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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By A. Villasenor ,Deputy Clerk

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO

PABLO AMADOR, an individual,

vs.

SIRY ENTERPRISES,
INCORPORATED, a California
Corporation, MAJID SIRY, an
individual; and DOES 1 – 50,
inclusive,

Defendants.

Case No.: 24CU004466C

FIRST AMENDED COMPLAINT FOR:

1. Failure to pay overtime; Violation of California Labor Code §§ 218.5, 510, and 1198;
2. Failure to pay minimum wage; Violation of California Labor Code §§ 218.5, 1181.12, 1194, 1194.2, and 1197;
3. Failure to pay final paycheck on time under Labor Code §§ 201, 203, 218.5, and 1194;
4. Failure to provide accurate, itemized wage statements in Violation of California Labor Code § 226; Wage Order No. 9-2001 § 7 and Cal. Code Regs. tit. 8, § 11040;
5. Failure to Maintain Records in violation of California Labor Code §§ 1174, 1174.5;
6. Failure to comply with inspection request in violation of California Labor Code § 226(c);
7. Failure to Reimburse all required Expenses in Violation of California Labor Code § 2802;
8. Failure to provide Meal Periods in violation of California Labor Code § 226.7, § 512(a);
9. Failure to provide Rest Breaks in violation of California Labor Code § 226.7, § 512(a);
10. Misclassification; Violation of Labor Code §§ 226.8, 515, and 1198;
11. Retaliation under Labor Code § 1102.5;
12. Wrongful Termination § 1102.5;
13. Unfair Competition. Violation of Business and Professions Code §§ 17200, et seq.;
14. Civil penalties pursuant to the Private Attorneys General Act (PAGA) in violation of Labor Code §§ 2698 et seq.

Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

1 **I. INTRODUCTION**

2 1. This action is brought by Plaintiff PABLO AMADOR (hereafter “Plaintiff”) against
3 Defendants SIRY ENTERPRISES, INCORPORATED, a California Corporation; operating as a
4 business under the name of CarCo Auto Sales, and MAJID SIRY, an individual; AND DOES 1
5 – 50, INCLUSIVE (hereafter “Defendants”). Defendants DOES 1 – 50, INCLUSIVE are sued
6 herein pursuant to CCP § 474. Plaintiff seeks damages, attorney’s fees and costs of suit. The
7 matters stated in this Complaint are true to Plaintiff’s knowledge, except the matters that are
8 therein stated on information and belief, and as to those matters Plaintiff believes them to be
9 true. Plaintiff, on that basis, alleges as follows:

10 **II. GENERAL ALLEGATIONS**

11 2. The grounds of this action are multiple illegal employment practices giving rise to,
12 among other things, the following:

- 13 a. Causes of action for multiple violations of various wage/hour and related laws which
14 deprived Plaintiff of employment benefits and rights mandated under California law.
- 15 b. Misclassification as independent contractors. Based on the job duties of Plaintiff, the
16 classification as a 1099 contractor is insufficient and Defendant failed to compensate its
17 California hourly non-exempt employees in compliance with California law.
- 18 c. As more fully described herein, Defendants failed and continue to fail to compensate
19 Plaintiff the full amount of daily overtime pay based on all overtime hours worked,
20 overtime and double time premiums based on the correct regular rate of pay, all wages
21 when due, all wages at time of separation, and minimum wage for all hours worked.
- 22 d. As more fully described herein, Defendants failed and continue to fail to provide
23 accurate, itemized wage statements, reimburse employees for costs including but not
24 limited to cell phone bills, mileage, gas, and travel, provide legally compliant paid rest
25 breaks, provide legally compliant meal breaks, and engage in other Labor Code violations
26 and violations of the applicable Industrial Welfare Commissions Wage Order.

27 3. This court is the proper court, and this action is properly filed in San Diego County and
28 in this judicial district because Defendants do business in San Diego County and have their

1 business located in San Diego County and Plaintiff's primary working location is located in San
2 Diego County.

3 4. Plaintiff is a former misclassified independent contractor for Defendants.

4 5. Plaintiff is informed and believes and thereon alleges that each and all of the acts and
5 omissions alleged herein were performed by and or are attributable to all Defendants each
6 acting as agents and or employees and or under the direction and control of each of the other
7 Defendants and that said acts and failures to act were within the course and scope of said
8 agency employment and or direction and control Plaintiff is informed and believes and
9 thereon alleges that at all times material hereto Defendants were and are the agents of each
10 other.

11 6. The true names and capacities whether individual corporate associate or otherwise
12 of DOES 1 – 50 are unknown to Plaintiff who therefore sues DOE Defendants by fictitious
13 names. Plaintiff will amend this Complaint to show their true names and capacities when
14 they have been ascertained.

15 7. Plaintiff is informed and believes, and thereon alleges that Individual Defendants, Entity
16 Defendants and DOES 1 - 50 were also engaged in a single enterprise in which each said
17 Defendants contributed skill, effort, knowledge, and/or money to achieve a common purpose of
18 maximizing the profits of the single enterprise. That DOES 1 - 50 are the partners owners,
19 shareholders, managers, joint employers, or alter egos of Defendant Employers and were acting
20 on behalf of defendant employers at all relevant times alleged here in.

21 8. California courts have recognized that the definition of "employer" for purposes of
22 enforcement of the California Labor Code goes beyond the concept of traditional employment
23 to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
24 California's labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who
25 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
26 person to work or exercises control over the wages, hours, or working conditions of any person,
27 may be liable for violations of the California Labor Code as to that person. Cal. Labor Code §§
28 558 and 558.1.

1 9. California Labor Code § 558.1(a) states “Any employer or other person acting on behalf
2 of an employer, who violates, or causes to be violated, any provision regulating minimum wages
3 or hours and days of work in any order of the Industrial Welfare Commission, or violates, or
4 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
5 employer for such violation.”

6 10. At all relevant times alleged herein Plaintiff was employed by Defendants, and Plaintiff
7 held a position with Defendants in San Diego County, State of California.

8 11. Plaintiff brings this action against the following Individual Defendants and Entity
9 Defendants, alter egos, agents, and other persons/entities engaged with Individual Defendants
10 and Entity Defendants in a joint enterprise: Defendants SIRY ENTERPRISES,
11 INCORPORATED, a California Corporation; operating as a business under the name of CarCo
12 Sales and Finance; MAJID SIRY, an individual; AND DOES 1 through 50, inclusive were the
13 employers/joint employers of Plaintiff in the State of California.

14 **III. FACTS**

15 12. Plaintiff worked for Defendants as a car salesman from October 25, 2023, until April 22,
16 2024.

17 13. Plaintiff would travel to the 147 Broadway, Chula Vista, CA 91910 location to perform
18 financing and managerial duties as well as 12538 Poway Rd, Poway, CA 92064 for vehicle drop-
19 off.

20 14. Plaintiff’s shift hours were to begin at 9:00 am and end at 7:00 pm while commonly
21 working until 11:00 pm.

22 15. Plaintiff was paid \$3000 a month plus commission while being paid as an independent
23 contractor.

24 16. Plaintiff was not compensated for any overtime hours and is owed amounts for all hours
25 worked.

26 17. Defendants failed to pay overtime for reasons including but not limited to the following
27 list: Plaintiff was not paid for (1) working more than 40 hours in a workweek and (2) working
28 over eight hours in a workday. For example, on April 1, 2024, Plaintiff logged as working from

1 9:00 am to 10:30 pm for a duration of 13.5 hours but did not receive overtime pay. Also, from
2 April 1, 2024, to April 7, 2024, Plaintiff worked 43.16 hours over the course of four days in a
3 workweek and was entitled to overtime for hours worked over 40; however, Plaintiff was not
4 compensated for overtime hours worked as required by California law.

5 18. In all time periods Plaintiff was paid less than minimum wage. In all time periods for
6 reasons including but not limited to missing Plaintiff's rest breaks. The actual wage paid is at
7 minimum wage while the effective wage paid is below minimum wage for the hours worked by
8 Plaintiff. For example, Plaintiff's logs demonstrate working at least 41 hours per week from
9 April 1, 2024, to April 22, 2024. At the San Diego County minimum wage of \$16.85 with an
10 overtime rate of \$25.28 and compensation for missed rest breaks, Plaintiff should have been
11 earning well over the \$750 per week of the \$3000 monthly flat rate.

12 19. Plaintiff was promised \$450 bonus per car sold.

13 20. Plaintiff sold 14 cars one month but was only given a check for \$5000.

14 21. Upon termination, defendant did not pay plaintiff full amount owed.

15 22. Defendants promised to pay Plaintiff's commission if he signed a voluntary resignation
16 form, but Plaintiff only received the \$3000 monthly rate.

17 23. Defendants wrote paychecks for Plaintiff without providing paystubs and withholding
18 taxes.

19 24. Defendants failed to provide rest breaks and meal periods for Plaintiff.

20 25. Plaintiff would work a ten-hour day with a single meal break and was never given the
21 required two meal breaks.

22 26. Defendants failed to maintain records including but not limited to the failure to record
23 total hours worked, rest periods, and meal periods.

24 27. Defendants failed to reimburse Plaintiff for all necessary expenditures incurred in the
25 course of their duties including but not limited to use of a personal cellphone, and mileage.

26 28. Plaintiff was misclassified as an independent contractor.

27 29. Plaintiff operated as a car salesman but would also do tasks such as body-shop work, oil
28 changes, cleaning restrooms, answering phone calls, producing advertisements, driving to go

1 pick up parts, as well as managerial duties.

2 30. Defendants instructed Plaintiff to inspect vehicles and perform service work after the
3 Defendants' initial mechanic was let go.

4 31. Plaintiff inspected and serviced roughly 200 vehicles.

5 32. Plaintiff acted in various managerial roles outside of selling cars, including financing
6 duties.

7 33. In several occurrences, Plaintiff ran several storefronts on his own as Defendants did not
8 show up to work.

9 34. Defendants instructed Plaintiff on how to interact with customers and perform his job
10 duties through on the job training.

11 35. Plaintiff got permission to leave work to do a bank deposit yet upon returning was
12 disciplined for this issue.

13 36. Defendants wrote Plaintiff up and fired him for leaving during work as pretext but in
14 reality, Plaintiff was actually terminated in retaliation for his complaints with regard to his pay
15 which was received late, received only in part, and not paid in accordance with California Law.

16 37. Plaintiff made consistent complaints to Defendants on the failure to pay his commission
17 in full, to pay him on time, and to pay him at least minimum wage.

18 38. Plaintiff's most recent complaint was made on the day of his termination. Upon returning
19 to the worksite from the bank, Defendants were upset with Plaintiff about leaving the worksite
20 early but in reality, this does not make any sense since Defendants directed him to leave, and
21 Defendants were actually mad about Plaintiff's demands to be paid overtime and receive meal
22 and rest breaks.

23 39. Defendants failed to pay overtime in Violation of California Labor Code §§ 510 and
24 1198. Defendants failed to pay minimum wage in Violation of California Labor Code §§
25 1181.12, 1194, 1194.2 and 1197. Defendants failed to pay the final paycheck on time as required
26 under Labor Code §§ 201, 203, 218.5 and 1194. Defendants failed to provide accurate, itemized
27 wage statements in Violation of California Labor Code § 226 and Wage Order No. 5-2001 § 7.
28 Defendants acted in Retaliation against Plaintiff in violation of Labor Code §§ 98.6, 246.5 and

1 1102.5. Defendants failed to pay Plaintiff all hours worked in Violation of California Labor Code
2 § 203 and 29 C.F.R. §§ 785.15 and 785.16. Defendants previously or continues to engage in
3 unlawful, unfair, and/or fraudulent business practices in violation of California's Business and
4 Professions Code § 17200.

5 40. Defendant's conduct, as alleged herein, has caused Plaintiff damages including, but not
6 limited to, loss of wages and compensation.

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1 **FIRST CAUSE OF ACTION**

2 *Failure to pay overtime*

3 Violation of California Labor Code §§ 218.5, 510 and 1198.

4 (Against all Defendants)

5 41. Plaintiff restates and incorporates by reference each and every allegation of the
6 foregoing paragraphs as though fully set forth herein.

7 42. Labor Code § 510 states: "Eight hours of labor constitutes a day's work. Any work in
8 excess of eight hours in one workday and any work in excess of 40 hours in any one work week
9 and the first eight hours worked on the seventh day of work in any one work week shall be
10 compensated at the rate of no less than one and one-half times the regular rate of pay."

11 43. Labor Code §1198 states: "It is unlawful to employ person for longer than the hours set
12 by the IWC or under conditions prohibited by the applicable IWC Wage Orders."

13 44. Labor Code § 218.5 states that: "In any action brought for the nonpayment of wages,
14 fringe benefits, or health and welfare or pension fund contributions, the court shall award
15 reasonable attorney's fees and costs to the prevailing party if any party to the action requests
16 attorney's fees and costs upon the initiation of the action."

17 45. Plaintiff requests attorney's fees and costs under § 218.5 for this cause of action which
18 is brought for nonpayment of wages.

19 46. Defendants, and each of them willfully, knowingly, and intentionally failed to calculate
20 and compensate Plaintiff the overtime wages they were entitled to under Labor Code Labor Code
21 §§ 510 and 1198 and IWC Wage Orders §§ 4, 7 and 9 for all the hours they worked for
22 Defendants.

23 47. If an employer willfully fails to pay "without abatement or deduction" wages due to an
24 employee who quits or is discharged, the employee's wages continue as a penalty until paid, for
25 up to 30 days. Labor Code § 203; see *Mamika v. Barca* (1998) 68 CA4th 487, 493, 80 CR2d
26 175, 178 (unpaid wages accrue on a daily basis, not only on days that the employee might have
27 worked, but also on nonworking days).

28 48. As applicable under California law to the allegations made in this cause of action,

1 Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth
2 below in the Prayer for Damages, Awards and Other Relief.

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1 **SECOND CAUSE OF ACTION**

2 *Failure to pay minimum wage*

3 Violation of California Labor Code §§ 218.5, 1181.12, 1194, 1194.2 and 1197.

4 (Against all Defendants)

5 49. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
6 paragraphs as though fully set forth herein.

7 50. California Labor Code § 1197 States: “The minimum wage for employees fixed by the
8 commission or by any applicable state or local law, is the minimum wage to be paid to
9 employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

10 51. California Labor Code § 1182.12 and the IWC California Minimum Wage Order (MW-
11 2024) States: (1) For any employer who employs 26 or more employees, the minimum wage
12 shall be:

13 (A) From January 1, 2017, to December 31, 2017, inclusive,- (\$10.50) per hour.

14 (B) From January 1, 2018, to December 31, 2018, inclusive,- (\$11) per hour.

15 (C) From January 1, 2019, to December 31, 2019, inclusive,- (\$12) per hour.

16 (D) From January 1, 2020, to December 31, 2020, inclusive,- (\$13) per hour.

17 (E) From January 1, 2021, to December 31, 2021, inclusive,- (\$14) per hour.

18 (F) From January 1, 2022, to December 31, 2022, inclusive - (\$15.00) per hour.

19 (G) From January 1, 2023, to December 31, 2023, inclusive - (\$15.50) per hour.

20 (H) From January 1, 2024, to December 31, 2024, inclusive - (\$16.00) per hour.

21 52. Labor Code § 218.5 states that: “In any action brought for the nonpayment of wages,
22 fringe benefits, or health and welfare or pension fund contributions, the court shall award
23 reasonable attorney's fees and costs to the prevailing party if any party to the action requests
24 attorney's fees and costs upon the initiation of the action.”

25 53. The IWC California Minimum Wage Order (MW-2024) states that effective January 1,
26 2024, minimum wage is \$16.00 per hour. San Diego County minimum wage in 2024 is \$16.85
27 with an overtime rate of \$25.28.

28 54. Plaintiff requests attorney’s fees and costs under § 218.5 for this cause of action which
is brought for nonpayment of wages.

55. At all times during the applicable statutes of limitations period, Defendants, and each of
them willfully, knowingly, and intentionally failed to calculate and compensate Plaintiff the

1 minimum wages they were entitled to under Labor Code § 1182.12 and IWC Wage Orders §§ 4
2 and 9 for all the hours they worked for Defendants including but not limited to as follows:

- 3 a. Plaintiff has not been paid at least the minimum wage as pay rates during the tenure of
4 their employment.
- 5 b. Plaintiff has not been paid at least the minimum wage due to working off the clock before
6 and after work which are unpaid working hours.
- 7 c. Plaintiff has not been paid at least the minimum wage owed to them due to “rounding”
8 and “adjustment” of clock-in/out times which have consistently worked to Defendant’s
9 unfair advantage.
- 10 d. Plaintiff has not been paid at least the minimum wage owed to them due to meal periods,
11 and rest periods.
- 12 e. The effective rate of pay after missing one 10-minute rest break over an eight-hour
13 working day for an employee paid at \$15.00/Hour is \$14.69 Hourly.
- 14 f. Plaintiff has not been paid at least minimum wage as required under Labor Code §
15 1182.12.

16 56. Pursuant to § 4 of IWC Wage Order No. 9-2001, and the IWC California Minimum Wage
17 Order (MW-2014), Plaintiff is entitled to receive not less than minimum wage for all hours
18 worked.

19 57. For all hours that Plaintiff worked, they are entitled to and seek not less than the
20 California minimum wage and, pursuant to Labor Code § 1194.2(a) liquidated damages in an
21 amount equal to the unpaid minimum wages and interest thereon. Pursuant to Labor Code §
22 1194, Plaintiff is entitled to their attorneys' fees and costs and interest according to proof.

23 58. As applicable under California law to the allegations made in this cause of action,
24 Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth
25 below in the Prayer for Damages, Awards and Other Relief.

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1 **THIRD CAUSE OF ACTION**

2 *Failure to pay wages owed at time of separation*

3 Violation of California Labor Code §§ 201, 203, 218.5 and 1194.

4 (Against all Defendants)

5 59. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
6 paragraphs as though fully set forth herein.

7 60. Labor Code § 201 states that: “If the employee and employer relationship is separated,
8 then the wages earned and unpaid at the time of discharge are due and payable immediately.”

9 61. Defendants terminated Plaintiff on or about April 22, 2024, and were required to pay
10 Plaintiff all wages earned and unpaid on that date. Plaintiff did not receive a final paycheck
11 including all hours earned, so it failed to comply with the requirement of Labor Code § 201 that
12 all outstanding wages be paid on the day of separation. As of August 13, 2024, Defendants have
13 not paid Plaintiff those missing wages.

14 62. Labor Code § 203 states that:
15 “If an employer willfully fails to pay, without abatement or reduction . . . any wages
16 of any employee who is discharged or who quits, the wages of the employee shall
17 continue as a penalty from the due date thereof at the same rate until paid or until
18 an action therefor is commenced; but the wages shall not continue for more than
19 30 days.”

20 63. Labor Code § 218.5 states that:
21 “In any action brought for the nonpayment of wages, fringe benefits, or health and
22 welfare or pension fund contributions, the court shall award reasonable attorney's fees
23 and costs to the prevailing party if any party to the action requests attorney's fees and
24 costs upon the initiation of the action. Plaintiff and other aggrieved employees requests
25 attorney’s fees and costs under § 218.5 for this cause of action which is brought for
26 nonpayment of wages.”

27 64. In *Pineda* the California Supreme Court maintained that when an employee is terminated
28 or resigns from his or her employment, final wages are generally due and payable immediately.
(Lab.Code, §§ 201, 202.). *Pineda v. Bank of Am., N.A.*, 50 Cal. 4th 1389, 241 P.3d 870 (2010).
The Court explained further that Section 203 plainly provides that, if an employer willfully fails
to timely pay final wages, “the wages of the employee shall continue as a penalty from the due
date thereof at the same rate until paid or until an action therefor is commenced; but the wages
shall not continue for more than 30 days.” *Id.*

1 65. Accordingly, as a result of Defendants' conduct, Plaintiff is entitled to waiting time
2 penalties under Labor Code § 203, with interest thereon and reasonable attorneys' fees and costs
3 pursuant to Labor Code §§ 218.5 and 1194.

4 66. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has lost
5 and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims
6 such amount as general damages for mental and emotional distress, aggravation, and physical
7 harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to Civil
8 Code § 3287 and any other provision of law providing for pre-judgment interest.

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1 **FIFTH CAUSE OF ACTION**

2 *Failure to Maintain Records*

3 Violation of California Labor Code § 1174.5.

4 (Against all Defendants)

5 74. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
6 paragraphs as though fully set forth herein.

7 75. Labor Code § 1174.5 States that: “Any person employing labor who willfully fails to
8 maintain the records required by subdivision (c) of Section 1174 or accurate and complete
9 records required by subdivision (d) of Section 1174, or to allow any member of the commission
10 or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall
11 be subject to a civil penalty of five hundred dollars (\$500).”

12 76. Labor Code § 1174 States that: “Every person employing labor in this state shall: (d)
13 Keep, at a central location in the state or at the plants or establishments at which employees are
14 employed, payroll records showing the hours worked daily by and the wages paid to, and the
15 number of piece-rate units earned by and any applicable piece rate paid to, employees employed
16 at the respective plants or establishments.”

17 77. Defendant failed to maintain records including but not limited to the failure to record
18 total hours worked, rest periods, and meal periods.

19 78. Labor Code § 226(h) States that: “An employee may also bring an action for injunctive
20 relief to ensure compliance with this section and is entitled to an award of costs and reasonable
21 attorney's fees.”

22 79. As applicable under California law to the allegations made in this cause of action,
23 Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth
24 below in the Prayer for Damages, Awards and Other Relief.

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SEVENTH CAUSE OF ACTION

Failure to Reimburse All Required Expenses

Violation of California Labor Code § 2802.

(Against all Defendants)

85. Plaintiff restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.
86. California Labor Code § 2802 requires employers to indemnify employees for all expenses incurred in the course of and as a result of discharging their duties to their employers.
87. Defendants often required Plaintiff to use his personal vehicle to travel to the 147 Broadway, Chula Vista, CA 91910 location to perform financing duties as well as 12538 Poway Rd, Poway, CA 92064 for vehicle drop-off.
88. Plaintiff performed roles using his personal cellphone in order to sell, communicate, and delegate with customers and Defendants.
89. Defendants failed to reimburse Plaintiff for all necessary expenditures incurred in the course of their duties including but not limited to use of a personal cellphone, and mileage.
90. Defendants have therefore violated Labor Code § 2802 and are liable to Plaintiff for this failure.

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1 **EIGHTH CAUSE OF ACTION**

2 *Failure to Provide Meal Breaks*

3 Violation of California Labor Code §§ 226.7 and 512(a).

4 (Against all Defendants)

5 91. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
6 paragraphs as though fully set forth herein.

7 92. At all relevant times, IWC Wage Order § 11 and California Labor Code §§ 226.7 and
8 512(a) were applicable to Plaintiff's employment by Defendants.

9 93. At all relevant times, California Labor Code § 226.7 provides that no employer shall
10 require an employee to work during any meal or rest period mandated by an applicable order of
11 the California IWC.

12 94. At all relevant times, IWC Wage Order § 11 and California Labor Code § 512(a) provide
13 that an employer may not require, cause or permit an employee to work for a work period of
14 more than (5) hours per day without providing the employee with a meal period of not less than
15 thirty (30) minutes, except that if the total work period per day of the employee is no more than
16 six (6) hours, the meal period may be waived by mutual consent of both the employer and
17 employee.

18 95. At all relevant times, Wage Order § 11 and California Labor Code § 512(a) further
19 provide that an employer may not require, cause or permit an employee to work for a work
20 period of more than ten (10) hours per day without providing the employee with a second
21 uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours
22 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
23 consent of the employer and the employee only if the first meal period was not waived.

24 96. The Court has interpreted § 512 to require employers to relinquish control of their
25 employees' activities during meal periods: "Employers must afford employees uninterrupted
26 half-hour periods in which they are relieved of any duty or employer control and are free to come
27 and go as they please." *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004,
28 1037. Defendants frequently did not allow Plaintiff to take meal periods and denied the ability

1 to take meal breaks on Sundays, and so are in violation of the meal period requirement for every
2 day on which Plaintiff was entitled to a meal period. Based on defendant's records this
3 constitutes 264 meal period violations.

4 97. During the relevant time period, Plaintiff was scheduled to work for a period of time no
5 longer than six (6) hours, and who did not waive their legally mandated meal periods by mutual
6 consent, were required to work for periods longer than five (5) hours without an uninterrupted
7 meal period of not less than thirty (30) minutes and/or rest period.

8 98. During the relevant time period, Plaintiff was scheduled to work for a period of time in
9 excess of six (6) hours and was required to work for periods longer than five (5) hours without
10 an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

11 99. During the relevant time period, Defendants intentionally and willfully required Plaintiff
12 to work during meal periods and failed to compensate Plaintiff the full meal period premium for
13 work performed during meal periods.

14 100. Due to an overburdened workload forcing Plaintiff to work largely on their own—and
15 requiring Plaintiff to work without coverage during breaks—Plaintiff had meal periods lasting
16 less than thirty minutes, interrupted, and/or were denied.

17 101. During the relevant time period, Defendants failed to pay Plaintiff the full meal period
18 premium due pursuant to California Labor Code § 226.7.

19 102. As a direct result, Plaintiff has suffered substantial damages in an amount to be proven
20 at trial and is entitled to all appropriate legal remedies provided by the Labor Code and Wage
21 Order, including unpaid wages, liquidated damages, interest, attorneys' fees, and costs of suit.

22 103. Defendants' conduct violates IWC Wage Order § 11 and California Labor Code §§ 226.7
23 and 512(a).

24 104. For all the days on which Plaintiff was denied a valid meal period, they are entitled to
25 seek and do seek from Defendants one additional hour of pay at the regular rate of compensation
26 for each workday that a meal period was not provided, pursuant to Wage Order § 11 and Labor
27 Code § 226.7(c). Further, pursuant to Labor Code § 1194, Plaintiff is entitled to their attorneys'
28 fees and costs and interest according to proof.

1 **NINTH CAUSE OF ACTION**

2 *Failure to Provide Rest Periods*

3 Violation of California Labor Code §§ 226.7 and 512(a).

4 (Against all Defendants)

5 105. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
6 paragraphs as though fully set forth herein.

7 106. At all times herein set forth, IWC Wage Order § 12 and California's Labor Code § 226.7
8 were applicable to Plaintiff's employment by Defendants.

9 107. At all relevant times, California Labor Code § 226.7 provides that no employer shall
10 require an employee to work during any rest period mandated by IWC Wage Order § 12.

11 108. At all relevant times, IWC Wage Order § 12 provides that "[e]very employer shall
12 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
13 the middle of each work period" and that the "rest period shall be based on the total hours worked
14 daily at the rate of ten (1) minutes net rest time per four (4) hours or major fraction thereof"
15 unless the total daily work times is less than three and one-half (3 ½) hours.

16 109. In *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal.5th 257, the California Supreme
17 Court held that "state law requires employers to provide their employees with rest periods that
18 are free from duties or employer control."

19 110. Furthermore, California Labor Code § 226.7(a) provides that employees compensated
20 on a piece-rate basis during a pay period shall be compensated for rest and recovery periods and
21 other nonproductive time separate from any piece-rate compensation.

22 111. During the relevant time period, Defendants required Plaintiff to work four (4) or more
23 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour
24 period worked.

25 112. During the relevant time period, Defendants willfully required Plaintiff to work during
26 rest periods and failed to pay Plaintiff the full rest period premium for work performed during
27 rest periods.

28 113. During the relevant time period, Defendants failed to pay Plaintiff the full rest period

1 premium due pursuant to California Labor Code § 226.7.

2 114. As a direct result, Plaintiff has suffered and continues to suffer substantial damages in
3 an amount to be proven at trial and are entitled to all appropriate legal remedies provided by the
4 Labor Code and the Wage Order, including unpaid wages, liquidated damages, interest,
5 attorneys' fees, and costs of suit.

6 115. Defendants' conduct violates IWC Wage Order § 12 and California Labor Code § 226.7.

7 116. Plaintiff is entitled to seek and does seek from Defendants one additional hour of pay at
8 the regular rate of compensation for each workday that a rest period was not provided, pursuant
9 to Wage Order § 12 and Labor Code § 226.7(c). Further, pursuant to Labor Code § 1194, Plaintiff
10 is entitled to their attorneys' fees and costs and interest according to proof.

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1 **TENTH CAUSE OF ACTION**

2 *Misclassification*

3 Violation of California Labor Code §§ 226.8, 515 and 1198.

4 (Against all Defendants)

5 117. Plaintiff restates and incorporates by reference each and every allegation of the
6 foregoing paragraphs as though fully set forth herein.

7 118. Labor Code § 226.8 states that it is unlawful for any person or employer to engage in
8 willful misclassification of an individual as an independent contractor. California's Assembly
9 Bill No.5 codified the state supreme court's adoption of an ABC test in *Dynamex Operations W.*
10 *v. Superior Court*, 4 Cal. 5th 903 (2018) which creates a presumption that a worker who performs
11 services for a hirer is an employee for purposes of claims for wages and benefits arising under
12 wage orders issued by the Industrial Welfare Commission.

13 119. Labor Code § 515(a) lays out the criteria for classifying an employee as exempt stating:
14 "(a) The Industrial Welfare Commission may establish exemptions from the requirement that an
15 overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive,
16 administrative, and professional employees, if the employee is primarily engaged in the duties
17 that meet the test of the exemption, customarily and regularly exercises discretion and
18 independent judgment in performing those duties, and earns a monthly salary equivalent to no
19 less than two times the state minimum wage for full-time employment."

20 120. Labor Code § 2751(a) states that: Whenever an employer enters into a contract of
21 employment with an employee for services to be rendered within this state and the contemplated
22 method of payment of the employee involves commissions, the contract shall be in writing and
23 shall set forth the method by which the commissions shall be computed and paid.

24 121. Labor Code § 1198 states that: The maximum hours of work and the standard conditions
25 of labor fixed by the commission shall be the maximum hours of work and the standard
26 conditions of labor for employees. The employment of any employee for longer hours than those
27 fixed by the order or under conditions of labor prohibited by the order is unlawful.

28 122. Addendum A to the "Vehicle Salesperson Compensation Program" States: "These

1 Commission Elements are calculated monthly, reconciled to determine applicability of the
2 commissioned sales exemption for the monthly period.”

3 123. The commission compensation component of the inside salesperson exemption must be
4 satisfied in each workweek and paid in each period for the exemption to apply. See *Peabody v.*
5 *Time Warner Cable, Inc.*, 59 Cal.4th 662 (2014). This is commonly referred to as the “Inside
6 Salesperson Exemption.”

7 124. Plaintiff did not qualify for the Inside Salesperson Exemption during all pay periods for
8 reasons including but not limited to: They were not paid commission during the first bimonthly
9 pay period.

10 125. Plaintiff was misclassified as an independent contractor during the term of employment.

11 126. Plaintiff was hired for a position with the sales department, but no written agreement was
12 executed. Plaintiff was paid a monthly rate but worked more than 8 hours per day. Based on
13 information and belief, commission compensation was not paid during each pay period as
14 required.

15 127. Plaintiff requests payment of overtime compensation, and other compensation denied due
16 to their miscategorized status according to proof, penalty wages, interest, attorneys' fees and
17 costs pursuant to Labor Code sections §§ 203, 218.5 and 1194(a), as well as the assessment of
18 any other statutory penalties against defendants, and each of them, in a sum as provided by the
19 Labor Code and/or other statutes

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1 **ELEVENTH CAUSE OF ACTION**

2 *Retaliation*

3 Violation of California Labor Code § 1102.5.

4 (Against all Defendants)

5 128. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
6 paragraphs as though fully set forth herein.

7 129. At all times relevant to this complaint, Labor Code § 1102.5 was in effect and applicable
8 to Defendants. Labor Code § 1102.5 makes it unlawful for an employer to retaliate against an
9 employee for reporting violations of state or federal law.

10 130. Plaintiff was retaliated against for having complained about wage and hour violations
11 that were ongoing and for complaining about discriminatory treatment he faced. The Defendants
12 who threatened and retaliated Plaintiff were the “principal owner(s) of Defendant corporation
13 and employed in a managerial capacity and was acting within the course and scope of his
14 employment.”

15 131. Plaintiff made consistent complaints to Defendants on the failure to pay his commission
16 in full, to pay him on time, and to pay him at least minimum wage.

17 132. Defendants terminated Plaintiff in retaliation for the above complaints.

18 133. As a direct and proximate result of Defendants unlawful conduct, Plaintiff has suffered
19 and will continue to suffer pain and suffering, mental anguish, emotional distress, and a loss of
20 earnings and other employment benefits. Plaintiff is thereby entitled to general and
21 compensatory damages in amounts to be proven at trial. Plaintiff claims such amount as damages
22 together with pre-judgment interest pursuant to Civil Code § 3287 and/or any other provision of
23 law providing for pre-judgment interest.

24 134. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has lost
25 and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims
26 such amount as damages together with pre-judgment interest pursuant to Civil Code § 3287
27 and/or any other provision of law providing for pre-judgment interest.

28 135. As a result of the aforesaid acts of Defendants, Plaintiff claims general damages for

1 mental and emotional distress and aggravation in an amount to be proven at trial.

2 136. As a proximate result of the foregoing conduct of Defendants which violated the
3 provisions of Labor Code § 1102.5, Plaintiff has been forced to incur and will continue to incur
4 attorney's fees and costs in the litigation of this claim in an amount to be proven at trial.

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1 **TWELFTH CAUSE OF ACTION**

2 *Wrongful Termination*

3 Violation of California Labor Code § 1102.5.

4 (Against all Defendants)

5 137. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
6 paragraphs as though fully set forth herein.

7 138. “[W]hen an employer’s discharge of an employee violates fundamental principles of
8 public policy, the discharged employee may maintain a tort action and recover damages
9 traditionally available in such actions.” (Tameny v. Atlantic Richfield Co. (1980) 27 Cal.3d 167,
10 170 [164 Cal.Rptr. 839, 610 P.2d 1330].)

11 139. Public policy may be violated by retaliating against an employee for internal disclosure
12 of illegal, unethical or unsafe practices which affect the public at large, not merely the employer.
13 [Green v. Ralee Eng. Co. (1998) 19 C4th 66, 85, 78 CR2d 16, 27].

14 140. Plaintiff was retaliated against for having complained about wage and hour violations
15 that were ongoing and for complaining about discriminatory treatment he faced. The Defendants
16 who threatened and retaliated Plaintiff were the “principal owner(s) of Defendant corporation
17 and employed in a managerial capacity and was acting within the course and scope of his
18 employment.”

19 141. As a result of the aforesaid acts of retaliation against Plaintiff for having complained
20 about several illegal practices by Defendants, Plaintiff claims general damages for mental and
21 emotional distress and aggravation in an amount to be proven at trial.

22 142. As a direct and foreseeable result of the aforesaid acts of Entity Defendants, Plaintiff has
23 lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
24 claims such amount as general damages for mental and emotional distress and aggravation in an
25 amount to be proven at time of trial, together with pre-judgment interest pursuant to Civil Code
26 § 3287 and/or any other provision of law providing for pre-judgment interest.

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1 **THIRTEENTH CAUSE OF ACTION**

2 *Unfair Competition.*

3 Violation of Business and Professions Code §§ 17200, et seq.

4 (Against all Defendants)

5 143. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
6 paragraphs as though fully set forth herein.

7 144. Beginning on an exact date unknown to Plaintiff but believed to have occurred at least
8 since four (4) years before the filing of this action, Defendants have engaged in a pattern and
9 practice of acts of unfair competition in violation of Business and Professions Code §17200,
10 including the practices alleged herein.

11 145. Defendants, and each of them, are "persons" as defined by Business and Professions Code
12 § 17201.

13 146. Plaintiff seeks to enforce important rights affecting the public interest. Plaintiff was
14 required to work overtime and double time hours without receiving the full amount of overtime
15 and double time compensation and as parties harmed by Defendants unfair business practices.

16 147. Plaintiff suffered injuries-in-fact and has lost money as a result of the Defendants' unfair
17 competition alleged herein.

18 148. Defendants previously or continue to engage in unlawful, unfair, and/or fraudulent
19 business practices, as alleged in this Complaint, in violation of California's B&PC §17200 et seq.

- 20 a. Failing and refusing to pay Plaintiff minimum wage for all hours worked in violation of
21 Labor Code §§ 510, 1194 & 1197 and IWC Wage Orders No. 4-2001 & No. 9-2001; and
22 b. Failing and refusing to pay Plaintiff the full amount of overtime and double time
23 compensation for all overtime and double time hours worked in violation of Labor Code
24 §§ 510, 1194 & 1197 and IWC Wage Orders No. 4-2001 & No. 9-2001; and
25 c. Failing to pay Plaintiff final paycheck including all hours earned at separation in violation
26 of Labor Code § 201; and
27 d. Failing and refusing to pay Plaintiff Meal and Rest Premiums; and
28 e. Failing to maintain accurate and complete records in violation of Labor Code § 1174.5;

- 1 and
- 2 f. Failing to permit Plaintiff to inspect or receive a copy of records within the time set forth
- 3 under Labor Code § 226(c); and
- 4 g. Misclassifying Plaintiff as an independent contractor and failing to compensate Plaintiff
- 5 in compliance with California law; and
- 6 h. Retaliating and terminating Plaintiff for reporting violations of state and federal law in
- 7 violation of Labor Code § 1102.5; and
- 8 i. Violating fundamental principles of public policy by discharging Plaintiff for having
- 9 complained about several illegal practices by Defendants; and
- 10 j. Failing to provide accurate, itemized wage statements, reimburse employees for costs
- 11 including but not limited to cell phone bills, mileage, gas, and travel, provide legally
- 12 compliant paid rest breaks, provide legally compliant meal breaks, and engage in other
- 13 Labor Code violations and violations of the applicable Industrial Welfare Commissions
- 14 Wage Order.

15 149. All of these allegations constitute unfair business practices and/or unlawful business

16 practices in violation of California B&PC §17200, *et seq.*

17 150. Defendants have avoided payment of wages, overtime and double time wages and other

18 benefits as required by the California Labor Code, the California Code of Regulations and

19 applicable IWC Wage Orders. As a result of Defendants' unfair business practices, Defendants

20 have reaped unfair benefits and illegal profits at the expense of Plaintiff. Defendants should be

21 made to disgorge their ill-gotten gains and to restore them to Plaintiff.

22 151. Plaintiff seeks full restitution of said monies, as necessary and according to proof, to

23 restore any and all monies withheld and/or acquired by Defendants by means of the unfair,

24 unlawful, and fraudulent business practices complained of herein. Plaintiff seeks restitution of

25 monies retained by Defendants. Plaintiff further seeks on behalf of themselves, the appointment

26 of a receiver, as necessary, to establish the total restitutionary relief from Defendants. The

27 restitution includes all wages withheld by Defendants as a result of the unfair, unlawful, and/or

28 fraudulent business practices; including interest thereon. Absent a statutory provision

specifically governing the type of claim at issue, the prejudgment interest rate is 10 percent.

152. The acts complained of herein occurred, at least in part, within the last four (4) years preceding the filing of the Complaint.

153. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices prohibited by California B&PC § 17200, thereby depriving their employees, the minimum working condition, standards and conditions due to them under the California labor laws and Industrial Welfare commission wage orders as specifically described herein.

154. By and through its unfair, unlawful, and/or fraudulent business practices and acts described herein, Defendants have obtained valuable services from Plaintiff and all persons similarly situated and has deprived Plaintiff of valuable rights and benefits guaranteed by law, all to their detriment.

155. Plaintiff is entitled to and does seek such relief as may be necessary to restore to them the money and property which Defendants have acquired, or of which Plaintiff has been deprived by means of the herein described unfair, unlawful, and/or fraudulent business practices.

156. Plaintiff is further entitled to and does seek a declaration that the above-described business practices are unfair, unlawful, and/or fraudulent, and declaratory relief of Defendants engaging in any of the herein described unfair, unlawful, and/or fraudulent business practices.

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FOURTEENTH CAUSE OF ACTION

Civil Penalties Pursuant to the Private Attorneys General Act.

Violation of Labor Code §§ 2698 et seq.

(Against all Defendants)

157. Plaintiff intends to amend this Complaint to include a claim under the Private Attorneys General Act (PAGA).

158. Pursuant to Labor Code § 2699.3, Plaintiff provided notice to the Labor and Workforce Development Agency (“LWDA”) and written notice by U.S. certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated and the facts and theories to support the alleged violations. These notices were sent on July 10, 2024.

159. Thus, under Labor Code § 2699.3(a)(2)(C), Plaintiff is permitted to commence a civil action pursuant to Labor Code § 2699 after sixty-five calendar days from July 10, 2024.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 3 1. For all unpaid wages due to Plaintiff in amounts to be proven at trial;
- 4 2. For the full amount of unpaid minimum wages and liquidated damages due to
- 5 Plaintiff pursuant to Labor Code §§ 1194 and 1194.2;
- 6 3. For the full amount of unpaid overtime and double time wages due to Plaintiff
- 7 pursuant to Labor Code §1194;
- 8 4. For recovery as authorized by Labor Code §226(e);
- 9 5. For recovery as authorized by Labor Code § 1199;
- 10 6. For recovery as authorized by Wage Orders No. 4-2001 and No. 9-2001;
- 11 7. For restitution of all unpaid wages due to Plaintiff;
- 12 8. For all applicable statutory penalties, in amounts to be proven at trial;
- 13 9. For an award of waiting time penalties pursuant to § 203 of the California Labor
- 14 Code, in amounts to be proven at trial;
- 15 10. For general damages including compensatory damages according to proof;
- 16 11. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a) as well
- 17 as Cal. Civil Code § 3287 and to the extent permitted by law, the California Constitution, and/or
- 18 deemed equitable by the Court;
- 19 12. For all applicable interest on damages, wages, and penalties due;
- 20 13. For injunctive relief to prevent further violations of the California Labor Code;
- 21 14. For declaratory relief that Defendants engaged in unfair practices;
- 22 15. For declaratory relief that Defendants violated Labor Code §§ 201-203, 226,
- 23 226.7, 510, 512, 1194 and 1197;
- 24 16. For restitution of all moneys due to Plaintiff and disgorged profits from the
- 25 unlawful and/or unfair business practices of Defendants, pursuant to California Business &
- 26 Professions Code § 17200;
- 27 17. For one (1) hour of pay at each of the employees' regular rate of compensation
- 28 for each workday that a legally compliant rest break was not provided;

1 18. For one (1) hour of pay at each of the employees' regular rate of compensation
2 for each workday that a legally compliant meal break was not provided

3 19. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§ 226(e)
4 and (h), 1194(a), Code of Civil Procedure § 1021.5, et seq., and all other applicable law, and;

5 20. For damages of not less than \$40,000 plus punitive damages and attorney fees.

6 21. For declaratory relief that Defendants violated Labor Code §§ 201-203, 204, 226,
7 246, 510, 1102.5 and 1197.

8 22. For all such other and further relief that the Court may deem just and proper.
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10

11 Dated: August 13, 2024

JAFARI LAW GROUP, INC.



David V. Jafari
Saul Acherman
Eli Hamblet
Attorneys for Plaintiff Pablo Amador

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

Dated: August 13, 2024

JAFARI LAW GROUP, INC.



David V. Jafari
Saul Acherman
Eli Hamblet
Attorneys for Plaintiff Pablo Amador