WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010
Tel: (213) 381-9988
Fax: (213) 381-9989
wilshirelawfirm.com

Sean Paisan, Esq.
Justin F. Marquez, Esq.
John Yslas, Esq.

Stephanie Mazepa, Esq.
Nicol Hajjar, Esq.
Thiago Coelho, Esq.

June 20, 2024

LWDA
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(***Via Online Submission***)

Steven L. Simas, Esq.
Ryan M. Keever, Esq.
SIMAS & ASSOCIATES, LTD.
7355 Morro Road, Suite 101
Atascadero, California 93422
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6620 2545 39

E. Clarke Moseley
Agent for Service of Process
Eagle Motors, Inc.
2401 Oakwood Street
Paso Robles, CA 93446
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6620 2545 46

Re: ***Alex Quintero and Jose Sandoval v. Eagle Motors, Inc.***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Alex Quintero and Jose Sandoval ("Employees") to pursue a Labor Code Private Attorneys General Act of 2004 ("PAGA") representative action (Cal. Lab. Code §§ 2699, *et seq.*) against their former employers, Eagle Motors, Inc. ("Eagle Motors" or "Employers"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Employers engaged in with respect to Employees and some or potentially all of Employers' Aggrieved Employees.

Employees wish to pursue this action on behalf of Employees as Aggrieved Employees, on behalf of the State of California, as well as on behalf of some or potentially all other persons who worked for Employers in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Employees and the Aggrieved Employees, or some of them, suffered the Labor Code violations described below.

Employees' Employment with Eagle Motors

Eagle Motors is a full-service automobile dealership. Employees worked as lube technicians. Their primary job functions included performing oil changes, tire rotations, and inspection of the whole vehicle to determine any other services needed. In performing their duties, Employees were regularly required to perform work (off-the-clock), without compensation. Due to high workloads, Employees were also frequently deprived of an opportunity to take legally compliant meal and rest breaks. Moreover, Employers failed to provide Employees and other Aggrieved Employees with the meal and rest break premiums as required by the Labor Code. Additionally, Employees were expected to and did incur business-related expenses, but Employers failed to reimburse such business-related expenses. These are just non-exhaustive examples of the facts and theories the Employees assert, which are described in more detail below.

Employers own/owned and operate/operated an industry, business, and establishment within the State of California. As such and based upon all the facts and circumstances incident to Employers' business in California, Employers are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Employee Alex Quintero is a resident of King City, California who worked for Employers in San Luis Obispo County, California as an hourly-paid, non-exempt employee from approximately March 2023 to approximately March 2024.

Employee Jose Sandoval is a resident of Paso Robles, California who worked for Employers in San Luis Obispo County, California as an hourly-paid, non-exempt employee from approximately September 2024 to approximately March 2024.

During their employment for Employers, Employers paid Employees an hourly wage and classified them as non-exempt from overtime. Employers typically scheduled Employees to work at least five days in a workweek and at least eight hours per day, but Employees also worked more than eight hours in a workday and more than forty (40) hours in a workweek.

Throughout Employees' employment, Employers failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Employees with legally compliant meal periods, failed to authorize and permit Employees to take rest periods, failed to timely pay all final wages to Employees when Employers terminated Employees' employment, failed to furnish accurate wage statements to Employees, failed to indemnify Employees for business expenditures, and failed to timely produce Employees' requested employment records. As discussed below, Employees' experience working for Employers was typical and illustrative.

Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is 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.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Employers at times failed to pay Employees and the Aggrieved Employees, or some of them, for all hours worked, including minimum, straight time, and overtime wages. Employers at times required Employees and the Aggrieved Employees, or some of them, to work "off-the-clock," uncompensated, by, for example, requiring Employees and the Aggrieved

Employees to perform work during uncompensated meal periods and rest periods, and requiring Employees and the Aggrieved Employees to perform work before clocking in and/or after clocking out. Some of this unpaid work should have been paid at the overtime rate. California Labor Code § 510 requires that employers compensate employees 1.5 times their regular rate of pay when employees work over eight hours per day, 40 hours per week, or when employees work up to eight hours on any seventh day of a workweek. Employer at times failed to properly calculate Employees' regular rate of pay when paying overtime, by failing to include all compensation in Employees' overtime calculations. In failing to pay for all hours worked, Employers also failed to maintain accurate records of the hours Employees and the Aggrieved Employees, or some of them, worked.

