants regularly failed to authorize and
10 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
11 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
12 Defendants’ company-wide practices, including assigning heavy workloads, resulted in a lack
13 of rest period coverage and prevented Plaintiff and other non-party Aggrieved Employees
14 from being relieved of all duty in order to take compliant rest periods. Defendants also failed
15 to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest
16 period coverage, further led to Plaintiff and other non-party Aggrieved Employees not being
17 authorized and permitted to take rest periods.

18 90. Furthermore, upon information and belief, during the relevant time period,
19 Defendants maintained a company-wide on-premises rest period policy, which effectively
20 required that Plaintiff and/or other non-party Aggrieved Employees remain on the work
21 premises during their rest periods. Because Plaintiff and/or other non-party Aggrieved
22 Employees were restricted from leaving the premises during rest periods, they were denied the
23 ability to use their rest periods freely for their own purposes, such as running personal errands.
24 Thus, Defendants effectively maintained control over Plaintiff and/or other non-party
25 Aggrieved Employees during rest periods.

26 91. As a result of Defendants’ practices and policies, Plaintiff and other non-party
27 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
28 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they

1 were entitled. For example, throughout his employment, Plaintiff had to forgo 4-5 rest
2 periods per week because the dealership was busy.

3 92. Defendants have also engaged in a company-wide practice and/or policy of not
4 paying rest period premiums owed when compliant rest periods are not authorized and
5 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
6 Employees have not received premium pay for all missed rest periods. Alternatively, to the
7 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
8 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
9 other non-party Aggrieved Employees at the correct rate of pay for premiums because
10 Defendants failed to include all forms of compensation, such as incentive pay,
11 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.
12 Accordingly, Defendants failed to authorize and permit all compliant rest periods and failed to
13 pay the full rest period premiums due.

14 93. Defendants' conduct violates the applicable IWC Wage Order and California
15 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
16 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
17 558 and/or 2699(a), (f), and (k).

18 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
19 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

20 94. At all relevant times herein, California Labor Code section 226(a) provides that
21 every employer shall furnish each of his or her employees an accurate and complete itemized
22 wage statement in writing, including, but not limited to, the name and address of the legal
23 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
24 applicable rates of pay.

25 95. During the relevant time period, Defendants have knowingly and intentionally
26 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
27 inaccurate wage statements. For example, Defendants issued uniform wage statements to
28 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages

1 earned; total hours worked; net wages earned; the address of the legal entity that is the
2 employer; and all applicable hourly rates in effect during the pay period, including rates of
3 pay for overtime wages and/or meal and rest period premiums, and the corresponding number
4 of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
5 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

6 96. First, because Defendants did not record the time Plaintiff and other non-party
7 Aggrieved Employees spent working off-the-clock and deducted time from their records for
8 meal periods that were interrupted and/or missed (and therefore time for which they should
9 have been paid), Defendants did not list the correct amount of gross wages and net wages
10 earned by Plaintiff and other non-party Aggrieved Employees in compliance with section
11 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to
12 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved
13 Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of
14 pay in effect during the pay period and the corresponding accurate number of hours worked at
15 each hourly rate, in violation of section 226(a)(9).

16 97. Second, because Defendants did not calculate Plaintiff's and other non-party
17 Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages
18 and/or meal and rest period premiums, Defendants did not list the correct amount of gross
19 wages in compliance with section 226(a)(1). For the same reason, Defendants failed to list the
20 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
21 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates
22 of pay for overtime wages and/or meal and rest period premiums, in violation of section
23 226(a)(9).

24 98. Third, and separately from these violations, Defendants issued uniform wage
25 statements to Plaintiff and other non-party Aggrieved Employees that failed to list the address
26 of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section
27 226(a)(8) is to provide California employees with transparency as to the true identity of their
28 employer, to allow the employee to contact their employer during employment or in the future

1 for various reasons, including filing an administrative claim, judicial claim, or other action to
2 seek relief against their employer, to obtain unemployment benefits, etc. During the relevant
3 time period, Defendants systematically, and on a company-wide basis, issued wage statements
4 to Plaintiff and other non-party Aggrieved Employees that fail to list the employing entity's
5 correct address. Plaintiff's and other non-party Aggrieved Employees' wage statements
6 incorrectly list the employer's address as "2680 S East Ave, Fresno, CA 93706," but
7 according to the California Secretary of State's website, UTILITY TRAILER SALES OF
8 CENTRAL CALIFORNIA, INC.'s entity address should be "12608 S. HARLAN ROAD,
9 LATHROP, CA 95330."

