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Attorneys for Plaintiff BRIAN
VILLALPANDO individually, and on
behalf of others similarly aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

BRIAN VILLALPANDO, individually, and on
behalf of others similarly aggrieved

CASE NO.:

Plaintiff,

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEY'S GENERAL ACT OF 2004**

vs.

JKC PALM SPRINGS AUTOMOTIVE, INC.,
a California corporation; and DOES 1 through
50, inclusive,

DEMAND FOR JURY TRIAL

Defendants

1 PLAINTIFF BRIAN VILLALPANDO (“PLAINTIFF”) an individual, demanding a jury
2 trial, on behalf of himself and other persons similarly aggrieved, hereby alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other similarly
5 aggrieved employees of Defendant JKC PALM SPRINGS AUTOMOTIVE, INC. (“JKC PALM
6 SPRINGS”); and DOES 1 through 50 inclusive, (collectively “DEFENDANTS”) to recover
7 penalties arising from unpaid wages earned and due, including but not limited to unpaid and
8 illegally calculated overtime compensation, illegal meal and rest period policies, failure to
9 maintain required records, failure to provide accurate itemized wage statements, failure to timely
10 pay wages during employment, failure to indemnify employees for necessary expenditures and/or
11 losses incurred in discharging their duties.

12 **JURISDICTION AND VENUE**

13 2. The Superior Court of the State of California has jurisdiction in this matter because
14 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do
15 business in California and do regularly conduct business in California, including in the County of
16 San Diego. Further, no federal question is at issue because the claims are based solely on California
17 law.

18 3. Venue is proper in this judicial district and the County of San Diego, California
19 because PLAINTIFF, and other persons similarly aggrieved, performed work for DEFENDANTS
20 in the County of San Diego, DEFENDANTS maintain offices and facilities and transact business
21 in the County of San Diego, and because DEFENDANTS’ illegal payroll policies and practices
22 which are the subject of this action were applied, at least in part, to PLAINTIFF, and other
23 persons similarly aggrieved, in the County of San Diego.

24 **PARTIES**

25 4. PLAINTIFF is a resident of the State of California. At times material to this
26 complaint, PLAINTIFF was employed by DEFENDANTS in the State of California as a non-
27 exempt lot porter.

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1 5. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
2 JKC PALM SPRINGS is, and at all times relevant hereto was, a corporation organized and
3 existing under the laws of the State of California. PLAINTIFF is further informed and believes,
4 and thereon alleges, that DEFENDANT JKC PALM SPRINGS is authorized to conduct business
5 in the State of California, and does conduct business in the State of California. Specifically,
6 DEFENDANT JKC PALM SPRINGS maintains offices and facilities and conducts business in,
7 and engages in illegal payroll practices or policies in, the County of San Diego, State of
8 California.

9 6. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
10 PLAINTIFF at this time, and PLAINTIFF therefore sues such defendants under fictitious names.
11 PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a
12 DOE is in some manner highly responsible for the occurrences alleged herein, and that
13 PLAINTIFF and other aggrieved employees' injuries and damages, as alleged herein, were
14 proximately caused by the conduct of such DOE defendants. PLAINTIFF will seek leave of the
15 court to amend this complaint to allege the true names and capacities of such DOE defendants
16 when ascertained.

17 7. At all relevant times herein, DEFENDANTS were the joint employers of
18 PLAINTIFF and other aggrieved employees. PLAINTIFF is informed and believes, and thereon
19 alleges, that at all times material to this complaint DEFENDANTS were the alter egos, divisions,
20 affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities,
21 co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or
22 ostensible, of each other. Each defendant was completely dominated by his, her, or its co-
23 defendant, and each was the alter ego of the other.

24 8. At all relevant times herein, PLAINTIFF and other aggrieved employees were
25 employed by DEFENDANTS under employment agreements that were partly written, partly oral,
26 and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and
27 each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying
28 PLAINTIFF and other aggrieved employees all wages earned and due, through methods and

1 schemes which include, but are not limited to, failing to pay overtime premiums; failing to
2 provide rest and meal periods; failing to properly maintain records; failing to provide accurate
3 itemized statements for each pay period; failing to timely pay wages during employment; failing
4 to properly compensate PLAINTIFF and other aggrieved employees for necessary expenditures;
5 and requiring, permitting or suffering the employees to work off the clock, in violation of the
6 California Labor Code (“Labor Code”) and the applicable Industrial Welfare Commission
7 (“IWC”) Wage Order.

8 9. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
9 of the acts and omissions alleged herein were performed by, and/or attributable to, all
10 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
11 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
12 and scope of said agency, employment and/or direction and control.

13 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

14 10. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
15 Labor Code §§ 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current
16 and former non-exempt aggrieved employees of DEFENDANTS in the State of California
17 (“aggrieved employees”) at any time within the period beginning one (1) year and sixty five (65)
18 days prior to providing notice to the California Labor and Workforce Development Agency
19 (“LWDA”) of this action, and ending at the time this action settles or proceeds to final judgment
20 (“PENALTY PERIOD”).

21 11. Pursuant to Labor Code § 2699.3, PLAINTIFF gave written notice by online filing
22 on October 31, 2024 to the LWDA and by certified mail to DEFENDANTS of the specific
23 provisions of the Labor Code and IWC Wage Orders alleged to have been violated, including the
24 facts and theories to support the alleged violations. PLAINTIFF has not received any response
25 from the LWDA. As PLAINTIFF has waited more than sixty-five (65) days from the October 31,
26 2024 postmark date of PLAINTIFF’s written notice before filing this action, PLAINTIFF has
27 complied with all of the requirements set forth in Labor Code § 2699.3 to commence a
28 representative action under PAGA.

FACTUAL ALLEGATIONS

12. In or around October 2022, PLAINTIFF was hired as an hourly, non-exempt lot porter for JKC PALM SPRINGS.

13. Throughout PLAINTIFF's employment, PLAINTIFF and other similarly situated aggrieved employees were denied off-duty, uninterrupted meal and rest breaks. PLAINTIFF and other similarly situated aggrieved employees were given short meal breaks, provided meal breaks late (after the fifth hour of work for the first meal period and/or after the tenth hour of work for the second meal period), had their meal breaks interrupted, and/or were denied their meal breaks entirely.

14. Similarly, DEFENDANTS consistently failed to authorize and permit PLAINTIFF and other similarly situated aggrieved employees off-duty rest breaks, including failing to authorize and permit PLAINTIFF and other similarly situated aggrieved employees to take rest breaks in the middle of each work period insofar as practicable.

15. DEFENDANTS did not compensate PLAINTIFF and other similarly situated aggrieved employees for their missed meal and rest breaks.

16. Further, PLAINTIFF and other similarly situated aggrieved employees often worked either more than 8 hours per day and/or more than 40 hours per week, but DEFENDANTS did not compensate them for their overtime work.

17. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS frequently provided non-compliant, inaccurate wage statements and failed to properly maintain records for PLAINTIFF and other similarly situated aggrieved employees as a result of these unlawful practices. Moreover, DEFENDANTS did not timely pay PLAINTIFF and other similarly situated aggrieved employees for all hours worked when it failed to pay for the missed meal and rest break periods, overtime wages, and/or for forcing PLAINTIFF and other similarly situated aggrieved employees to work off-the-clock without pay.

18. Additionally, PLAINTIFF and other similarly situated aggrieved employees were forced to pay out of pocket for business expenses such as cell phones, and other employment-related expenses. DEFENDANTS did not indemnify PLAINTIFF and other similarly situated

1 aggrieved employees for these expenses.

2 **Exhaustion of Administrative Remedies:**

3 19. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on
4 October 31, 2024 by online filing to the California Labor and Workforce Development Agency
5 (“LWDA”) and by certified mail to DEFENDANTS of the specific provisions of the California
6 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories
7 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has
8 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

9 **Failure to Provide Required Meal Periods**

10 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 11]**

11 20. During the PENALTY PERIOD, as part of DEFENDANTS’ illegal policies and
12 practices to deprive their current and former non-exempt employees all wages earned and due, all
13 wages earned and due, DEFENDANTS required, suffered or permitted PLAINTIFF and other
14 aggrieved employees to take less than the 30-minute meal period, or to work through them, and
15 have failed to otherwise provide the required meal periods to PLAINTIFF and other aggrieved
16 employees pursuant to Labor Code §§ 226.7 and 512 and IWC Order No. 4-2001, § 11.

17 21. DEFENDANTS further violated Labor Code §§ 226.7 and 512 and IWC Wage
18 Order No. 4-2001, § 11 by failing to compensate PLAINTIFF and other aggrieved employees
19 who were not provided with a meal period, in accordance with the applicable IWC Wage Order,
20 one additional hour of compensation at each employee’s regular rate of pay for each workday that
21 a meal period was not provided.

22 **Failure to Provide Required Rest Periods**

23 **[Cal. Labor Code §§ 226.7; IWC Wage Order No. 4-2001, § 12]**

24 22. At all times relevant herein, as part of DEFENDANTS’ illegal policies and
25 practices to deprive their current and former non-exempt employees all wages earned and due,
26 DEFENDANTS failed to provide rest periods to PLAINTIFF and other aggrieved employees as
27 required under Labor Code § 226.7, and IWC Wage Order No. 4-2001, § 12.

28 //

23. DEFENDANTS further violated Labor Code § 226.7 and IWC Wage Order No. 4-2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not provided with a rest period, in accordance with the applicable IWC Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a rest period was not provided.

Failure to Pay Overtime Wages

[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 4-2001, § 3]

24. Pursuant to Labor Code §§ 510 and 1194 and IWC Wage Order No. 4-2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

25. PLAINTIFF and other aggrieved employees are current and former non-exempt employees of DEFENDANTS entitled to the protections of Labor Code §§ 510 and 1194 and IWC Wage Order No. 4-2001. During the PENALTY PERIOD, DEFENDANTS failed to compensate PLAINTIFF and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001, § 3; requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work off the clock; requiring, permitting or suffering PLAINTIFF and other aggrieved employees to work through meal breaks; illegally and inaccurately recording time in which PLAINTIFF and other aggrieved employees worked; failing to properly maintain PLAINTIFF's and other aggrieved employees' records; failing to provide accurate itemized wage statements to PLAINTIFF for each pay period; and other methods to be discovered.

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1 26. DEFENDANTS have knowingly and willfully refused to perform their obligations
2 to compensate PLAINTIFF and other aggrieved employees for all wages earned and all hours
3 worked in violation of Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 4-2001, § 3.

4 **Failure to Pay Minimum Wages**

5 **[Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 4-2001, § 4]**

6 27. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 4-
7 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
8 worked in a payroll period is unlawful.

9 28. During the PENALTY PERIOD and in violation of California Labor Code §§ 1194
10 and 1197 and IWC Wage Order No. 4-2001, § 4, DEFENDANTS failed to pay PLAINTIFF and
11 other aggrieved employees the applicable minimum wages for all hours worked in a payroll
12 period by, among other things: requiring, suffering or permitting PLAINTIFF and other aggrieved
13 employees to work off the clock; requiring, suffering or permitting PLAINTIFF and other
14 aggrieved employees to work through meal breaks; illegally and inaccurately recording time in
15 which PLAINTIFF and other aggrieved employees worked; failing to properly maintain
16 PLAINTIFF's and other aggrieved employees' records; failing to provide accurate itemized wage
17 statements to PLAINTIFF and other aggrieved employees for each pay period; and other methods
18 to be discovered.

19 **Failure to Maintain Required Records**

20 **[Cal. Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 4-2001, § 7]**

21 29. During the PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
22 policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned
23 and due, DEFENDANTS knowingly and intentionally failed to maintain records as required
24 under Labor Code §§ 226(a) and 1174(d) and IWC Wage Order No. 4-2001, § 7, including but
25 not limited to the following records: total daily hours worked by each employee; applicable rates
26 of pay; all deductions; meal periods; time records showing when each employee begins and ends
27 each work period; and accurate itemized statements.

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Failure to Furnish Accurate Itemized Wage Statements

[Cal. Labor Code § 226(a); IWC Wage Order No. 4-2001, § 7]

30. During the PENALTY PERIOD, DEFENDANTS routinely failed and continue to fail to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and only the last four digits of his or her social security number or employee identification number, the name and address of the legal entity or entities employing PLAINTIFF and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code § 226(a) and IWC Wage Order No. 4-2001 § 7.

31. During the PENALTY PERIOD, DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements in accordance with Labor Code § 226(a).

32. During the PENALTY PERIOD, PLAINTIFF and other aggrieved employees suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage statements as PLAINTIFF and other aggrieved employees could not promptly and easily determine from the wage statement alone one or more of the following: the gross wages earned, the total hours worked, all deductions made, the net wages earned, the name and address of the legal entity or entities employing PLAINTIFF and other aggrieved employees, and/or all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **[Cal. Labor Code § 2698, *et seq.*]**

4 **(Against All DEFENDANTS)**

5 33. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
6 factual allegations in the foregoing paragraphs.

7 34. PLAINTIFF is an “aggrieved employee” within the meaning of Labor Code
8 §2699(c), and a proper representative to bring a civil action on behalf of himself and other current
9 and former non-exempt employees of DEFENDANTS pursuant to the procedures specified in
10 Labor Code § 2699.3, because PLAINTIFF was employed by DEFENDANTS, and one or more
11 of the alleged Labor Code violations was committed against PLAINTIFF during the PENALTY
12 PERIOD.

13 35. PLAINTIFF seeks to recover civil penalties through a representative action
14 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969
15 (2009). Thus, class certification is not required.

16 36. Pursuant to Labor Code §§ 2698-2699.5, PLAINTIFF seeks to recover civil
17 penalties from DEFENDANTS in a representative action for the violations set forth above,
18 including but not limited to violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510,
19 512, 1174(d), 1194, 1197, 1198, and 2802.

20 37. Pursuant to Labor Code § 2699(a), PLAINTIFF seeks civil penalties for
21 DEFENDANTS’ violations of Labor Code provisions for which a civil penalty is specifically
22 provided, including but not limited to the following:

23 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
24 DEFENDANTS are subject to a civil penalty in the amount of one hundred dollars (\$100)
25 for the initial violation for each failure to pay each employee and two hundred dollars
26 (\$200) per employee for violations in subsequent pay periods.

27 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a),
28 DEFENDANTS are subject to a civil penalty in the amount of two hundred and fifty

1 dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs
2 and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent
3 pay periods.

4 c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting
5 on behalf of an employer who violates, or causes to be violated, a section of this chapter
6 or any provision regulating hours and days of work in any order of the Industrial Welfare
7 Commission,” including Labor Code §§ 510 and 512, shall be subject to a civil penalty, in
8 addition to any other penalty provided by law, of fifty dollars (\$50) for initial violations
9 for each underpaid employee for each pay period for which the employee was underpaid
10 and one hundred dollars (\$100) for each subsequent violation for each underpaid
11 employee for each pay period for which the employee was underpaid.

12 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
13 DEFENDANTS are subject to a civil penalty of five hundred dollars (\$500).

14 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be
15 paid to any employee a wage less than the minimum fixed by an order of the commission,
16 shall be subject to a civil penalty as follows: for any initial violation that is intentionally
17 committed, one hundred dollars (\$100) for each underpaid employee for each pay period
18 for which the employee is underpaid; and for each subsequent violation of the same
19 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
20 for which the employee is underpaid regardless of whether the initial violation was
21 intentionally committed.

22 38. Labor Code § 2699(f) provides that for all Labor Code violations for which a
23 civil penalty is not specifically provided, the following civil penalties are established: one
24 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
25 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
26 violation. PLAINTIFF seeks such civil penalties under Labor Code § 2699(f) for
27 DEFENDANTS’ violations of Labor Code provisions for which a civil penalty is not specifically
28 provided, including but not limited to Labor Code §§ 201, 202, 203, 226.7, 1194, 1197, 1198, and

1 2802.

2 39. PLAINTIFF additionally seeks reasonable attorney's fees and costs pursuant to
3 Labor Code § 2699(g)(1).

4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF, individually and on behalf of all other aggrieved
6 employees, prays for relief against DEFENDANTS as follows:

7 1. For civil penalties according to proof, including but not limited to the amount of
8 any unpaid wages of PLAINTIFF and other aggrieved employees and all penalties authorized by
9 the Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);

10 2. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802,
11 California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-
12 judgment interest;

13 3. For reasonable attorney's fees and costs pursuant to Labor Code § 2699(g) and/or
14 any other applicable provisions providing for attorney's fees and costs; and

15 4. For such further relief that the Court may deem just and proper.

16
17 DATED: October 31, 2024

18 Respectfully submitted,

19 **MATERN LAW GROUP, PC**

20
21 By: _____

22 MATTHEW J. MATERN

23 JOSHUA D. BOXER

24 NORA R. KATZ

25 Attorneys for Plaintiff

26 BRIAN VILLALPANDO, individually, and
27 on behalf of other persons similarly
28 aggrieved

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: October 31, 2024

Respectfully submitted,

MATERN LAW GROUP, PC

By: _____

MATTHEW J. MATERN

JOSHUA D. BOXER

NORA R. KATZ

Attorneys for Plaintiff

BRIAN VILLALPANDO, individually, and on
behalf of other persons similarly aggrieved