Throughout the statutory period, Employers also engaged, at times, in a practice of improper rounding. Under Camp v. Home Depot U.S.A., Inc. (2022) 84 Cal.App.5th 638, because Employers could and did track the exact time in minutes that Employees worked, they must pay for all time worked. When an employer uses an electronic timekeeping system to record time worked, this ability to "precisely capture time worked" means that "the employer must pay the employee for that worktime when due." (Id. at 671.) As a result of Employers' rounding policy, Employees consistently were not compensated at least minimum wage for all hours that Employees worked.

As a result, Employers are liable to Employees and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

<u>Failure to Provide Meal Periods</u>

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Employers at times wrongfully failed to provide Employees and the Aggrieved Employees, or some of them, with their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law (and also including but not limited to failing at times to provide Plaintiff, the Class, and the Aggrieved Employees, or some of them, the opportunity to leave the work premises to take meal periods). Employers also continued to assert control over Employees and the Aggrieved Employees, or some of them, by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Employees and the Aggrieved Employees, or some of them, permission to take a meal period under the conditions required by law, and without properly compensating Employees and the Aggrieved Employees, or some of them, for meal periods that were not provided as required by law. Employers also did not inform Employees of their right to, nor permitted them to take, all of Employees' second meal periods when they worked at least ten hours of work in a workday and otherwise unlawfully pressured Employees to waive such breaks. Accordingly, Employers at times failed to provide meal periods to Employees and the Aggrieved Employees, or some of them, in compliance with California law.

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Employees and the Aggrieved Employees, or some of them, are thus entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s). Employers, however, at times failed to pay Employees and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for meal periods that were not provided.

As a result, Employers are liable to Employees and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e., more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Employers at times have wrongfully failed to authorize and permit Employees and the Aggrieved Employees, or some of them, to take legally compliant rest periods in a manner required by law (and also including but not limited to failing, at times, to authorize and permit Plaintiff, the Class, and the Aggrieved Employees, or some of them, the opportunity to leave the work premises to take rest periods). Employers at times required Employees and the Aggrieved Employees, or some of them, to work in excess of four consecutive hours a day without Employers authorizing and permitting Employees to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Employees and the Aggrieved Employees, or some of them, for rest periods that were not authorized or permitted. Instead, Employers at times continued to assert control over Employees and the Aggrieved Employees, or some of them, by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Employees and the Aggrieved Employees, or some of them, permission to take a rest period. Accordingly, Employers at times failed to authorize and permit Employees and the Aggrieved Employees, or some of them, to take rest periods in compliance with California law.

Employees and the Aggrieved Employees, or some of them, are thus entitled to be paid one hour of additional wages for each workday they were not authorized and permitted to take all required rest period(s). Employers, however, at times failed to pay Employees and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for rest periods that they were not authorized and permitted to take.

As a result, Employers are liable to Employees and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on Employers' failure at times to pay Employees and the Aggrieved Employees, or some of them, for all wages as discussed above, Employers also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, at times, Employers failed and refused to pay the Employees all wages due, and failed to pay those wages twice a month, in that Employees were not paid all wages for all meal periods not provided by Employers, all wages for all rest periods not authorized and permitted by Employers, and all wages for all hours worked. As a result, Employers owe Employees the legally required wages for unpaid wages, and Employees and the Aggrieved Employees, or some of them, suffered damages in those amounts.

Moreover, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

<u>Failure to Maintain Accurate Records of Hours Worked and Meal Periods</u>

Employees seek penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded. Employers, however, at times failed to maintain accurate records of hours worked and all meal periods taken or missed by Employees and the Aggrieved Employees, or some of them.