10 99. The wage statement deficiencies also include, among other things, failing to list
11 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
12 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
13 for which aggrieved employees were paid; failing to list the name of the employee and only
14 the last four digits of his or her social security number or an employee identification number
15 other than a social security number; failing to list the name of the legal entity that is the
16 employer; and/or failing to state all hours worked as a result of not recording or stating the
17 hours they worked off-the-clock.

18 100. California Labor Code section 1174(d) provides that "[e]very person employing
19 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
20 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
21 plants or establishments at which employees are employed, payroll records showing the hours
22 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
23 applicable piece rate paid to, employees employed at the respective plants or
24 establishments" Labor Code section 1174.5 provides that employers are subject to a
25 \$500 civil penalty if they fail to maintain accurate and complete records as required by section
26 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
27 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
28 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto

1 as a result of failing to record the off-the-clock hours that they worked.

2 101. California Labor Code section 1198 provides that the maximum hours of work
3 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
4 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
5 employment of any employees for longer hours than those fixed by the order or under
6 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
7 Wage Order, employers are required to keep accurate time records showing when the
8 employee begins and ends each work period and meal period. During the relevant time
9 period, Defendants engaged in company-wide practices and/or policies of failing to record
10 actual hours worked (including falsifying time records by recording that compliant meal
11 periods were taken regardless if or when meal periods were actually taken), and thereby failed
12 to keep accurate records of work period and meal period start and end times for Plaintiff and
13 other non-party Aggrieved Employees, in violation of section 1198. Furthermore, in light of
14 Defendants’ failure to provide Plaintiff and other non-party Aggrieved Employees with
15 second 30-minute meal periods to which they were entitled, Defendants kept no records of
16 meal start and end times for second meal periods.

17 102. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
18 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
19 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

20 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

21 **VIOLATION OF LABOR CODE SECTION 204**

22 103. At all relevant times herein set forth, California Labor Code section 204
23 requires that all wages earned by any person in any employment between the 1st and the 15th
24 days, inclusive, of any calendar month, other than those wages due upon termination of an
25 employee, are due and payable between the 16th and the 26th day of the month during which
26 the labor was performed. Labor Code section 204 further provides that all wages earned by
27 any person in any employment between the 16th and the last day, inclusive, of any calendar
28 month, other than those wages due upon termination of an employee, are due and payable

1 between the 1st and the 10th day of the following month.

2 104. At all relevant times herein, California Labor Code section 204 also requires
3 that all wages earned for labor in excess of the normal work period shall be paid no later than
4 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
5 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
6 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
7 more than seven (7) calendar days following the close of the payroll period.

8 105. During the relevant time period, Defendants willfully failed to pay Plaintiff and
9 other non-party Aggrieved Employees all wages due to them within any time period specified
10 by California Labor Code sections 204 including, but not limited to, overtime wages,
11 minimum wages, and/or meal and rest period premiums.

12 106. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
13 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

14 **FAILURE TO PAY WAGES UPON TERMINATION**

15 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

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

23 108. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
24 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
25 above, including but not limited to, overtime wages, minimum wages, and/or meal and rest
26 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
27 leaving Defendants' employ.

28 109. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees

1 who are no longer employed by Defendants their wages earned and unpaid at the time of
2 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
3 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
4 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
5 2699(a), (f), and (k).

6 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

7 **VIOLATION OF LABOR CODE SECTION 2802**

8 110. At all times herein set forth, California Labor Code section 2802 provides that
9 an employer must reimburse employees for all necessary expenditures and losses incurred by
10 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
11 to prevent employers from passing off their cost of doing business and operating expenses on
12 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
13 (2014). The applicable wage order, IWC Wage Order No. 7-2001 provides that: "[w]hen tools
14 or equipment are required by the employer or are necessary to the performance of a job, such
15 tools and equipment shall be provided and maintained by the employer, except that an
16 employee whose wages are at least two (2) times the minimum wage provided herein may be
17 required to provide and maintain hand tools and equipment customarily required by the trade
18 or craft." IWC Wage Order No. 7-2001 further provides that: "[w]hen uniforms are required
19 by the employer to be worn by the employee as a condition of employment, such uniforms
20 shall be provided and maintained by the employer."

