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Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

GARABED GAZALYAN, an individual,
GARY ZUBKO, an individual and on behalf of
the State of California in thier representative
capacity as a private attorney general,

Plaintiff,

v.

Del Montell Motors, Ltd. dba SANTA
MONICA BMW, a Corporation; and DOES 1-
50, Inclusive,

Defendants.

Case No: **25SMCV00209**

COMPLAINT FOR:

1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ].

PLAINTIFFS GARABED GAZALYAN and GARY ZUBKO ("PLAINTIFFS") on behalf
of the people of the State of California, and as an "aggrieved employee" acting as a private attorney
general under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA")
only, alleges on information and belief, except for their own acts and knowledge which are based
on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFFS brings this action against Defendant Del Montell Motors, Ltd. dba
Santa Monica BMW (collectively "DEFENDANT" and/or "DEFENDANTS") seeking only to
recover PAGA civil penalties on behalf of all current and former non-exempt, commission-based
and/or piece-rate based employees that worked for DEFENDANTS in California during the
relevant PAGA period, as defined herein. PLAINTIFF does **not seek to recover anything other**

1 **than penalties as permitted by California Labor Code § 2699.** To the extent that statutory
2 violations are mentioned for wage violations, PLAINTIFFS do not seek underlying general and/or
3 special damages for those violations, but simply the civil penalties permitted by California Labor
4 Code § 2699. Notwithstanding, Plaintiffs are not abandoning their right to pursue their individual
5 claims for, inter alia, Defendant's wage violations, and/or general or special damages arising from
6 those wage and hour violations, retaliation, any Unfair Competition Law violation for failure to
7 provide 401K, and they fully intend to, at a future date, pursue claims for those individual claims
8 and damages.

9 2. California has enacted the PAGA which permits PLAINTIFFS to bring an action
10 on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this action.

11 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
12 DEFENDANTS' violations under PAGA and solely for the relief as permitted by PAGA that is,
13 penalties and any other relief the Court deems proper pursuant to PAGA. Nothing in this
14 complaint should be constructed as attempting to obtain any relief that would not be available in
15 a PAGA-only action.

16 4. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
17 decreased their employment-related costs by systematically violating California wage and hour
18 laws.

19 5. DEFENDANTS' systematic pattern of wage and hour and IWC Wage Order
20 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 21 a. Failure to provide compliant meal and rest periods;
- 22 b. Failure to allow employees to take duty-free meal and rest periods;
- 23 c. Failure to pay all minimum, sick pay, regular and overtime wages;
- 24 d. Failure to correctly calculate the regular rate of pay;
- 25 e. Failure to pay within seven (7) days of the close of payroll;
- 26 f. Failure to pay for all hours worked;
- 27 g. Failure to maintain true and accurate records;
- 28 h. Failure to reimburse for required business expenses;

- 1 i. Failure to provide accurate itemized wage statements; and
2 j. Failure to timely pay wages due during, and upon termination of employment.
3 6. PLAINTIFFS reserve the right to name additional representatives throughout the
4 State of California.

5 **THE PARTIES**

6 7. Defendant Del Montell Motors, Ltd. dba Santa Monica BMW (“Defendant”) is a
7 California Corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout California.

9 8. DEFENDANT operates car dealerships in California, including in the county of
10 Los Angeles, where PLAINTIFFS work.

11 9. PLAINTIFFS allege that DOES 1-50 are the partners, agents, owners, or managers
12 of DEFENDANT at all relevant times.

13 10. DEFENDANTS were the employers of PLAINTIFFS as evidenced by the
14 documents issued to PLAINTIFFS and by the company PLAINTIFFS performed work for.

15 11. PLAINTIFF Garabed Gazalyan was employed by DEFENDANTS in California
16 from January 15, 2024 to present as a non-exempt employee, paid on an hourly basis, non-
17 discretionary bonuses, commissions, and entitled to the legally required meal and rest periods and
18 payment of minimum and overtime wages due for all time worked.

19 12. PLAINTIFF Gary Zubko was employed by DEFENDANTS in California from
20 July 2018 to present as a non-exempt employee, paid on an hourly basis, non-discretionary
21 bonuses, commissions, and entitled to the legally required meal and rest periods and payment of
22 minimum and overtime wages due for all time worked.

23 13. PLAINTIFF, and such persons that may be added from time to time who satisfy
24 the requirements and exhaust the administrative procedures under the Private Attorney General
25 Act, bring this Representative Action on behalf of the State of California with respect to
26 themselves and all individuals who are or previously were employed by Defendant in California
27 and classified as non-exempt, exempt, commission-based and/or piece-rate based employees,
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1 (“AGGRIEVED EMPLOYEES”) during the time period of October 21, 2020, and the present
2 (“PAGA Period”).

3 14. PLAINTIFFS are “AGGRIEVED EMPLOYEE” within the meaning of Labor
4 Code § 2699(c) because they was employed by DEFENDANT and personally suffered each of
5 the alleged Labor Code violations committed by DEFENDANT.

6 15. PLAINTIFFS and all other AGGRIEVED EMPLOYEES are, and at all relevant
7 times were, employees of DEFENDANTS, within the meanings set forth in the California Labor
8 Code and the applicable Industrial Welfare Commission Wage Order.

9 16. Each of the fictitiously named Defendants participated in the acts alleged in this
10 Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50,
11 inclusive, are presently unknown to PLAINTIFFS. PLAINTIFFS will amend this Complaint,
12 setting forth the true names and capacities of these fictitiously named Defendants when their true
13 names are ascertained. PLAINTIFFS are informed and believe, and on that basis alleges, that each
14 of the fictitious Defendants have participated in the acts alleged in this Complaint.

15 17. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively
16 “DEFENDANTS”), were PLAINTIFFS’ employers or persons acting on behalf of PLAINTIFFS’
17 employer, within the meaning of California Labor Code § 558, who violated or caused to be
18 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
19 hours and days of work in any order of the Industrial Welfare Commission and, as such, are
20 subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all
21 relevant times.

22 18. DEFENDANTS were PLAINTIFFS’ employer or persons acting on behalf of
23 PLAINTIFF’S employer either individually or as an officer, agent, or employee of another person,
24 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
25 employee a wage less than the minimum fixed by California state law, and as such, are subject to
26 civil penalties for each underpaid employee.

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1 the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be
2 adjusted accordingly.

3 **A. Meal Period Violations**

4 22. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
5 were required to pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all their time worked,
6 meaning the time during which an employee is subject to the control of an employer, including
7 all the time the employee is suffered or permitted to work. From time to time during the PAGA
8 PERIOD, DEFENDANTS required PLAINTIFFS and AGGRIEVED EMPLOYEES to work
9 without paying them for all the time they were under DEFENDANTS' control. Specifically,
10 DEFENDANTS required PLAINTIFFS to work while clocked out during what was supposed to
11 be PLAINTIFF'S off-duty meal break. Indeed, there were many days where PLAINTIFFS did
12 not even receive a partial lunch. As a result, the PLAINTIFFS and other AGGRIEVED
13 EMPLOYEES forfeited minimum wage and overtime compensation by regularly working
14 without their time being accurately recorded and without compensation at the applicable
15 minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay
16 PLAINTIFFS and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
17 DEFENDANT's business records.