Employers' failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Employees and the Aggrieved Employees, or some of them, the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Employers' records. Therefore, Employees and the Aggrieved Employees, or some of them, had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Employers. As a direct result, Employees and the Aggrieved Employees, or some of them, have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorneys' fees in seeking to compel Employers to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Employers' knowing failure, at times, to comply with the California Labor Code and applicable IWC Wage Orders, Employees and the Aggrieved Employees, or some of them, have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

<u>Failure to Timely Pay All Wages at Termination</u>

Labor Code §§ 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. Direct deposits of wages to an employee's bank, saving and loan, or credit union account that were previously authorized by the employee are immediately terminated when an employee quits or is discharged, and the payment of wages upon termination of employment in the manner described above shall apply unless the employee has voluntarily authorized that deposit and provided that the employer complies with the provisions of Labor Code § 213(d) relating to the payment of wages upon termination or quitting of employment.

Within the applicable statute of limitations, the employment of Employees and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Employers at times failed, and continue at times to fail to pay Employees and terminated Aggrieved Employees, or some of them, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Employers' employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages. Employers also violated, and continue to violate, Labor Code section 213(d) by paying final wages (if any are paid at all) via direct deposit without the employee's voluntary authorization.

Employers' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Employees and the Aggrieved Employees, or some of them, are entitled to recover from Employers their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203. Moreover, Employers are liable to Employees and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination, and for unlawfully making any such payment (if any) via direct deposit without the employee's voluntary authorization.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Throughout the statutory period, Employers at times failed to, and continue at times to fail, to timely furnish Employees and the Aggrieved Employees, or some of them, with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Employers at times violated Labor Code § 226, Employees and similarly Aggrieved Employees, or some of them, suffered injury and damage to their statutorily protected rights. Accordingly, Employees and similarly Aggrieved Employees, or some of them, are entitled to recover from Employers the greater of their actual damages caused by Employers' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee. Moreover, Employers are liable to Employees and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 226.3 for failing to timely furnish accurate itemized wage statements.

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) provides that employers shall indemnify their employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the statute of limitations period applicable to this cause of action, Employers at times wrongfully required Employees and the Aggrieved Employees, or some of them, to pay expenses that they incurred in direct discharge of their duties for Employers. Employees and the Aggrieved Employees, or some of them, at times paid out-of-pocket for necessary employment-related expenses. Employees and the Aggrieved Employees, or some of them, incurred substantial expenses as a direct result of performing their job duties for Employers, but Employers failed to indemnify Employees and the Aggrieved Employees for these employment-related expenses.

As a result, Employers are liable to Employees and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Employees and the Aggrieved Employees, or some of them, for necessary business expenditures.

Failure to Produce Requested Employment Records

Labor Code § 226 provides that current and former employees have the right to inspect or receive a copy of their records pertaining to their employment, upon reasonable request to their employer. Under this statute, an employer that receives a request to inspect or receive a copy of records pertaining to a current or former employee must comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request. Labor Code § 1198.5(a) also provides that every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employees' performance or to any grievance concerning the employee. Under this statute, upon written request from a current or former employee or his or her representative, an employer must make the contents of those personnel records available for inspection or provide a copy of the personnel records to the current or former employee, or his or her representative, not later than thirty (30) calendar days from the date the employer receives the written request, subject to some limited exceptions. Labor Code § 432 provides that if an employee or applicant signs any instrument relating to the obtaining or holding of employment, he or she shall be given a copy of the instrument upon request.

On information and belief, Employees and the Aggrieved Employees, or some of them, submitted written request(s) to Employers for their payroll records, timecards, and personnel records but did not timely receive them as required by the Labor Code.

As a result, Employers are liable to Employees and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 226(f), 1198.5(k), and 2699 for failing to timely produce the requested records.