21 111. During the relevant time period, Defendants, on a company-wide basis,
22 required that Plaintiff and other non-party Aggrieved Employees use their own personal
23 mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out
24 their job duties, but failed to reimburse them for the costs of their work-related mobile device
25 expenses. For example, Plaintiff and other non-party Aggrieved Employees were required to
26 use their personal mobile devices and/or mobile data for work-related tasks, including
27 responding to calls from management and customers and taking and sending photos of trailers
28 to document any damage and upload to the company's system on his work computer.

Moreover, Plaintiff and other non-party Aggrieved Employees were required to download mobile applications on their personal cellular phones such as the Verkada Pass application, in order to lock and unlock the service department doors. Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, Defendants failed to reimburse them for these costs.

112. Additionally, during the relevant time period, Defendants, on a company-wide basis, required Plaintiff and other non-party Aggrieved Employees to report to work in uniforms bearing the company logo. However, Defendants did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. Defendants only provided Plaintiff with three (3) shirts at the time of hire. Because Defendants failed to provide employees with an adequate number of uniforms in relation to the tasks they were required to perform, Plaintiff had to wash his uniforms more frequently than he would otherwise do laundry, and incurred expenses in doing so. Thus, Defendants failed to maintain the uniforms they required Plaintiff and other non-party Aggrieved Employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

113. Defendants could have provided Plaintiff and other non-party Aggrieved Employees with the actual equipment for use on the job, such as company mobile devices, and an adequate number of uniforms or access to laundering services. Or, Defendants could have reimbursed employees for the costs of their mobile device usage and laundering expenses or provided a uniform maintenance allowance. Instead, Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

114. Defendants' company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and passing on their operating costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

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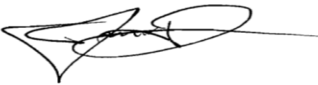
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6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: September 3, 2024

Respectfully submitted,
Capstone Law APC



By: _____
Robert Drexler
Jonathan Lee

Attorneys for Plaintiff Robert Jones

EXHIBIT “1”



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June 27, 2024

VIA ONLINE SUBMISSION

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

Subject: *Robert Jones v. Utility Trailer Sales of Central California, Inc., et al.*

Dear PAGA Administrator:

This office represents Robert Jones in connection with his claims under the California Labor Code. Mr. Jones was an employee of UTILITY TRAILER SALES OF CENTRAL CALIFORNIA, INC.; UTILITY TRAILER OF CALIFORNIA, LLC; and/or UTILITY TRAILER MANUFACTURING COMPANY, LLC. For the purpose of this letter, Mr. Jones collectively refers to these entities as "UTSCC."

The employers may be contacted directly at the addresses below:

UTILITY TRAILER SALES OF CENTRAL CALIFORNIA, INC. 12608 S. HARLAN ROAD LATHROP, CA 95330	UTILITY TRAILER OF CALIFORNIA, LLC 15567 VALLEY BLVD FONTANA, CA 92335
--	--

UTILITY TRAILER OF CALIFORNIA, LLC
PO BOX 1510
FONTANA, CA 92334

UTILITY TRAILER MANUFACTURING COMPANY, LLC
17295 E. RAILROAD STREET
CITY OF INDUSTRY, CA 91748

Mr. Jones 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. Jones seeks relief on behalf of himself, the State of California, and other persons who are or were employed by UTSCC as a non-exempt, hourly paid employee in California 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.

UTSCC employed Mr. Jones as an hourly paid, non-exempt Service Clerk and Aftermarket Counter Sales Representative from approximately October 2023 to March 2024. Mr. Jones worked for UTSCC at its dealership location in Fresno, California. During his employment, Mr. Jones typically worked eight (8) or more hours per day and five (5) days per week. At the time his employment

ended, Mr. Jones was compensated approximately \$28.00 per hour. His primary job duties included, without limitation, checking in customers, recording customers' information, scheduling customers' appointments, calling and billing customers, ringing up customers, and cold-calling customers to facilitate sales.