18 23. From time to time during the PAGA PERIOD, as a result of their rigorous work
19 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFFS and other
20 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty
21 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
22 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANTS for
23 more than five (5) hours during some shifts without receiving a meal break. Further,
24 DEFENDANTS failed to provide PLAINTIFFS and AGGRIEVED EMPLOYEES with a second
25 off-duty meal period for some workdays in which these employees are required by
26 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
27 PLAINTIFFS and other AGGRIEVED EMPLOYEES does not qualify for the limited and
28 narrowly construed "on-duty" meal period exception. When they were provided with meal

1 periods, PLAINTIFFS and other AGGRIEVED EMPLOYEES were, from time to time, required
2 to remain on duty and on call. Further, DEFENDANTS from time to time required PLAINTIFFS
3 and other AGGRIEVED EMPLOYEES to maintain cordless communication devices in order to
4 receive and respond to work-related communications during what was supposed to be their off-
5 duty meal breaks. DEFENDANTS' failure to provide PLAINTIFFS and the AGGRIEVED
6 EMPLOYEES with legally required meal breaks is evidenced by DEFENDANTS' business
7 records. PLAINTIFFS and AGGRIEVED EMPLOYEES therefore forfeit meal breaks without
8 additional compensation and in accordance with DEFENDANTS' strict corporate policy and
9 practice.

10 **B. Rest Period Violations**

11 24. From time to time during the PAGA PERIOD, PLAINTIFFS and other
12 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being
13 provided ten (10) minute rest periods as a result of their rigorous work requirements and
14 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
15 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
16 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
17 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
18 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
19 time to time. When they were provided with rest breaks, PLAINTIFFS and other AGGRIEVED
20 EMPLOYEES were, from time to time, required to remain on duty and/or on call. Further,
21 DEFENDANTS from time to time required PLAINTIFFS and other AGGRIEVED
22 EMPLOYEES to maintain cordless communication devices in order to receive and respond to
23 work-related communications during what was supposed to be their off-duty rest breaks.
24 PLAINTIFFS and other AGGRIEVED EMPLOYEES were also not provided with one-hour
25 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS'
26 inadequate staffing, PLAINTIFFS and other AGGRIEVED EMPLOYEES were from time to
27 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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1 **C. Unreimbursed Business Expenses**

2 25. DEFENDANTS as a matter of corporate policy, practice, and procedure,
3 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFFS
4 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
5 PLAINTIFFS and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
6 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are
7 required to indemnify employees for all expenses incurred in the course and scope of their
8 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
11 even though unlawful, unless the employee, at the time of obeying the directions, believed them
12 to be unlawful."

13 26. In the course of their employment, DEFENDANTS required PLAINTIFFS and
14 other AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell
15 phones, vehicles, computers, and internet connection as a result of and in furtherance of their job
16 duties. Specifically, PLAINTIFFS and other AGGRIEVED EMPLOYEES were required to use
17 their own cell phones, vehicles, computers, and internet connection in order to perform work
18 related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFFS and other
19 AGGRIEVED EMPLOYEES for the personal expenses incurred for the use of their personal cell
20 phones, vehicles, computers, and internet connection. As a result, in the course of their
21 employment with DEFENDANTS, the PLAINTIFFS and other AGGRIEVED EMPLOYEES
22 incurred unreimbursed business expenses that included, but were not limited to, costs related to
23 the use of their personal cell phones, vehicles, computers, and internet connection all on behalf of
24 and for the benefit of DEFENDANT.

25 **D. Wage Statement Violations**

26 27. California Labor Code Section 226 required an employer to furnish its employees
27 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
28 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,

1 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
2 name of the employee and only the last four digits of the employee's social security number or an
3 employee identification number other than a social security number, (8) the name and address of
4 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee.

6 28. From time to time during the PAGA PERIOD, when PLAINTIFFS and other
7 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
8 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
9 to provide PLAINTIFFS and other AGGRIEVED EMPLOYEES with complete and accurate
10 wage statements which failed to show, among other things, all deductions, the total hours worked
11 and all applicable hourly rates in effect during the pay period, and the corresponding amount of
12 time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and
13 rest periods.

14 29. Further, DEFENDANTS, from time to time, failed to provide PLAINTIFFS and
15 the AGGRIEVED EMPLOYEES with wage statements that provide all applicable hourly rates in
16 effect during the pay period and the corresponding number of hours worked at each hourly rate
17 by the employee, in violation of Cal. Lab. Code § 226(a)(9).

18 30. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
19 PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
20 Lab. Code § 226.

21 31. As a result, DEFENDANTS issued PLAINTIFFS and AGGRIEVED
22 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
23 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
24 to clerical or inadvertent mistake.

25 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

26 32. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and
27 continue to fail to accurately pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all hours
28 worked.

1 33. During the PAGA PERIOD, from time-to-time DEFENDANTS required
2 PLAINTIFFS and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This
3 resulted in PLAINTIFF and AGGRIEVED EMPLOYEES to have to work while off-the-clock.

4 34. DEFENDANTS directed and directly benefited from the undercompensated off-
5 the-clock work performed by PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

6 35. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
7 assignments, and employment conditions of PLAINTIFFS and AGGRIEVED EMPLOYEES.

8 36. DEFENDANT was able to track the amount of time PLAINTIFFS and
9 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document,
10 track, or pay PLAINTIFFS and AGGRIEVED EMPLOYEES all wages earned and owed for all
11 the work they performed.

12 37. PLAINTIFFS and AGGRIEVED EMPLOYEES were non-exempt, exempt,
13 commission-based and/or piece-rate based employees subject to the requirements of the
14 California Labor Code.

15 38. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other
16 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
17 the off-the-clock work activities. Because PLAINTIFFS and AGGRIEVED EMPLOYEES
18 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
19 DEFENDANTS' policies and practices also deprived them of overtime pay.

20 39. DEFENDANTS knew or should have known that PLAINTIFFS and
21 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

22 40. As a result, PLAINTIFFS and AGGRIEVED EMPLOYEES forfeited wages due
23 to them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent
24 working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
25 PLAINTIFFS and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
26 applicable law is evidenced by DEFENDANTS' business records.

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1 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
2 **and Redeemed Sick Pay**

3 41. From time to time during the PAGA PERIOD, DEFENDANTS failed and
4 continues to fail to accurately calculate and pay PLAINTIFFS and other AGGRIEVED
5 EMPLOYEES for their overtime and double time hours worked, meal and rest period premiums,
6 and redeemed sick pay. As a result, PLAINTIFFS and the other AGGRIEVED EMPLOYEES
7 forfeited wages due to them for working overtime without compensation at the correct overtime
8 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
9 DEFENDANTS’ uniform policy and practice not to pay PLAINTIFFS and the AGGRIEVED
10 EMPLOYEES at the correct rate for all overtime and double time worked, meal and rest period
11 premiums, and redeemed sick pay in accordance with applicable law is evidenced by
12 DEFENDANTS’ business records.

13 42. State law provides that employees must be paid overtime at one-and-one-half times
14 their “regular rate of pay.” PLAINTIFFS and other AGGRIEVED EMPLOYEES were
15 compensated at an hourly rate plus commissions and/or non-discretionary incentive pay that was
16 tied to specific elements of an employee’s performance and/or commissions.

17 43. The second component of PLAINTIFFS’ and other AGGRIEVED EMPLOYEES’
18 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFFS
19 and other AGGRIEVED EMPLOYEES’ incentive wages based on their performance for
20 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
21 basis with bonus compensation when the employees met the various performance goals set by
22 DEFENDANTS.

23 44. DEFENDANTS’ non-discretionary commission and bonus program provided the
24 AGGRIEVED EMPLOYEES, including PLAINTIFFS, with commissions and/or bonus
25 compensation when the employees met the various performance goals set by DEFENDANTS.
26 However, when calculating the regular rate of pay, in those pay periods where PLAINTIFFS and
27 the AGGRIEVED EMPLOYEES worked overtime and earned non-discretionary bonus and/or
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1 commission wages, DEFENDANTS failed to accurately include the non-discretionary bonus
2 compensation and/or commission wages as part of the employees' "regular rate of pay."

3 45. Management and supervisors described the bonus and commissions programs and
4 commission compensation program to potential and new employees as part of the compensation
5 package for new and used car salespersons including PLAINTIFFS and the AGGRIEVED
6 EMPLOYEES. As a matter of law, the incentive and commission compensation received by
7 PLAINTIFFS and other AGGRIEVED EMPLOYEES must be included and correctly calculated
8 into the "regular rate of pay" for purposes of overtime and double time compensation, meal and
9 rest period premium payments, and sick pay. DEFENDANTS' failure to do so has resulted in
10 DEFENDANTS' systematic underpayment of overtime and double time compensation, meal and
11 rest period premium payments, and sick pay to PLAINTIFFS and AGGRIEVED EMPLOYEES.
12 Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees
13 shall be calculated in the same manner as the regular rate of pay for the workweek in which the
14 employee uses paid sick time, whether or not the employee actually works overtime in that
15 workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive
16 compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in
17 violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor
18 Code Sections 201, 202, 203 and/or 204.

19 46. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
21 matter of company policy, practice, and procedure, intentionally and knowingly failed to
22 compensate PLAINTIFFS and AGGRIEVED EMPLOYEES at the correct rate of pay for all
23 overtime and double time compensation, meal and rest period premium payments, and sick pay.
24 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
25 payment of the correct overtime and double time compensation, meal and rest period premium
26 payments, and sick pay as required by California law which allowed DEFENDANTS to illegally
27 profit and gain an unfair advantage over competitors who complied with the law. To the extent
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1 equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
2 DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

3 **G. Commission and Piece-Rate Violations**

4 47. From time-to-time during the PAGA PERIOD, PLAINTIFFS and the
5 AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis. In
6 those instances where PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid in part on
7 a commission and/or piece-rate basis, PLAINTIFFS and the AGGRIEVED EMPLOYEES were
8 entitled to be separately compensated for all non-productive time at an hourly rate that is no less
9 than the applicable minimum wage. Notwithstanding, in those instances where PLAINTIFF and
10 the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis,
11 DEFENDANTS failed to separately compensate PLAINTIFFS and the AGGRIEVED
12 EMPLOYEES for all non-productive time, including but not limited to, paid rest periods, at an
13 hourly rate that is no less than the applicable minimum wage. As a result, PLAINTIFFS and
14 AGGRIEVED EMPLOYEES forfeited minimum wages and overtime wages by
15 DEFENDANTS' failure to separately compensate their non-productive time at an hourly rate
16 that is no less than the applicable minimum wage.

17 48. Further, from time-to-time during the PAGA PERIOD, DEFENDANTS
18 improperly misclassified PLAINTIFFS and the AGGRIEVED EMPLOYEES who were paid on
19 a draw versus commission basis as exempt from overtime compensation. During the PAGA
20 PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the
21 overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet
22 the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th
23 252-254.) As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES who were paid on a
24 draw versus commission basis forfeited overtime wages by DEFENDANTS' failure to
25 accurately classify them as non-exempt from overtime compensation.

26 **H. Unlawful Deductions**

27 49. DEFENDANTS, from time-to-time unlawfully deducted wages from
28 PLAINTIFFS and AGGRIEVED EMPLOYEES' pay without explanations and without

1 authorization to do so or notice to PLAINTIFFS and the AGGRIEVED EMPLOYEES. As a
2 result, DEFENDANTS violated Labor Code § 221.

3 **I. Timekeeping Manipulation**

4 50. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
5 immutable timekeeping system to accurately record and pay PLAINTIFFS and other
6 AGGRIEVED EMPLOYEES for the actual time PLAINTIFFS and AGGRIEVED
7 EMPLOYEES worked each day, including regular time, overtime hours, sick pay, meal and rest
8 breaks. As a result, DEFENDANTS were able to and did in fact, unlawfully, and unilaterally
9 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and other
10 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all hours worked,
11 applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest
12 breaks.

13 51. As a result, PLAINTIFFS and other AGGRIEVED EMPLOYEES, from time-to-
14 time, forfeited time worked by working without their time being accurately recorded and without
15 compensation at the applicable pay rates.

16 52. The mutability of the timekeeping system also allowed DEFENDANTS to alter
17 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
18 timekeeping system so as to create the appearance that PLAINTIFFS and other AGGRIEVED
19 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were
20 not at all times provided an off-duty meal break. This practice is a direct result of
21 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
22 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

23 53. As a result, PLAINTIFFS and AGGRIEVED EMPLOYEES forfeited wages due
24 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
25 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
26 PLAINTIFFS and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance
27 with applicable law is evidenced by DEFENDANTS' business records.

28 **J. Unlawful Rounding Practices**

1 54. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
2 timekeeping system to accurately record and pay PLAINTIFFS and AGGRIEVED
3 EMPLOYEES for the actual time these employees worked each day, including overtime hours.
4 Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted
5 in PLAINTIFFS and AGGRIEVED EMPLOYEES being undercompensated for all of their time
6 worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally
7 round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and the
8 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked,
9 including the applicable overtime compensation for overtime worked. As a result, PLAINTIFFS
10 and AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time
11 worked by working without their time being accurately recorded and without compensation at
12 the applicable overtime rates.

13 55. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
14 rounding policy and practice resulted in PLAINTIFFS and AGGRIEVED EMPLOYEES' time
15 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
16 policy and practice caused PLAINTIFFS and AGGRIEVED EMPLOYEES to perform work as
17 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
18 duty meal break.

19 **K. Violations for Untimely Payment of Wages**

20 56. Pursuant to California Labor Code section 204, PLAINTIFFS and the
21 AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their
22 employment. PLAINTIFFS and the AGGRIEVED EMPLOYEES, from time to time, did not
23 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
24 meal period premium wages, and rest period premium wages within permissible time period.

25 57. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
26 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant
27 to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall
28 become due and payable not later than 72 hours thereafter, unless the employee has given 72

1 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
2 or her wages at the time of quitting.” PLAINTIFFS and the AGGRIEVED EMPLOYEES were,
3 from time to time, not timely provided the wages earned and unpaid at the time of their discharge
4 and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

5 58. As such, PLAINTIFFS demands up to thirty days of pay as penalty for not timely
6 paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose
7 employment ended during the PAGA PERIOD.

8 **L. Sick Pay Violations**

9 59. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
10 July 1, 2015, works in California for the same employer for 30 or more days within a year from
11 the commencement of employment is entitled to paid sick days as specified in this section.”
12 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From
13 time to time, DEFENDANTS failed to have a policy or practice in place that provided
14 PLAINTIFF and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

15 60. California Labor Code Section 246(i) requires an employer to furnish its
16 employees with written wage statements setting forth the amount of paid sick leave available.
17 From time to time, DEFENDANTS violated Cal. Lab. Code § 246 by failing to furnish
18 PLAINTIFF and AGGRIEVED EMPLOYEES with wage statements setting forth the amount of
19 paid sick leave available.

20 61. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to
21 take off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
22 PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more than five
23 (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed
24 to provide PLAINTIFFS with a second off-duty meal period each workday in which he was
25 required by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
26 PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on-duty and on-call for the
27 rest break. DEFENDANTS policy caused PLAINTIFFS to remain on-call and on-duty during
28 what was supposed to be his off-duty meal periods. PLAINTIFFS therefore forfeited meal and

1 rest breaks without additional compensation and in accordance with DEFENDANTS' strict
2 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFFS with
3 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to
4 reimburse PLAINTIFFS for required business expenses related to the personal expenses incurred
5 for the use of her personal cell phone, vehicle, computer and home internet on behalf of and in
6 furtherance of his employment with DEFENDANTS. To date, DEFENDANTS have not fully
7 paid PLAINTIFFS the minimum, overtime and double time compensation still owed to him or
8 any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for
9 PLAINTIFFS individually does not exceed the sum or value of \$75,000.

10 **FIRST CAUSE OF ACTION**

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

12 **(Cal. Lab. Code §§2698 et seq.)**

13 **(Alleged by PLAINTIFFS on behalf of Aggrieved Employees against all DEFENDANTS)**

14 62. PLAINTIFFS realleges and incorporates by this reference, as though fully set forth
15 herein, the prior paragraphs of this Complaint.

16 63. PAGA is a mechanism by which the State of California itself can enforce state
17 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
18 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
19 fundamentally a law enforcement action designed to protect the public and not to benefit private
20 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
21 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
22 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
23 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
24 ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

25 64. At all relevant times, for the reasons described herein, and others, PLAINTIFFS
26 and the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
27 meaning of Labor Code Section 2699(c).
28

1 65. Labor Code Sections 2699(a) and (k) authorize an AGGRIEVED EMPLOYEE,
2 like PLAINTIFFS, on behalf of themselves and other current or former employees, to bring a civil
3 action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

4 66. PLAINTIFFS complied with the procedures for bringing suit specified in Labor
5 Code Section 2699.3. By certified letter, return receipt requested, dated October 16, 2024,
6 PLAINTIFFS gave written notice to the Labor and Workforce Development Agency (“LWDA”)
7 and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated,
8 including the facts and theories to support the alleged violations. See Exhibit #1.

9 67. As of the date of this complaint, more than sixty-five (65) days after serving the
10 LWDA with notice of DEFENDANTS’ violations, the LWDA has not provided any notice by
11 certified mail of its intent to investigate the DEFENDANTS’ alleged violations as mandated by
12 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
13 2699.3(a)(2)A, PLAINTIFFS may commence and is authorized to pursue this cause of action.

14 68. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFFS and the
15 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of
16 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
17 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199,
18 2802, and 2804 in the following amounts:

- 19 a. For violation of Labor Code Sections 201, 202, 203, and 204, up to (\$200) per
20 AGGRIEVED EMPLOYEE per pay period [penalty per Labor Code Section
21 2699(f)];
- 22 b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two
23 hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial
24 violation and one thousand dollars for each subsequent violation [penalty per
25 Labor Code Section 226.3];
- 26 c. For violations of Labor Code Sections 204, a civil penalty in the amount of one
27 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial
28

- 1 violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each
2 subsequent violation [penalty per Labor Code Section 210];
- 3 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the
4 amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for
5 the initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED
6 EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];
- 7 e. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five
8 hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor
9 Code Section 1174.5].
- 10 f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil
11 penalty in the amount of one hundred dollars (\$100) per AGGRIEVED
12 EMPLOYEE per pay period for the initial violation and two hundred dollars fifty
13 (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent
14 violation [penalty per Labor Code Section].
- 15 69. For all provisions of the Labor Code for which civil penalty is not specifically
16 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of up to two hundred dollars
17 (\$200) for each AGGRIEVED EMPLOYEE per pay period. PLAINTIFFS and the AGGRIEVED
18 EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with
19 their claims for civil penalties pursuant to Labor Code Section 2699(k)(1).

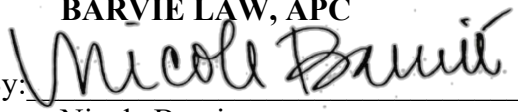
20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFFS on behalf of the Aggrieved Employees prays for judgment
22 against DEFENDANTS as follows:

- 23 1. For reasonable attorney's fees and costs of suit to the extent permitted by law,
24 including, but not limited to pursuant to Labor Code § 2699, *et seq.*;
- 25 2. For civil penalties to the extent permitted bylaw pursuant to the Labor Code under
26 the Private Attorneys General Act; and
- 27 3. For such other relief as the Court deems just and proper.
- 28

1 DATED: January 13, 2025

BARVIE LAW, APC

By: 

Nicole Barvie

Attorney for PLAINTIFFS

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EXHIBIT #1

Barvié

— LAW —

October 21, 2024

VIA ONLINE FILING TO LWDA and CERTIFIED MAIL TO DEFENDANT

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html <i>Via Online Electronic Submission</i>	“Del Montell Motors Ltd” dba Santa Monica BMW Attn: Legal Dept. 1127 Santa Monica Blvd Santa Monica, CA 90401 <i>Via Certified Mail</i>
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Re: Notice of Violation of California Labor Code Sections 201, 202, 203, 204 *et seq.*, 210, 218.5, 218.6, 218, 221, 226(a), 226(a)(8), 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1198.5, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Garabed “Gary” Gazalyan and Gary Zubko (hereinafter, collectively “Plaintiffs”) and other aggrieved employees in a proposed lawsuit against “Del Montell Motors Ltd” dba Santa Monica BMW, a California Corporation (“Defendant”). Plaintiff Garabed “Gary” Gazalyan has been employed by Defendant in California since January 15, 2024 to present and Plaintiff Gary Zubko has been employed by Defendant in California since July 2018 to present. Both Plaintiffs were employed as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. Defendant, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of their time worked, for all of their meal breaks and rest breaks and incentive pay. Defendant also failed to correctly calculate Plaintiffs’ regular rate of pay for purposes of payment of overtime, premium pay, and sick time pay. As a consequence of the aforementioned violations, Plaintiffs further contend that Defendant failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates





Labor Code §§ 201, 202, 203, 204 et seq., 210, 218.5, 218.6, 218, 221, 226(a), 226(a)(8), 226.2, 226.3, 226.7, 227.3, 232, 246, 510, 512, 558, 1102.5, 1174(d), 1174.5, 1198.5, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and the applicable Industrial Welfare Commission Wage Order(s) and is therefore actionable under California Labor Code section 2699.3.

Plaintiffs seek to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiffs against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiffs, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

Nicole Barvié
Attorney for Plaintiffs

Enclosure: Plaintiffs' Complaint.

BARVIE LAW, APC
Nicole Barvie (State Bar # 282352)
550 W B St. Fourth Floor
San Diego, CA 92101
Telephone: (858) 255-0928
Facsimile: (858) 357-8592
nicole@barvielaw.com

Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

GARABED GAZALYAN, an individual,
GARY ZUBKO, an individual and on behalf of
the State of California in thier representative
capacity as a private attorney general,

Plaintiff,

v.

Del Montell Motors, Ltd. dba SANTA
MONICA BMW, a Corporation; and DOES 1-
50, Inclusive,

Defendants.

Case No:

COMPLAINT FOR:

1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.

PLAINTIFFS GARABED GAZALYAN and GARY ZUBKO ("PLAINTIFFS") on behalf
of the people of the State of California, and as an "aggrieved employee" acting as a private attorney
general under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA")
only, alleges on information and belief, except for their own acts and knowledge which are based
on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFFS brings this action against Defendant Del Montell Motors, Ltd. dba
Santa Monica BMW (collectively "DEFENDANT" and/or "DEFENDANTS") seeking only to
recover PAGA civil penalties on behalf of all current and former non-exempt, commission-based
and/or piece-rate based employees that worked for DEFENDANTS in California during the
relevant PAGA period, as defined herein. PLAINTIFF does **not seek to recover anything other**

1 than penalties as permitted by California Labor Code § 2699. To the extent that statutory
2 violations are mentioned for wage violations, PLAINTIFFs do not seek underlying general and/or
3 special damages for those violations, but simply the civil penalties permitted by California Labor
4 Code § 2699. Notwithstanding, Plaintiffs are not abandoning their right to pursue their individual
5 claims for, inter alia, Defendant's wage violations, and/or general or special damages arising from
6 those violations, and they fully intend to, at a future date, pursue claims for those individual claims
7 and damages.

8 2. California has enacted the PAGA which permits PLAINTIFFS to bring an action
9 on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this action.

10 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
11 DEFENDANTS' violations under PAGA and solely for the relief as permitted by PAGA that is,
12 penalties and any other relief the Court deems proper pursuant to PAGA. Nothing in this
13 complaint should be constructed as attempting to obtain any relief that would not be available in
14 a PAGA-only action.

15 4. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
16 decreased their employment-related costs by systematically violating California wage and hour
17 laws.

18 5. DEFENDANTS' systematic pattern of wage and hour and IWC Wage Order
19 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 20 a. Failure to provide compliant meal and rest periods;
- 21 b. Failure to allow employees to take duty-free meal and rest periods;
- 22 c. Failure to pay all minimum, sick pay, regular and overtime wages;
- 23 d. Failure to correctly calculate the regular rate of pay;
- 24 e. Failure to pay within seven (7) days of the close of payroll;
- 25 f. Failure to pay for all hours worked;
- 26 g. Failure to maintain true and accurate records;
- 27 h. Failure to reimburse for required business expenses;
- 28 i. Failure to provide accurate itemized wage statements; and

1 j. Failure to timely pay wages due during, and upon termination of employment.

2 6. PLAINTIFFS reserve the right to name additional representatives throughout the
3 State of California.

4 **THE PARTIES**

5 7. Defendant Del Montell Motors, Ltd. dba Santa Monica BMW (“Defendant”) is a
6 California Corporation that at all relevant times mentioned herein conducted and continues to
7 conduct substantial and regular business throughout California.

8 8. DEFENDANT operates car dealerships in California, including in the county of
9 Los Angeles, where PLAINTIFFS work.

10 9. PLAINTIFFS allege that DOES 1-50 are the partners, agents, owners, or managers
11 of DEFENDANT at all relevant times.

12 10. DEFENDANTS were the employers of PLAINTIFFS as evidenced by the
13 documents issued to PLAINTIFFS and by the company PLAINTIFFS performed work for.

14 11. PLAINTIFF Garabed Gazalyan was employed by DEFENDANTS in California
15 from January 15, 2024 to present as a non-exempt employee, paid on an hourly basis, non-
16 discretionary bonuses, commissions, and entitled to the legally required meal and rest periods and
17 payment of minimum and overtime wages due for all time worked.

18 12. PLAINTIFF Gary Zubko was employed by DEFENDANTS in California from
19 July 2018 to present as a non-exempt employee, paid on an hourly basis, non-discretionary
20 bonuses, commissions, and entitled to the legally required meal and rest periods and payment of
21 minimum and overtime wages due for all time worked.

22 13. PLAINTIFF, and such persons that may be added from time to time who satisfy
23 the requirements and exhaust the administrative procedures under the Private Attorney General
24 Act, bring this Representative Action on behalf of the State of California with respect to
25 themselves and all individuals who are or previously were employed by Defendant in California
26 and classified as non-exempt, exempt, commission-based and/or piece-rate based employees,
27 (“AGGRIEVED EMPLOYEES”) during the time period of October 16, 2024, and the present
28 (“PAGA Period”).

1 14. PLAINTIFFS are an “AGGRIEVED EMPLOYEE” within the meaning of Labor
2 Code § 2699(c) because they was employed by DEFENDANT and personally suffered each of
3 the alleged Labor Code violations committed by DEFENDANT.

4 15. PLAINTIFFS and all other AGGRIEVED EMPLOYEES are, and at all relevant
5 times were, employees of DEFENDANTS, within the meanings set forth in the California Labor
6 Code and the applicable Industrial Welfare Commission Wage Order.

7 16. Each of the fictitiously named Defendants participated in the acts alleged in this
8 Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50,
9 inclusive, are presently unknown to PLAINTIFFS. PLAINTIFFS will amend this Complaint,
10 setting forth the true names and capacities of these fictitiously named Defendants when their true
11 names are ascertained. PLAINTIFFS are informed and believe, and on that basis alleges, that each
12 of the fictitious Defendants have participated in the acts alleged in this Complaint.

13 17. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively
14 “DEFENDANTS”), were PLAINTIFFS’ employers or persons acting on behalf of PLAINTIFFS’
15 employer, within the meaning of California Labor Code § 558, who violated or caused to be
16 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
17 hours and days of work in any order of the Industrial Welfare Commission and, as such, are
18 subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all
19 relevant times.

20 18. DEFENDANTS were PLAINTIFFS’ employer or persons acting on behalf of
21 PLAINTIFF’S employer either individually or as an officer, agent, or employee of another person,
22 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
23 employee a wage less than the minimum fixed by California state law, and as such, are subject to
24 civil penalties for each underpaid employee.

25 **JURISDICTION AND VENUE**

26 19. This Court has jurisdiction over this Action pursuant to California Code of Civil
27 Procedure, Section 410.10. This Court has jurisdiction over AGGRIEVED EMPLOYEES’
28

1 claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code
2 §2698, *et seq.*

3 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
4 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times
5 maintained offices and facilities in this County and/or conduct substantial business in this County,
6 and (ii) committed the wrongful conduct herein alleged in this County against AGGRIEVED
7 EMPLOYEES.

8 THE CONDUCT

9 21. In violation of the applicable sections of the California Labor Code and the
10 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
11 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
12 failed to provide legally compliant meal and rest periods, failed to accurately compensate
13 PLAINTIFFS and AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay
14 PLAINTIFFS and AGGRIEVED EMPLOYEES for all time worked, failed compensate
15 PLAINTIFFS and AGGRIEVED EMPLOYEES for off-the-clock work, failed to pay
16 PLAINTIFFS and AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed
17 to compensate PLAINTIFFS and AGGRIEVED EMPLOYEES meal rest premiums at the regular
18 rate, failed to reimburse PLAINTIFFS and other AGGRIEVED EMPLOYEES for business
19 expenses, and knowingly and intentionally failed to issue to PLAINTIFFS and AGGRIEVED
20 EMPLOYEES with accurate itemized wage statements showing, among other things, all
21 applicable hourly rates in effect during the pay periods and the corresponding amount of time
22 worked at each hourly rate. DEFENDANTS’ uniform policies and practices are intended to
23 purposefully avoid the accurate and full payment for all time worked as required by California
24 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
25 competitors who comply with the law. To the extent equitable tolling operates to toll claims by
26 the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be
27 adjusted accordingly.

28 A. Meal Period Violations

1 22. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
2 were required to pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all their time worked,
3 meaning the time during which an employee is subject to the control of an employer, including
4 all the time the employee is suffered or permitted to work. From time to time during the PAGA
5 PERIOD, DEFENDANTS required PLAINTIFFS and AGGRIEVED EMPLOYEES to work
6 without paying them for all the time they were under DEFENDANTS' control. Specifically,
7 DEFENDANTS required PLAINTIFFS to work while clocked out during what was supposed to
8 be PLAINTIFF'S off-duty meal break. Indeed, there were many days where PLAINTIFFS did
9 not even receive a partial lunch. As a result, the PLAINTIFFS and other AGGRIEVED
10 EMPLOYEES forfeited minimum wage and overtime compensation by regularly working
11 without their time being accurately recorded and without compensation at the applicable
12 minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay
13 PLAINTIFFS and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
14 DEFENDANT's business records.

15 23. From time to time during the PAGA PERIOD, as a result of their rigorous work
16 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFFS and other
17 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty
18 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
19 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANTS for
20 more than five (5) hours during some shifts without receiving a meal break. Further,
21 DEFENDANTS failed to provide PLAINTIFFS and AGGRIEVED EMPLOYEES with a second
22 off-duty meal period for some workdays in which these employees are required by
23 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
24 PLAINTIFFS and other AGGRIEVED EMPLOYEES does not qualify for the limited and
25 narrowly construed "on-duty" meal period exception. When they were provided with meal
26 periods, PLAINTIFFS and other AGGRIEVED EMPLOYEES were, from time to time, required
27 to remain on duty and on call. Further, DEFENDANTS from time to time required PLAINTIFFS
28 and other AGGRIEVED EMPLOYEES to maintain cordless communication devices in order to

1 receive and respond to work-related communications during what was supposed to be their off-
2 duty meal breaks. DEFENDANTS' failure to provide PLAINTIFFS and the AGGRIEVED
3 EMPLOYEES with legally required meal breaks is evidenced by DEFENDANTS' business
4 records. PLAINTIFFS and AGGRIEVED EMPLOYEES therefore forfeit meal breaks without
5 additional compensation and in accordance with DEFENDANTS' strict corporate policy and
6 practice.

7 **B. Rest Period Violations**

8 24. From time to time during the PAGA PERIOD, PLAINTIFFS and other
9 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being
10 provided ten (10) minute rest periods as a result of their rigorous work requirements and
11 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
12 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
13 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
14 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
15 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
16 time to time. When they were provided with rest breaks, PLAINTIFFS and other AGGRIEVED
17 EMPLOYEES were, from time to time, required to remain on duty and/or on call. Further,
18 DEFENDANTS from time to time required PLAINTIFFS and other AGGRIEVED
19 EMPLOYEES to maintain cordless communication devices in order to receive and respond to
20 work-related communications during what was supposed to be their off-duty rest breaks.
21 PLAINTIFFS and other AGGRIEVED EMPLOYEES were also not provided with one-hour
22 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS'
23 inadequate staffing, PLAINTIFFS and other AGGRIEVED EMPLOYEES were from time to
24 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

25 **C. Unreimbursed Business Expenses**

26 25. DEFENDANTS as a matter of corporate policy, practice, and procedure,
27 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFFS
28 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the

1 PLAINTIFFS and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
2 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are
3 required to indemnify employees for all expenses incurred in the course and scope of their
4 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
5 employee for all necessary expenditures or losses incurred by the employee in direct consequence
6 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
7 even though unlawful, unless the employee, at the time of obeying the directions, believed them
8 to be unlawful."

9 26. In the course of their employment, DEFENDANTS required PLAINTIFFS and
10 other AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell
11 phones, vehicles, computers, and internet connection as a result of and in furtherance of their job
12 duties. Specifically, PLAINTIFFS and other AGGRIEVED EMPLOYEES were required to use
13 their own cell phones, vehicles, computers, and internet connection in order to perform work
14 related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFFS and other
15 AGGRIEVED EMPLOYEES for the personal expenses incurred for the use of their personal cell
16 phones, vehicles, computers, and internet connection. As a result, in the course of their
17 employment with DEFENDANTS, the PLAINTIFFS and other AGGRIEVED EMPLOYEES
18 incurred unreimbursed business expenses that included, but were not limited to, costs related to
19 the use of their personal cell phones, vehicles, computers, and internet connection all on behalf of
20 and for the benefit of DEFENDANT.

21 **D. Wage Statement Violations**

22 27. California Labor Code Section 226 required an employer to furnish its employees
23 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
24 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
25 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
26 name of the employee and only the last four digits of the employee's social security number or an
27 employee identification number other than a social security number, (8) the name and address of
28

1 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.

3 28. From time to time during the PAGA PERIOD, when PLAINTIFFS and other
4 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
5 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
6 to provide PLAINTIFFS and other AGGRIEVED EMPLOYEES with complete and accurate
7 wage statements which failed to show, among other things, all deductions, the total hours worked
8 and all applicable hourly rates in effect during the pay period, and the corresponding amount of
9 time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and
10 rest periods.

11 29. Further, DEFENDANTS, from time to time, failed to provide PLAINTIFFS and
12 the AGGRIEVED EMPLOYEES with wage statements that provide all applicable hourly rates in
13 effect during the pay period and the corresponding number of hours worked at each hourly rate
14 by the employee, in violation of Cal. Lab. Code § 226(a)(9).

15 30. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
16 PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
17 Lab. Code § 226.

18 31. As a result, DEFENDANTS issued PLAINTIFFS and AGGRIEVED
19 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
20 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
21 to clerical or inadvertent mistake.

22 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

23 32. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and
24 continue to fail to accurately pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all hours
25 worked.

26 33. During the PAGA PERIOD, from time-to-time DEFENDANTS required
27 PLAINTIFFS and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This
28 resulted in PLAINTIFF and AGGRIEVED EMPLOYEES to have to work while off-the-clock.

1 34. DEFENDANTS directed and directly benefited from the undercompensated off-
2 the-clock work performed by PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

3 35. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
4 assignments, and employment conditions of PLAINTIFFS and AGGRIEVED EMPLOYEES.

5 36. DEFENDANT was able to track the amount of time PLAINTIFFS and
6 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document,
7 track, or pay PLAINTIFFS and AGGRIEVED EMPLOYEES all wages earned and owed for all
8 the work they performed.

9 37. PLAINTIFFS and AGGRIEVED EMPLOYEES were non-exempt, exempt,
10 commission-based and/or piece-rate based employees subject to the requirements of the
11 California Labor Code.

12 38. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other
13 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
14 the off-the-clock work activities. Because PLAINTIFFS and AGGRIEVED EMPLOYEES
15 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
16 DEFENDANTS' policies and practices also deprived them of overtime pay.

17 39. DEFENDANTS knew or should have known that PLAINTIFFS and
18 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

19 40. As a result, PLAINTIFFS and AGGRIEVED EMPLOYEES forfeited wages due
20 to them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent
21 working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
22 PLAINTIFFS and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
23 applicable law is evidenced by DEFENDANTS' business records.

24 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
25 **and Redeemed Sick Pay**

26 41. From time to time during the PAGA PERIOD, DEFENDANTS failed and
27 continues to fail to accurately calculate and pay PLAINTIFFS and other AGGRIEVED
28 EMPLOYEES for their overtime and double time hours worked, meal and rest period premiums,

1 and redeemed sick pay. As a result, PLAINTIFFS and the other AGGRIEVED EMPLOYEES
2 forfeited wages due to them for working overtime without compensation at the correct overtime
3 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
4 DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and the AGGRIEVED
5 EMPLOYEES at the correct rate for all overtime and double time worked, meal and rest period
6 premiums, and redeemed sick pay in accordance with applicable law is evidenced by
7 DEFENDANTS' business records.

8 42. State law provides that employees must be paid overtime at one-and-one-half times
9 their "regular rate of pay." PLAINTIFFS and other AGGRIEVED EMPLOYEES were
10 compensated at an hourly rate plus commissions and/or non-discretionary incentive pay that was
11 tied to specific elements of an employee's performance and/or commissions.

12 43. The second component of PLAINTIFFS' and other AGGRIEVED EMPLOYEES'
13 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFFS
14 and other AGGRIEVED EMPLOYEES' incentive wages based on their performance for
15 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
16 basis with bonus compensation when the employees met the various performance goals set by
17 DEFENDANTS.

18 44. DEFENDANTS' non-discretionary commission and bonus program provided the
19 AGGRIEVED EMPLOYEES, including PLAINTIFFS, with commissions and/or bonus
20 compensation when the employees met the various performance goals set by DEFENDANTS.
21 However, when calculating the regular rate of pay, in those pay periods where PLAINTIFFS and
22 the AGGRIEVED EMPLOYEES worked overtime and earned non-discretionary bonus and/or
23 commission wages, DEFENDANTS failed to accurately include the non-discretionary bonus
24 compensation and/or commission wages as part of the employees' "regular rate of pay."

25 45. Management and supervisors described the bonus and commissions programs and
26 commission compensation program to potential and new employees as part of the compensation
27 package for new and used car salespersons including PLAINTIFFS and the AGGRIEVED
28 EMPLOYEES. As a matter of law, the incentive and commission compensation received by

1 PLAINTIFFS and other AGGRIEVED EMPLOYEES must be included and correctly calculated
2 into the “regular rate of pay” for purposes of overtime and double time compensation, meal and
3 rest period premium payments, and sick pay. DEFENDANTS’ failure to do so has resulted in
4 DEFENDANTS’ systematic underpayment of overtime and double time compensation, meal and
5 rest period premium payments, and sick pay to PLAINTIFFS and AGGRIEVED EMPLOYEES.
6 Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees
7 shall be calculated in the same manner as the regular rate of pay for the workweek in which the
8 employee uses paid sick time, whether or not the employee actually works overtime in that
9 workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive
10 compensation as part of the “regular rate of pay” for purposes of sick pay compensation was in
11 violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor
12 Code Sections 201, 202, 203 and/or 204.

13 46. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
15 matter of company policy, practice, and procedure, intentionally and knowingly failed to
16 compensate PLAINTIFFS and AGGRIEVED EMPLOYEES at the correct rate of pay for all
17 overtime and double time compensation, meal and rest period premium payments, and sick pay.
18 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
19 payment of the correct overtime and double time compensation, meal and rest period premium
20 payments, and sick pay as required by California law which allowed DEFENDANTS to illegally
21 profit and gain an unfair advantage over competitors who complied with the law. To the extent
22 equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
23 DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

24 **G. Commission and Piece-Rate Violations**

25 47. From time-to-time during the PAGA PERIOD, PLAINTIFFS and the
26 AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis. In
27 those instances where PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid in part on
28 a commission and/or piece-rate basis, PLAINTIFFS and the AGGRIEVED EMPLOYEES were

1 entitled to be separately compensated for all non-productive time at an hourly rate that is no less
2 than the applicable minimum wage. Notwithstanding, in those instances where PLAINTIFF and
3 the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis,
4 DEFENDANTS failed to separately compensate PLAINTIFFS and the AGGRIEVED
5 EMPLOYEES for all non-productive time, including but not limited to, paid rest periods, at an
6 hourly rate that is no less than the applicable minimum wage. As a result, PLAINTIFFS and
7 AGGRIEVED EMPLOYEES forfeited minimum wages and overtime wages by
8 DEFENDANTS' failure to separately compensate their non-productive time at an hourly rate
9 that is no less than the applicable minimum wage.

10 48. Further, from time-to-time during the PAGA PERIOD, DEFENDANTS
11 improperly misclassified PLAINTIFFS and the AGGRIEVED EMPLOYEES who were paid on
12 a draw versus commission basis as exempt from overtime compensation. During the PAGA
13 PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the
14 overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet
15 the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th
16 252-254.) As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES who were paid on a
17 draw versus commission basis forfeited overtime wages by DEFENDANTS' failure to
18 accurately classify them as non-exempt from overtime compensation.

19 **H. Unlawful Deductions**

20 49. DEFENDANTS, from time-to-time unlawfully deducted wages from
21 PLAINTIFFS and AGGRIEVED EMPLOYEES' pay without explanations and without
22 authorization to do so or notice to PLAINTIFFS and the AGGRIEVED EMPLOYEES. As a
23 result, DEFENDANTS violated Labor Code § 221.

24 **I. Timekeeping Manipulation**

25 50. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
26 immutable timekeeping system to accurately record and pay PLAINTIFFS and other
27 AGGRIEVED EMPLOYEES for the actual time PLAINTIFFS and AGGRIEVED
28 EMPLOYEES worked each day, including regular time, overtime hours, sick pay, meal and rest

1 breaks. As a result, DEFENDANTS were able to and did in fact, unlawfully, and unilaterally
2 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and other
3 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all hours worked,
4 applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest
5 breaks.

6 51. As a result, PLAINTIFFS and other AGGRIEVED EMPLOYEES, from time-to-
7 time, forfeited time worked by working without their time being accurately recorded and without
8 compensation at the applicable pay rates.

9 52. The mutability of the timekeeping system also allowed DEFENDANTS to alter
10 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
11 timekeeping system so as to create the appearance that PLAINTIFFS and other AGGRIEVED
12 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were
13 not at all times provided an off-duty meal break. This practice is a direct result of
14 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
15 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

16 53. As a result, PLAINTIFFS and AGGRIEVED EMPLOYEES forfeited wages due
17 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
18 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
19 PLAINTIFFS and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance
20 with applicable law is evidenced by DEFENDANTS' business records.

21 **J. Unlawful Rounding Practices**

22 54. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
23 timekeeping system to accurately record and pay PLAINTIFFS and AGGRIEVED
24 EMPLOYEES for the actual time these employees worked each day, including overtime hours.
25 Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted
26 in PLAINTIFFS and AGGRIEVED EMPLOYEES being undercompensated for all of their time
27 worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally
28 round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and the

1 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked,
2 including the applicable overtime compensation for overtime worked. As a result, PLAINTIFFS
3 and AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time
4 worked by working without their time being accurately recorded and without compensation at
5 the applicable overtime rates.

6 55. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
7 rounding policy and practice resulted in PLAINTIFFS and AGGRIEVED EMPLOYEES' time
8 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
9 policy and practice caused PLAINTIFFS and AGGRIEVED EMPLOYEES to perform work as
10 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
11 duty meal break.

12 **K. Violations for Untimely Payment of Wages**

13 56. Pursuant to California Labor Code section 204, PLAINTIFFS and the
14 AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their
15 employment. PLAINTIFFS and the AGGRIEVED EMPLOYEES, from time to time, did not
16 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
17 meal period premium wages, and rest period premium wages within permissible time period.

18 57. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
19 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant
20 to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall
21 become due and payable not later than 72 hours thereafter, unless the employee has given 72
22 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
23 or her wages at the time of quitting." PLAINTIFFS and the AGGRIEVED EMPLOYEES were,
24 from time to time, not timely provided the wages earned and unpaid at the time of their discharge
25 and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

26 58. As such, PLAINTIFFS demands up to thirty days of pay as penalty for not timely
27 paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose
28 employment ended during the PAGA PERIOD.

1 **L. Sick Pay Violations**

2 59. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
3 July 1, 2015, works in California for the same employer for 30 or more days within a year from
4 the commencement of employment is entitled to paid sick days as specified in this section.”
5 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From
6 time to time, DEFENDANTS failed to have a policy or practice in place that provided
7 PLAINTIFF and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

8 60. California Labor Code Section 246(i) requires an employer to furnish its
9 employees with written wage statements setting forth the amount of paid sick leave available.
10 From time to time, DEFENDANTS violated Cal. Lab. Code § 246 by failing to furnish
11 PLAINTIFF and AGGRIEVED EMPLOYEES with wage statements setting forth the amount of
12 paid sick leave available.

13 61. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to
14 take off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
15 PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more than five
16 (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed
17 to provide PLAINTIFFS with a second off-duty meal period each workday in which he was
18 required by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
19 PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on-duty and on-call for the
20 rest break. DEFENDANTS policy caused PLAINTIFFS to remain on-call and on-duty during
21 what was supposed to be his off-duty meal periods. PLAINTIFFS therefore forfeited meal and
22 rest breaks without additional compensation and in accordance with DEFENDANTS’ strict
23 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFFS with
24 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to
25 reimburse PLAINTIFFS for required business expenses related to the personal expenses incurred
26 for the use of her personal cell phone, vehicle, computer and home internet on behalf of and in
27 furtherance of his employment with DEFENDANTS. To date, DEFENDANTS have not fully
28 paid PLAINTIFFS the minimum, overtime and double time compensation still owed to him or

1 any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for
2 PLAINTIFFS individually does not exceed the sum or value of \$75,000.

3
4 **FIRST CAUSE OF ACTION**

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

6 **(Cal. Lab. Code §§2698 et seq.)**

7 **(Alleged by PLAINTIFFS on behalf of Aggrieved Employees against all DEFENDANTS)**

8 62. PLAINTIFFS realleges and incorporates by this reference, as though fully set forth
9 herein, the prior paragraphs of this Complaint.

10 63. PAGA is a mechanism by which the State of California itself can enforce state
11 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
12 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
13 fundamentally a law enforcement action designed to protect the public and not to benefit private
14 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
15 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
16 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
17 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
18 ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

19 64. At all relevant times, for the reasons described herein, and others, PLAINTIFFS
20 and the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
21 meaning of Labor Code Section 2699(c).

22 65. Labor Code Sections 2699(a) and (k) authorize an AGGRIEVED EMPLOYEE,
23 like PLAINTIFFS, on behalf of themselves and other current or former employees, to bring a civil
24 action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

25 66. PLAINTIFFS complied with the procedures for bringing suit specified in Labor
26 Code Section 2699.3. By certified letter, return receipt requested, dated October 16, 2024,
27 PLAINTIFFS gave written notice to the Labor and Workforce Development Agency ("LWDA")
28

1 and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated,
2 including the facts and theories to support the alleged violations. See Exhibit #1.

3 67. As of the date of this complaint, more than sixty-five (65) days after serving the
4 LWDA with notice of DEFENDANTS' violations, the LWDA has not provided any notice by
5 certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by
6 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
7 2699.3(a)(2)A, PLAINTIFFS may commence and is authorized to pursue this cause of action.

8 68. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFFS and the
9 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of
10 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
11 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199,
12 2802, and 2804 in the following amounts:

- 13 a. For violation of Labor Code Sections 201, 202, 203, and 204, up to (\$200) per
14 AGGRIEVED EMPLOYEE per pay period [penalty per Labor Code Section
15 2699(f)];
- 16 b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two
17 hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial
18 violation and one thousand dollars for each subsequent violation [penalty per
19 Labor Code Section 226.3];
- 20 c. For violations of Labor Code Sections 204, a civil penalty in the amount of one
21 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial
22 violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each
23 subsequent violation [penalty per Labor Code Section 210];
- 24 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the
25 amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for
26 the initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED
27 EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];
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1 e. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five
2 hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor
3 Code Section 1174.5].

4 f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil
5 penalty in the amount of one hundred dollars (\$100) per AGGRIEVED
6 EMPLOYEE per pay period for the initial violation and two hundred dollars fifty
7 (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent
8 violation [penalty per Labor Code Section].

9 69. For all provisions of the Labor Code for which civil penalty is not specifically
10 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of up to two hundred dollars
11 (\$200) for each AGGRIEVED EMPLOYEE per pay period. PLAINTIFFS and the AGGRIEVED
12 EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with
13 their claims for civil penalties pursuant to Labor Code Section 2699(k)(1).

14 **PRAYER FOR RELIEF**

15 WHEREFORE, PLAINTIFFS on behalf of the Aggrieved Employees prays for judgment
16 against DEFENDANTS as follows:

17 1. For reasonable attorney's fees and costs of suit to the extent permitted by law,
18 including, but not limited to pursuant to Labor Code § 2699, *et seq.*;

19 2. For civil penalties to the extent permitted by law pursuant to the Labor Code under
20 the Private Attorneys General Act; and

21 3. For such other relief as the Court deems just and proper.

22
23 DATED: _____, 2024

24 **BARVIE LAW, APC**

25 By: _____

26 Nicole Barvie
27 Attorney for PLAINTIFFS
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EXHIBIT #1

DRAFT