Recordkeeping Requirement Violations

California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by Employees and Aggrieved Employees. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, Employers at times failed, and continue at times to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when Employees and other Aggrieved Employees began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, Employers at times failed and continue at times to fail to keep accurate and complete records showing total hours worked by Employees and Aggrieved Employees, or some of them, by virtue of Employers' time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices. Employers at times failed and continue at times to fail to keep accurate and complete records showing total hours worked by virtue of Employers' failure to relieve Employees and Aggrieved Employees, or some of them, of all duties and Employers' control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, Employers further failed at times, and continue at times to fail, to record the true start and end times of Employees' and Aggrieved Employees' meal periods, or some of them.

Based on further information and belief, Employers further failed at times and continue at times to fail, to record the true start and end times of Employees' and Aggrieved Employees' work shifts, or some of them. Additionally, Employers at times failed, and continue at times to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for Employees and Aggrieved Employees, or some of them.

Employers' failure to keep "accurate and complete" payroll records for Employees and Aggrieved Employees, or some of them, violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject Employers to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each Aggrieved Employees (or some of them), results in a separate civil penalty.[1]

Violation of Wage Theft Protection Act of 2011

Based on information and belief, Employers failed at times, and continue at times to fail, to comply with the notice requirements of Labor Code section 2810.5 (i.e., the Wage Theft Protection Act of

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[1] See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

2011) by, among other things, failing to provide Employees and Aggrieved Employees, or some of them, with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employers, the name of the employer, including any "doing business as" names used, the name, address and telephone number of the workers' compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employers under Labor Code section 2810.5. Employees are informed and believe that failure to provide such information, including rates of pay that are in effect, has permitted Employers to pay Aggrieved Employees, or some of them, at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California.

Employees are additionally informed and believe that the notice requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting. Among other relief, Aggrieved Employees, or some of them, may collect from Employers in connection with these violations' civil penalties pursuant to Labor Code sections 558 and 2699.

Violation of California Labor Code §§ 245-248.5

Throughout the relevant time period, Employers at times failed to provide proper paid sick leave to Employees and other Aggrieved Employees, or some of them. Employers either failed at times to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to Employees and other Aggrieved Employees, or some of them, by failing at times to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to unpaid meal periods that were restricted to Employers' premises) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, Employers further failed to provide notice of the correct sick leave amount balance available to Employees and other Aggrieved Employees on their wage statements or other written statement.

Based on information and belief, Employers failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, Employers failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, Employers failed to provide notice of sick leave amount balance left for Employees and other Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for this failure, Employees and other Aggrieved Employees would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and Employees seek all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of Employees and all Aggrieved Employees. In violation of Labor Code section 247.5, Employers failed to maintain records documenting the hours worked and paid sick days accrued and used by

Employees and all Aggrieved Employees, permitting the presumption that Employees and all Aggrieved Employees were entitled to the maximum number of hours accruable under this article.

Upon information and belief, Employers further failed and continue to fail to comply with Labor Code section 246, by failing to provide Employees and all Aggrieved Employees with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages. Employers unlawfully retained and continue to retain paid sick leave that should have been paid but was not, as a result of Employers' failure to properly institute a paid sick leave program.

On information and belief, Employees allege that all of these practices were experienced and continue to be experienced by other Aggrieved Employees. Employees request all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to Employers' sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, Employees and other Aggrieved Employees are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. Employees request all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

<u>Failure To Provide Supplemental Paid Sick Leave</u>

Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, Employers violated Labor Code section 248.2 by not providing Aggrieved Employees with required 2021 COVID-19 Supplemental Paid Sick Leave.

<u>Refusal to Make Payment</u>

Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

Employers violated and continue to violate Labor Code section 216 by failing to pay Employees and all Aggrieved Employees for all hours worked at the proper wage rate and by failing to pay Employee and all Aggrieved Employees an additional hour of pay for each meal and/or rest period not provided or that was invalid. Gould v. Maryland Sound Industries, Inc. (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject Employers to civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.[2]

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[2] Labor Code § 225.5 (establishing that "<u>[i]n addition to, and entirely independent and apart from, any other penalty provided in this article,</u> every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty…for each failure to pay each employee") (emphasis added).

Seating Violations

Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

> (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
>
> (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. Brinker Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, Employers failed to provide Aggrieved Employees with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that Aggrieved Employees were working. Lastly, based on information and belief, there were periods of time when Aggrieved Employees were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

Employers' Aggrieved Employees worked in various positions. The nature of Employees' and other Aggrieved Employees' work reasonably permitted the use of seats. However, Employers failed to provide suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting Employers to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.[3]

Statutory Wage Violations

Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, Employers willfully and systematically denied Employees and other Aggrieved Employees of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. Employers acted

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[3] See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, Employers paid Employees and other Aggrieved Employees lower wages than those they were entitled to while purporting that Employees and all Aggrieved Employees were properly paid. As such, Employees and all Aggrieved Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination.

Based on information and belief, Employers had and continue to have a uniform policy and practice of failing to allow Aggrieved Employees and Exempt Aggrieved Employees to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off to Aggrieved Employees and/or Exempt Aggrieved Employees upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Failure to Timely Provide Temporary Workers with Owed Wages

On information and believe, Employers had and have a policy of failing to provide all temporary workers with owed wages weekly by not later than the regular payday of the following week. As a result, pursuant to Labor Code section 201.3, Employers would be liable for civil penalties pursuant to Labor Code sections 201.3.

Unlawful Agreements/ Unlawful Criminal History Inquiries

Unlawful Agreements
Labor Code section 432.5 provides that "no employer … shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer … to be prohibited by law." Based on information and belief, Employers required Employees, Aggrieved Employees and Exempt Aggrieved Employees to agree in writing to unlawful conditions of employment including but not limited to, unlawful non-compete and/or non-solicitation agreements as well as unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA - CA Civil Code section 1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, et seq.) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, Employers ordered unlawful financial credit checks on Aggrieved Employees and Exempt Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved Employees and Exempt Aggrieved Employees to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, Employers also required Aggrieved Employees and Exempt Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. For example, based on information and belief, Employers required Employees to submit and/or agree to submit in writing to an unlawful background check as a condition of obtaining and/or holding employment in violation of, including but not limited to, Labor Code section 432.5.

Based on information and belief, Employers required Aggrieved Employees and Exempt Aggrieved Employees to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, et seq. and 15 U.S.C. section 1681, et seq., including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring Aggrieved Employees and Exempt Aggrieved Employees to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, Employers violated Labor Code section 432.5.

Based on information and belief, Employers also required Aggrieved Employees and Exempt Aggrieved Employees to agree in writing to provide ongoing consent to Employers to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, Employers knew that requiring Aggrieved Employees and Exempt Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring Aggrieved Employees and Exempt Aggrieved Employees agree in writing to unlawful provisions as a condition of employment, Employers violated Labor Code section 432.5.

Unlawful Inquires into Criminal History
Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, Employers asked Aggrieved Employees, and Exempt Aggrieved Employees about arrests not resulting in convictions on their employment application, in violation of California law.

Upon information and belief, Employers, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"), asked Aggrieved Employees and Exempt Aggrieved Employees about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on their employment application in violation of California law.

By asking about arrests not resulting in convictions, Employers violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, Employers violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring Aggrieved Employees and Exempt Aggrieved Employees to agree in writing to disclose arrests and/or convictions as a condition of employment.

Unlawful PAGA Waiver
Additionally, Employers violated Labor Code section 432.5 by requiring Employees, Aggrieved Employees and Exempt Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA '"…is a representative action on behalf of the state"' Kim v Reins Int'l California, Inc., (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and unenforceable. See Iskanian v CLS Transportation Los Angeles, LLC (2014) 59 Cal. 4th 348, 384 ("We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.") Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an individual PAGA claim. Kim v Reins Int'l California, Inc., (2020) 9 Cal. 5th 73, 86-87 ("There is no individual component to a PAGA action because 'every PAGA action … is a representative action on behalf of the state.'")