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

UTSCC's Company-Wide and Uniform Payroll and HR Practices

UTILITY TRAILER SALES OF CENTRAL CALIFORNIA, INC. is a California corporation while UTILITY TRAILER OF CALIFORNIA, LLC and UTILITY TRAILER MANUFACTURING COMPANY, LLC are California and Delaware limited liability companies, respectively. Together, they are a trailer dealer group specializing in local and national fleet designs and aftermarket distribution, with three (3) locations in California. Upon information and belief, UTSCC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Lathrop, California, for all non-exempt, hourly paid employees working for UTSCC in California, including Mr. Jones and other aggrieved employees. At all relevant times, UTSCC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Jones and other aggrieved employees, regardless of their location or position.

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

¹ These facts, theories, and claims are based on Mr. Jones's experience and counsel's review of those records currently available relating to Mr. Jones'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. Jones 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.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

UTSCC willfully failed to pay all overtime wages owed to Mr. Jones and other aggrieved employees. During the relevant time period, Mr. Jones and other aggrieved employees were not paid overtime 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, UTSCC had, and continues to have, a company-wide policy and/or practice of requiring Mr. Jones and other aggrieved employees to perform work off-the-clock before and after their scheduled shifts. For example, occasionally throughout his employment, Mr. Jones was required to perform tasks before clocking in for his shifts, such as assisting customers in-store or over the phone to make sales. As a further example, Mr. Jones was sometimes required to drive to UTSCC's location in Lathrop, California, to train new employees, but Mr. Jones was not paid for all of the time it took him to drive back to his dealership location in Fresno, California, due to UTSCC's management clocking Mr. Jones out from his shifts based on the estimated time of return as opposed to an actual time. As a result, on information and belief, UTSCC did not pay Mr. Jones for approximately 30 minutes of travel time on those days because UTSCC's management clocked him out early.

Additionally, UTSCC required Mr. Jones and other aggrieved employees to communicate with management, on their personal cellular phones, outside of scheduled shifts to discuss work-related issues, such as location of parts/inventory and status of orders, time for which they were not paid. These phone calls occurred approximately 3-4 times per week and would take 15 minutes each time. Finally, UTSCC had, and continues to have, a company-wide security policy of allowing only certain employees to carry keys to UTSCC's dealership. Specifically, only managerial employees were issued keys to access the dealership at any given time. In adherence with this policy, Mr. Jones and other aggrieved employees had to wait up to 15 minutes for a managerial employee to arrive at UTSCC's premises and unlock the door in the mornings before they could clock in for their shifts. Thus, Mr. Jones and other aggrieved employees were subject to UTSCC's control before and after their shifts, time for which they were not paid.

Second, during the relevant time period, UTSCC had, and continues to have, a company-wide policy and/or practice of failing to staff and employ sufficiently trained workers, such that there were too few employees on duty capable of handling the heavy workload and attending to customers. Because UTSCC did not employ sufficiently trained employees to meet customer demand, there was no one available to relieve employees like Mr. Jones who needed meal period coverage. This practice resulted in a lack of meal period coverage and prevented Mr. Jones and other aggrieved employees from taking all uninterrupted meal periods to which they were entitled. Moreover, UTSCC also failed to adhere to a schedule for meal periods, which further caused Mr. Jones and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, UTSCC's management would interrupt Mr. Jones during his meal periods to ask him work-related questions regarding parts, inventory, and customer orders, or other employees' work assignments for five (5) minutes at a time, as there was not anyone else sufficiently trained to handle these questions. As a result, Mr. Jones and other aggrieved employees had to work through all or part of their meal periods and/or had their meal periods interrupted, time for which they were not paid.

Furthermore, on information and belief, because UTSCC frowned upon employees accruing meal period penalties, UTSCC's management adjusted Mr. Jones's and other aggrieved employees' time

records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by UTSCC. Additionally, UTSCC's company-wide timekeeping system prevented Mr. Jones and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Jones 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, UTSCC did not record all hours worked during meal periods, and Mr. Jones and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

For example, UTSCC paid Mr. Jones and other aggrieved employees incentive pay and/or bonuses which were listed on Mr. Jones's and other aggrieved employees' wage statements as "Bonus." During pay periods that Mr. Jones and other aggrieved employees were paid overtime wages, UTSCC did not incorporate the incentive pay and/or bonuses into Mr. Jones'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, UTSCC paid Mr. Jones and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. UTSCC'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. Jones and other aggrieved employees on a company-wide basis.

UTSCC's failure to pay Mr. Jones 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. Jones 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, UTSCC had a company-wide policy and/or practice requiring Mr. Jones and other aggrieved employees to perform work-related tasks while off-the-clock before and after their shifts, including assisting customers, traveling to/from other locations, communicating with UTSCC’s management regarding work-related issues, and waiting for a managerial employee to arrive and unlock the premises in the morning. UTSCC failed to track this time Mr. Jones and other aggrieved employees spent working off-the-clock, and Mr. Jones and other aggrieved employees received no compensation for this time.

Second, as also stated, due to UTSCC’s policies and/or practices of assigning heavy workloads and failing to adhere to a schedule for meal periods, Mr. Jones 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. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, UTSCC’s management adjusted Mr. Jones’s and other aggrieved employees’ time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. Additionally, as stated, UTSCC’s company-wide timekeeping system prevented Mr. Jones and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Jones and other aggrieved employees for a full 30 minutes. Thus, UTSCC systematically failed to pay Mr. Jones and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, UTSCC did not pay minimum wages for all hours worked by Mr. Jones and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, UTSCC 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, UTSCC regularly failed to pay at least minimum wages to Mr. Jones 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. Jones 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.

First, as stated, UTSCC had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Jones and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, UTSCC had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Mr. Jones and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Jones 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, UTSCC's management often interrupted Mr. Jones's meal periods by asking him questions about parts, trailers, and work assignments. Additionally, Mr. Jones frequently took his meal periods late, after the fifth hour of work, due to the heavy workload.

Second, as stated, on information and belief, because UTSCC frowned upon employees accruing meal period penalties, UTSCC's management adjusted Mr. Jones's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit the meal penalties that UTSCC would otherwise owe. As also stated, UTSCC's company-wide timekeeping system prevented Mr. Jones and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Jones 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. As a result of these policies, UTSCC falsified and deducted meal periods from Mr. Jones's and other aggrieved employees' time records even when meal periods were missed, short, interrupted, and/or late and thus systematically failed to correctly record meal periods.

Third, UTSCC did not provide Mr. Jones and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Jones worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Mr. Jones 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, UTSCC had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. UTSCC 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. Furthermore, UTSCC requires employees to provide one day's advance written notice should they wish to revoke the waiver. UTSCC's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and/or 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, discouraged and impeded Mr. Jones 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. 7, subd. 11(A), (B)). That UTSCC required Mr. Jones and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because UTSCC's obligation to provide Mr. Jones and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

Additionally, the meal period waiver forms state that "Under the following circumstances, an employee is allowed to waive the first or second meal periods: . . . **employer and employee mutually consent to the waiver.**" (Emphasis added.) However, the blanket meal period waiver forms are only signed by Mr. Jones, the employee.

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

Moreover, UTSCC 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, Mr. Jones and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that UTSCC did pay Mr. Jones and other aggrieved employees for missed, late, and interrupted meal periods, UTSCC did not pay Mr. Jones and other aggrieved employees at the correct rate of pay for premiums because UTSCC systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, UTSCC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Jones 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, UTSCC regularly failed to authorize and permit Mr. Jones 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, UTSCC’s company-wide practices, including assigning heavy workloads, resulted in a lack of rest period coverage and prevented Mr. Jones and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. UTSCC also failed to schedule rest periods, which, coupled with UTSCC’s failure to provide adequate rest period coverage, further led to Mr. Jones and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, UTSCC maintained a company-wide on-premises rest period policy, which effectively required that Mr. Jones and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Jones 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, UTSCC effectively maintained control over Mr. Jones and/or other aggrieved employees during rest periods.

As a result of UTSCC’s practices and policies, Mr. Jones 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 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Jones had to forgo 4-5 rest periods per week because the dealership was busy.

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

Accordingly, UTSCC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Jones 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. UTSCC has not provided Mr. Jones 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, UTSCC has knowingly and intentionally provided Mr. Jones and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, UTSCC issued uniform wage statements to Mr. Jones and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, UTSCC violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because UTSCC did not record the time Mr. Jones 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), UTSCC did not list the correct amount of gross wages and net wages earned by Mr. Jones and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, UTSCC failed to accurately list the total number of hours worked by Mr. Jones 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).

Second, because UTSCC did not calculate Mr. Jones's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, paid sick leave, and/or reporting time pay, UTSCC did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, UTSCC failed to list the correct amount of net wages in violation of section 226(a)(5). UTSCC 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, paid sick leave, and/or reporting time pay, in violation of section 226(a)(9).