Upon information and belief, Employers required Employees, Aggrieved Employees and Exempt Aggrieved Employees to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring Employees, Aggrieved Employees and Exempt Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, Employers required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5. As such, Employees, Aggrieved Employees and Exempt Aggrieved Employees continue to be subject to various unlawful provisions as a condition of employment.

Preventing Employees from Using or Disclosing Skills, Knowledge, and Experience

On information and belief, Employers had and have a policy or practice of preventing Employees and/or other Aggrieved Employees from using or disclosing the skills, knowledge, and experience they obtained at Employers for purposes of competing with Employers, including, without limitation, preventing Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Employers and under what circumstances they might be receptive to an offer from a rival employer. As such, Employees are informed and believe that this violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k). Employers would be liable for civil penalties pursuant to Labor Code section 2699.

Whistleblower Violations

On information and belief, Employers had and have a policy or practice of preventing Employees and/or other Aggrieved Employees from disclosing violations of state and federal law, either within Employers to their managers or outside Employers to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Employees are informed and believe that these policies and/or practices prevent Employees and/or other Aggrieved Employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code sections 98.6, 232, and 232.5. These violations of the Labor Code would expose Employers to liability for civil penalties pursuant to Labor Code section 2699.

Workplace Health and Safety Violations

On information and belief, Employers had and have a policy or practice of failing to furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations and processes which are reasonably adequate to render such employment and place of employment safe and healthful, pursuant to, including but not limited to, Labor Code section 6401. Employees are informed and believe, and based thereon allege that Employers had and have a policy or practice of requiring or permitting employees to go or be in any employment or place of employment which is not safe and healthful, pursuant to Labor Code section 6402. Employees are informed and believe, and based thereon allege that Employers had and have a policy or practice of failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe; adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and do every other thing reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code section 6403. Employees are informed and believe, and based thereon allege that these failures include, without limitation, failing to disinfect time clocks and other surfaces after use by Employees and/or other Aggrieved Employees; failing to provide adequate protection equipment to Employees and/or other Aggrieved Employees; and failing to provide adequate distance in working conditions between Employees and/or other Aggrieved Employees.

On information and belief, Employers violated section 1527, 3366, 3457 and 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets to be used by each sex of employee.

Action for Civil Penalties Under PAGA

In light of the above, Employees allege that Employers violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code §§ 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 204 by failing to pay all earned wages two times per month;

5. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 2802 by failing to indemnify for necessary expenditures;
9. Labor Code §§ 226, 432, and 1198.5 by failing to timely produce requested payroll records, timecards, and personnel records;
10. Labor Code § 1174 by failing to keep accurate and complete payroll records;
11. Labor Code §§ 245-248.5 by failing to provide proper sick leave and supplemental paid sick leave;
12. Labor Code § 216 for refusal to pay wages due and payable and/or denial of the validity of any claim to wages due;
13. Labor Code § 223 for secretly paying wages lower than required by statute while purporting to pay legal wages;
14. Labor Code § 227.3 for failure to pay vested vacation and/or paid time off;
15. Section 14(A-B) of all applicable IWC Wage Orders for failure to provide suitable seating;
16. Labor Code § 432.5 for unlawful agreements;
17. Labor Code § 201.3 for failure to timely provide temporary workers with wages;
18. Labor Code §§ 98.6, 232, 232.5, 1102.5, and 1197.5 for preventing employees from using or disclosing the skills, knowledge and experience they obtained at Employers, and whistleblower violations;
19. Labor Code § 432.7 for unlawful inquiries into criminal histories; and
20. Labor Code §§ 1527, 3366, 3457, 8397.4, 6401, and 6401 for workplace health and safety violations.

Therefore, on behalf of potentially all Aggrieved Employees, Employees seek applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

Employees have placed Employers on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

John G. Yslas, Esq.