Third, and separately from these violations, UTSCC issued uniform wage statements to Mr. Jones and other aggrieved employees that failed to list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, UTSCC systematically, and on a company-wide basis, issued

wage statements to Mr. Jones and other aggrieved employees that fail to list the employing entity's correct address. Mr. Jones's and other aggrieved employees' wage statements incorrectly list the employer's address as "2680 S East Ave, Fresno, CA 93706," but according to the California Secretary of State's website, UTILITY TRAILER SALES OF CENTRAL CALIFORNIA, INC.'s entity address should be "12608 S. HARLAN ROAD, LATHROP, CA 95330." *See example paystub below.*

Statement of Earnings For: ROBERT W JONES				Utility Trailer Sales of Central CA Inc	
Period Begin	10/22/2023	Company Id	WP577	Employee Number	2680 S East Ave
Period End	11/4/2023	Branch	Fresno	Pay Group	Fresno, CA 93706
Check Date	11/10/2023	Department	Service		

The wage statement deficiencies also include, among other things, 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 of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they 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), UTSCC willfully failed to maintain accurate payroll records for Mr. Jones 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, UTSCC engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Jones and other aggrieved employees, in violation of section 1198. Furthermore, in light of UTSCC's failure to provide Mr. Jones and other aggrieved employees with second 30-minute meal periods to which they were entitled, UTSCC kept no records of meal start and end times for second meal periods.

Mr. Jones 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, UTSCC willfully failed to pay Mr. Jones and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, sick leave pay, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Mr. Jones 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.

UTSCC willfully failed to pay Mr. Jones and other aggrieved employees who are no longer employed by UTSCC 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 UTSCC's employ.

Mr. Jones 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. Further, 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, UTSCC did not pay Mr. Jones and/or other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, UTSCC paid Mr. Jones and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, UTSCC failed to incorporate all remunerations, including 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 Mr. Jones and/or other aggrieved employees took sick leave and received these other forms of pay, UTSCC failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, UTSCC paid Mr. Jones and/or other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

UTSCC’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. Jones and/or other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Mr. Jones and/or 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 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, UTSCC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because UTSCC failed to pay Mr. Jones and/or 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.

UTSCC had a company-wide practice of sending Mr. Jones and/or 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 Mr. Jones and/or other aggrieved employees for half of their usual or scheduled shift. Although Mr. Jones and/or other aggrieved employees reported to work based on the schedule that was provided to them, UTSCC would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, UTSCC did not pay Mr. Jones and/or other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay.

Accordingly, Mr. Jones and/or 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). Mr. Jones and/or 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, UTSCC, on a company-wide basis, required that Mr. Jones 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. Jones and other aggrieved employees were required to use their personal mobile devices and/or mobile data for work-related tasks, including responding to calls from management and customers and taking and sending photos of trailers to document any damage and upload to the company's system on his work computer. Moreover, Mr. Jones and other aggrieved employees were required to download mobile applications on their personal cellular phones such as the Verkada Pass application, in order to lock and unlock the service department doors. Although UTSCC required Mr. Jones and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, UTSCC failed to reimburse them for these costs.

Additionally, during the relevant time period, UTSCC, on a company-wide basis, required Mr. Jones and other aggrieved employees to report to work in uniforms bearing the company logo. However, UTSCC did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. UTSCC only provided Mr. Jones with three (3) shirts at the time of hire. Because UTSCC failed to provide employees with an adequate number of uniforms in relation to the tasks they were required to perform, Mr. Jones had to wash his uniforms more frequently than he otherwise would do laundry, and incurred expenses in doing so. Thus, UTSCC failed to maintain the uniforms they

required Mr. Jones and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

UTSCC could have provided Mr. Jones and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and an adequate number of uniforms or access to laundering services. Or, UTSCC could have reimbursed employees for the costs of their mobile device usage and laundering expenses or provided a uniform maintenance allowance. Instead, UTSCC passed these operating costs off onto Mr. Jones and other aggrieved employees. At all relevant times, Mr. Jones did not earn at least two (2) times the minimum wage.

Thus, UTSCC 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. Jones 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." UTSCC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Jones's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Jones 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 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Jones, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against UTSCC 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, and 2802.

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

Pre-Litigation Demand

This notice shall further serve as Mr. Jones's reasonable attempt to settle his dispute with UTSCC prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform UTSCC of Mr. Jones's aforementioned grievances and the proposed remedies as detailed below, while affording UTSCC a reasonable opportunity to satisfy Mr. Jones's demands.

Demand is hereby made that UTSCC shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. UTSCC shall pay Mr. Jones and all other aggrieved employees employed by UTSCC at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. UTSCC shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. UTSCC shall conduct a survey or interview all current and former aggrieved employees in California who worked for UTSCC in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device expenses; uniform maintenance costs; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. UTSCC shall pay Mr. Jones and each aggrieved employee one hour of pay at her or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. UTSCC also shall pay Mr. Jones and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. UTSCC shall properly calculate aggrieved employees' rates of pay for overtime, meal and rest period premiums, and paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, and 246(l).
6. UTSCC shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay 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 aggrieved employee's regular rate of pay.
7. UTSCC shall reimburse Mr. Jones and all aggrieved employees who were required to pay for any business expenses incurred for UTSCC's benefit, including, but not limited to, mobile device usage and uniform maintenance costs, as required by Labor Code section 2802.
8. UTSCC shall pay accrued legal interest to Mr. Jones and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
9. UTSCC shall provide Mr. Jones and all aggrieved employees employed by UTSCC at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
10. UTSCC shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

UTSCC shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but

not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 1174.5, 1197.1, and 2699, and Wage Order No. 7-2001, section 20.

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

Ninel Kocharyan
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 "Ninel", with a stylized flourish at the end.

Ninel Kocharyan

Copy: UTILITY TRAILER SALES OF CENTRAL CALIFORNIA, INC. (via U.S. Certified Mail);
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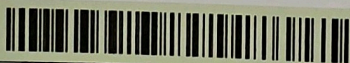
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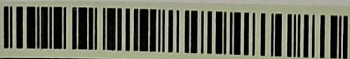
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If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PITNEY BOWES
US POSTAGE
\$17.55
Priority Mail
0 lbs 4 oz 25.00
028W0002311084
2000388312
ZIP 90067
JUN 21 2024



Domestic Return Receipt

CAPSTONE LAW, APC
 1875 Century Park East
 Suite #1000
 Los Angeles, CA 90067



**UTILITY TRAILER
 MANUFACTURING
 COMPANY, LLC**
 17295 E. Railroad Street
 City of Industry, CA 91748

7022 2410 0000 2406 2273

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

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

OFFICIAL USE

Certified Mail Fee \$ 4.40

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$ 3.05

☐ Return Receipt (electronic) \$ _____

☐ Certified Mail Restricted Delivery \$ _____

☐ Adult Signature Required \$ _____

☐ Adult Signature Restricted Delivery \$ _____

Postage \$ 9.60

Total Postage and Fees \$ 17.45

Sent to **UTILITY TRAILER
 MANUFACTURING
 COMPANY, LLC**

Street and Apt. No., or P.O. Box **17295 E. Railroad Street**

City, State, ZIP+4® **City of Industry, CA 91748**

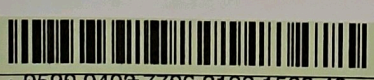
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Postmark Here

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.
- Attach this card to the back of the mailpiece.

**UTILITY TRAILER
 MANUFACTURING
 COMPANY, LLC**
 17295 E. Railroad Street
 City of Industry, CA 91748



2. Article Number Transferred from Service Label 42
 7022 2410 0000 2406 2273

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent ☒ Addressee

X

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

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

I. 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

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

PRIORITY BOXES
\$17.30
 US POSTAGE™
 PRIORITY MAIL
 0 lbs 4 ozs, Zone 1
 028W 0002311246
 ZIP 91748
 JUN 27 2024



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.
- Attach this card to the back of the mailpiece,

**UTILITY TRAILER
MANUFACTURING
COMPANY, LLC**

17295 E. Railroad Street
City of Industry, CA 91748



2. Article Number (transferred from service label)

7022 2410 0000 2406 2273

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *By the Hand*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

By the Hand

C. Date of Delivery

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

I. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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.
- Attach this card to the back of the mailpiece,

**UTILITY TRAILER OF
CALIFORNIA, LLC**

15567 Valley Blvd.
Fontana, CA 92335



2. Article Number (transferred from service label)

7022 2410 0000 2406 2259

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Lexis Falls*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Lexis Falls

C. Date of Delivery

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

I. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt