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Attorneys for Plaintiff, LINA BERKES,
as an aggrieved employee, and on behalf of all other
aggrieved employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LINA BERKES, as an aggrieved employee,
and on behalf of all other aggrieved employees
under the Labor Code Private Attorneys'
General Act of 2004,

Plaintiff,

v.

SOUTH BAY MOTORS, LLC. a California
limited liability company doing business as
"Audi Pacific", "Pacific Volkswagen",
"Porsche South Bay"; SULLIVAN
AUTOMOTIVE GROUP, LLC, a Delaware
Limited Liability Company; LACARGUY
WHOLESALE DIVISION, INC., a California
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: **25STCV00962**

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5, 1197.1
and 2699**

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$35,000.00]

COMES NOW plaintiff LINA BERKES ("Plaintiff"), as an aggrieved employee, and on
behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of
2004, and alleges as follows:

1 **JURISDICTION AND VENUE**

2 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
3 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), SOUTH BAY MOTORS,
4 LLC. A California limited liability company doing business as “Audi Pacific” “Pacific
5 Volkswagen”, and “Porsche South Bay” (“South Bay”), SULLIVAN AUTOMOTIVE GROUP,
6 LLC, a Delaware Limited Liability Company (“Sullivan”), LACARGUY WHOLESALE
7 DIVISION, INC., a California Corporation (“LACarGuy”), and any of their respective parents,
8 subsidiaries or affiliated companies within the State of California (collectively with DOES 1 through
9 100, as further defined below, are collectively hereinafter referred to as “Defendants”), as a proxy
10 of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf
11 of Plaintiff and all other current and former non-exempt employees of Defendants working within
12 the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure
13 to comply with Labor Code section 6400, *et seq.*, Labor Code section 2810.5, Labor Code section
14 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints
15 on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants
16 working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

17 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
18 of Civil Procedure section 410.10.

19 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
20 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
21 causes of action complained of herein arose; the county in which the employment relationship
22 began; the county in which performance of the employment contract, or part of it, between Plaintiff
23 and Defendants was due to be performed; the county in which the employment contract, or part of
24 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,
25 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
26 and Aggrieved Employees in Los Angeles County, and because Defendants employ numerous
27 Aggrieved Employees in Los Angeles County.

28 4. Plaintiff is informed and believes and based thereon alleges that, pursuant to

1 California Code of Civil Procedure section 395.5, Venue is proper in this judicial district and the
2 County of Los Angeles because Defendants transact business within this judicial district and conduct
3 alleged by Plaintiff herein occurred in this judicial district. (*See also Crestwood Behavioral Health,*
4 *Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 [venue in a PAGA action is proper in any county
5 where the defendants committed Labor Code violations against some of its employees].)

6 5. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
7 Defendants during the applicable statutory period and suffered one or more of the Labor Code
8 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
9 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
10 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
11 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
12 employees of Defendants during the Civil Penalty Period.

13 6. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
14 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
15 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
16 PAGA allegations described herein is not required.

17 7. During the period beginning one (1) year preceding the provision of notice to the
18 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
19 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210,
20 221, 223, 226, 226.3, 226.7, 232, 232.5, 246, *et seq.*, 432, 432.3, 432.5, 432.6, 510, 512, 558, 558.1,
21 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, 2810.5 and
22 6400, *et seq.*, among others.

23 8. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
24 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
25 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
26 specified in Labor Code section 2699.3.

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9. On or around November 8, 2024, Plaintiff provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

10. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the November 8, 2024 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

PAGA REPRESENTATIVE ALLEGATIONS

11. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other Aggrieved Employees working over eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without being paid proper overtime wages for all hours worked as a result of, including but not limited to, Defendants failing to accurately track and/or pay for all minutes and hours actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to perform pre-shift and post-shift tasks and/or make or response to telephone calls, emails and/or text messages off the clock; failing to include all forms of remuneration, including sales commissions and other incentive pay, into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; and working additional time on the 7th consecutive day of work, at times, without being paid for that time, to the detriment of Plaintiff and other Aggrieved Employees.

12. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control as a result of, without limitation, failing to accurately track and/or pay for all minutes and hours actually worked at their regular rate of pay that

1 is above the minimum wage; engaging, suffering, or permitting employees to work off the clock,
2 including, without limitation, by requiring employees: to perform pre-shift and post-shift tasks
3 and/or to make or respond to telephone calls, emails, and/or text messages off the clock; failing to
4 pay employees compensated on a piece-rate basis separately for rest and recovery periods and
5 nonproductive time separate from any piece-rate pay; failing to pay reporting time pay; accrued paid
6 time off and vacation time owed; and failing to pay split shift premiums, to the detriment of Plaintiff
7 and other Aggrieved Employees.

8 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
9 of failing to provide Plaintiff and other Aggrieved Employees a full, timely thirty (30) minute
10 uninterrupted meal period for days on which they worked more than five (5) hours in a work day
11 and a second thirty (30) minute uninterrupted meal period for days on which they worked in excess
12 of ten (10) hours in a work day, and failing to provide compensation for such unprovided meal
13 periods as required by California wage and hour laws.

14 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
15 of failing to authorize and permit Plaintiff and other Aggrieved Employees to take rest periods of at
16 least ten (10) minutes per four (4) hours worked or major fraction thereof, and failing to provide
17 compensation for such unprovided rest period as required by California wage and hour laws.

18 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
19 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
20 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
21 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
22 hourly rates in effect during the pay period and the corresponding number of hours worked at each
23 hourly rate by the employee; the legal name of the employer and/or the name and address of the legal
24 entity securing the employer's services; and other such information as required by Labor Code
25 section 226, subdivision (a).

26 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of failing to comply with Labor Code section 226, subdivision (a) by failing to keep adequate or
28 accurate time records including wage statements and similar payroll documents under Labor Code

1 section 226, intentionally failing to furnish Plaintiff and other Aggrieved Employees with
2 documents signed to obtain or hold employment under Labor Code section 432, personnel records
3 under Labor Code section 1198.5, and time records under Labor Code section 1174, making it
4 difficult for Plaintiff and other Aggrieved Employees to calculate their unpaid wages and/or
5 premium payments, to the detriment of Plaintiff and other Aggrieved Employees.

6 17. At all relevant times mentioned herein, Defendants had and have a policy or practice
7 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
8 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
9 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
10 Code sections 201, 202, and 203.

11 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
12 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
13 limitation, Plaintiff and other Aggrieved Employees, for the costs incurred in connection with the
14 use of their personal vehicle for work-related tasks (*i.e.*, gas and mileage costs), for the purchase
15 and maintenance of tools needed to perform their duties; for the purchase of drills to remove/replace
16 license plates, and for costs incurred in using their personal cell phones for work related activities,
17 in direct consequence of the discharge of their duties, or of their obedience to the directions of
18 Defendants, as required by Labor Code section 2802.

19 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
20 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
21 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
22 any calendar month shall be paid for between the 16th and 26th day of the month during which the
23 labor was performed, and labor performed between the 16th and the last day, inclusive of any
24 calendar month, shall be paid for between the 1st and 10th day of the following month" and for
25 payroll periods such as those that are weekly, biweekly, or semimonthly, wages must be paid within
26 seven (7) calendar days following the close of the payroll period in which wages were earned.

27 20. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge

1 and experience they obtained at Defendants for purposes of competing with Defendants, including,
2 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
3 a prospective employer, and from disclosing who else works at Defendants and under what
4 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
5 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
6 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
7 Code sections 232, 232.5, and 1197.5, subdivision (k).

8 21. Defendants had and have a policy or practice of preventing Plaintiff and/or other
9 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
10 to their managers or outside to private attorneys or government officials, among others, in violation
11 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
12 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
13 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
14 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
15 of Labor Code section 232 and 232.5.

16 22. Defendants had and have a policy or practice of preventing Plaintiff and/or other
17 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
18 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
19 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
20 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
21 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
22 economic liberty.

23 23. Defendants had and have a policy or practice of requiring, as a condition of
24 employment, its applicants or employees to waive any right, forum, or procedure for a violation of
25 any provision of the California Fair Employment and Housing Act or the Labor Code, including the
26 right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other
27 public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged
28 violation, in violation of Labor Code section 432.6. Based on information and belief, Defendants

1 knew that requiring such a condition was prohibited by law and as a result violated Labor Code
2 sections 432.5 and 432.6.

3 24. Defendants had and have a policy or practice of relying on the salary history
4 information of an applicant for employment as a factor in determining whether to offer employment
5 to an applicant or what salary to offer the applicant in violation of Labor Code section 432.3 by
6 including, on Defendants' application for employment, an inquiry regarding current and/or former
7 salary history information, including, without limitation, compensation and benefits of the applicant
8 for employment. As such, Plaintiff is informed and believes, and based thereon alleges, that
9 Defendants violated, without limitation, Labor Code section 432.3.

10 25. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
11 Code sections 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699 for the herein-described acts, which
12 violate the California Labor Code as described above, including on behalf of Plaintiff and other
13 Aggrieved Employees pursuant to PAGA.

14 **PARTIES**

15 **A. Plaintiff**

16 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
17 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
18 exempt employee, with duties that included, but were not limited to, but were not limited to, selling
19 vehicles, moving vehicles, and communicating with clients. Plaintiff is informed and believes, and
20 based thereon alleges, that Plaintiff is a current employee of Defendants and has worked for
21 Defendants since May of 2012.

22 **B. Defendants**

23 27. Plaintiff is informed and believes and based thereon alleges that defendant South Bay
24 is, and at all times relevant hereto was, a limited liability company duly organized, authorized, and
25 licensed to do business in the State of California. Plaintiff is further informed and believes, and
26 based thereon alleges, that South Bay is authorized to, and does in fact operate and do business in
27 the County of Los Angeles in the State of California. At all relevant times herein, defendant South
28 Bay employed Plaintiff and other aggrieved employees within the County of Los Angeles in the

1 State of California.

2 28. Plaintiff is informed and believes and based thereon alleges that defendant Sullivan
3 is, and at all times relevant hereto was, a limited liability company duly organized, authorized, and
4 licensed to do business in the State of California. Plaintiff is further informed and believes, and
5 based thereon alleges, that Sullivan is authorized to, and does in fact operate and do business in the
6 County of Los Angeles in the State of California. At all relevant times herein, defendant Sullivan
7 employed Plaintiff and other aggrieved employees within the County of Los Angeles in the State of
8 California.

9 29. Plaintiff is informed and believes and based thereon alleges that defendant
10 LACarGuy is, and at all times relevant hereto was, a corporation duly organized, authorized, and
11 licensed to do business in the State of California. Plaintiff is further informed and believes, and
12 based thereon alleges, that LACarGuy is authorized to, and does in fact operate and do business in
13 the County of Los Angeles in the State of California. At all relevant times herein, defendant
14 LACarGuy employed Plaintiff and other aggrieved employees within the County of Los Angeles in
15 the State of California.

16 30. Plaintiff is informed and believes and based thereon alleges that defendants South
17 Bay, Sullivan, and LACarGuy are, and at all times relevant hereto were, “person[s]” as defined in
18 Labor Code section 17 and Cal. Bus. & Prof. Code § 17201.

19 31. The true names and capacities, whether individual, corporate, associate, or otherwise,
20 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
21 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
22 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
23 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
24 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
25 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
26 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
27 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
28 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the

1 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
2 include South Bay, Sullivan, LACarGuy, and any of their parent, subsidiary, or affiliated companies
3 within the State of California, as well as DOES 1 through 100 identified herein.

4 **JOINT LIABILITY ALLEGATIONS**

5 32. Plaintiff is informed and believes, and based thereon alleges, that at all times
6 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
7 representative, joint venture or co-conspirator of each of the other defendants, either actually or
8 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
9 employment, joint venture, and conspiracy.

10 33. All of the acts and conduct described herein of each and every corporate and limited
11 liability company defendant was duly authorized, ordered, and directed by the respective and
12 collective defendant corporate and limited liability company employers, and the officers, members
13 and management-level employees of said corporate and limited liability company employers. In
14 addition thereto, said corporate and limited liability company employers participated in the
15 aforementioned acts and conduct of their said employees, agents, and representatives, and each of
16 them; and upon completion of the aforesaid acts and conduct of said corporate and limited liability
17 company employees, agents, and representatives, the defendant corporation and limited liability
18 company respectively and collectively ratified, accepted the benefits of, condoned, lauded,
19 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
20 aforementioned corporate and limited liability company employees, agents and representatives.

21 34. Plaintiff is informed and believes, and based thereon allege, that there exists such a
22 unity of interest and ownership between Defendants, and each of them, that their individuality and
23 separateness have ceased to exist.

24 35. Plaintiff is informed and believes, and based thereon alleges that despite the
25 formation of the purported business existence of South Bay, Sullivan, LACarGuy, and DOES 1
26 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same
27 with DOES 51 through 100 (“Individual Defendant”), and each of them due to, but not limited to,
28 the following reasons:

- 1 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
2 Defendants who personally committed the wrongful and illegal acts and violated the
3 laws as set forth in this Complaint, and who have hidden and currently hide behind
4 the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish
5 some other wrongful or inequitable purpose;
- 6 B. The Individual Defendants derive actual and significant monetary benefits by and
7 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
8 Defendants as the funding source for the Individual Defendants' own personal
9 expenditures;
- 10 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
11 and the Alter Ego Defendants, while really one and the same, were segregated to
12 appear as though separate and distinct for purposes of perpetrating a fraud,
13 circumventing a statute, or accomplishing some other wrongful or inequitable
14 purpose;
- 15 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
16 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
17 mentioned herein were, so mixed and intermingled that the same cannot reasonably
18 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
19 are, and at all relevant times mentioned herein were, used by the Individual
20 Defendants as mere shells and conduits for the conduct of certain of their, and each
21 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
22 herein were, the alter egos of the Individual Defendants;
- 23 E. The recognition of the separate existence of the Individual Defendants and the Alter
24 Ego Defendants would promote injustice insofar that it would permit defendants to
25 insulate themselves from liability to Plaintiff and Aggrieved Employees for
26 violations of the Civil Code, Labor Code, and other statutory violations. The
27 corporate and/or limited liability existence of these defendants should thus be
28 disregarded in equity and for the ends of justice because such disregard is necessary

1 to avoid fraud and injustice to Plaintiff and Aggrieved Employees herein;

2 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
3 Defendants (and vice versa), and the fiction of their separate corporate existence must
4 be disregarded;

5 36. As a result of the aforementioned facts, among others, Plaintiff is informed and
6 believes, and based thereon alleges, that the Individual Defendants, the Alter Ego Defendants, and
7 each of them, are joint employers by virtue of a joint enterprise, and that Plaintiff was an employee
8 of the Alter Ego Defendants and the Individual Defendants. Plaintiff performed services for each
9 and every defendant, and to the mutual benefit of all defendants, and all defendants shared control
10 of Plaintiff, either directly or indirectly, and in the manner in which defendants' business was and
11 is conducted.

12 **FIRST CAUSE OF ACTION**

13 **(Violation of PAGA – Against All Defendants)**

14 37. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
15 and incorporates each by reference as though fully set forth hereat.

16 **Civil Penalties Under Labor Code § 210**

17 38. At all relevant times herein, Labor Code section 204, requires and required that:
18 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
19 between the 16th and 26th day of the month during which the labor was performed, and labor
20 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
21 between the 1st and 10th day of the following month” and for payroll periods such as those that are
22 weekly, biweekly, or semimonthly, wages must be paid within seven (7) calendar days following
23 the close of the payroll period in which wages were earned.

24 39. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
25 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
26 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
27 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
28 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For

1 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
2 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

3 40. At all relevant times herein, Defendants have had a consistent policy or practice of
4 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
5 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
6 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
7 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
8 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
9 for each subsequent violation in connection with each payment that was made in violation of Labor
10 Code section 204.

11 Civil Penalties Under Labor Code § 226.3

12 41. Defendants had and have a policy or practice of failing to comply with Labor Code
13 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
14 with itemized wage statements that accurately reflect: reflect gross wages earned; total hours
15 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate; and other such information as required
17 by Labor Code section 226, subdivision (a).

18 42. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
19 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
20 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
21 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
22 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

23 43. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
24 this section are in addition to any other penalty provided by law.”

25 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
26 and have a policy or practice of failing to furnish non-exempt employees, including, without
27 limitation, Plaintiff, itemized wage statements that accurately reflect: reflect gross wages earned;
28 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and

1 the corresponding number of hours worked at each hourly rate; and other such information as
2 required by Labor Code section 226, subdivision (a).

3 45. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
4 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
5 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
6 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
7 period for each subsequent violation.

8 Violation of Labor Code § 558

9 46. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
10 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
11 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
12 penalty as follows:

13 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and
14 for each pay period for which the employee was underpaid in addition to an amount sufficient to
15 recover underpaid wages;

16 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
17 employee for each pay period for which the employee was underpaid in addition to an amount
18 sufficient to recover underpaid wages;

19 (3) Wages recovered pursuant to this section shall be paid to the affected
20 employee.

21 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
22 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
23 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum
24 wages, receive meal and rest periods or compensation in lieu thereof, be paid timely wages during
25 their employment and after their employment separation, receive accurate, itemized wage
26 statements, to be provided with the opportunity to inspect employment records, be provided with
27 notice as required under Labor Code section 2810.5, be provided with the proper accrual and use of
28 paid sick leave, and/or be paid out all paid time off and/or vested vacation wages owed at the proper

1 rate of pay.

2 48. As a direct and proximate result of the herein-described Labor Code violations,
3 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
4 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars
5 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
6 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

7 Violation of Labor Code § 1174.5

8 49. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
9 every person employing labor in California to "[a]llow any member of the commission or the
10 employees of the Division of Labor Standards Enforcement free access to the place of business or
11 employment of the person to secure any information or make any investigation that they are
12 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
13 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
14 or papers of the person."

15 50. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
16 every person employing labor in California to "[k]eep a record showing the names and addresses of
17 all employees employed and the ages of all minors."

18 51. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
19 every person employing labor in California to "[k]eep, at a central location in the state or at the
20 plants or establishments at which employees are employed, payroll records showing the hours
21 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
22 piece rate paid to, employees employed at the respective plants or establishments. These records
23 shall be kept in accordance with rules established for this purpose by the commission, but in any
24 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
25 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
26 earned."

27 52. Pursuant to Labor Code section 1174.5, "[a]ny person employing labor who willfully
28 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate

1 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
2 member of the commission or employees of the division to inspect records pursuant to subdivision
3 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

4 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
5 willfully failed keep adequate or accurate time records including wage statements and similar
6 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
7 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
8 under Labor Code section 1174.

9 54. As a direct and proximate result of the herein-described Labor Code violations,
10 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
11 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
12 hundred dollars (\$500) per violation per Aggrieved Employee.

13 Violation of Labor Code § 1197.1

14 55. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other
15 person acting either individually or as an officer, agent, or employee of another person, who pays
16 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
17 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
18 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
19 Section 203 as follows:

20 A. For any initial violation that is intentionally committed, one hundred dollars (\$100)
21 for each underpaid employee for each pay period for which the employee is underpaid. This amount
22 shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant
23 to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

24 B. For each subsequent violation for the same specific offense, two hundred fifty dollars
25 (\$250) for each underpaid employee for each pay period for which the employee is underpaid
26 regardless of whether the initial violation is intentionally committed. This amount shall be in
27 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
28 1194.2, and any applicable penalties imposed pursuant to Section 203.

1 C. Wages, liquidated damages, and any applicable penalties imposed pursuant to
2 Section 203, recovered pursuant to this section shall be paid to the affected employee.”

3 56. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
4 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
5 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ to pay minimum wages
6 for all hours worked or otherwise under Defendants’ control due to, without limitation, failing to
7 accurately track and/or pay for all minutes and hours actually worked at their regular rate of pay that
8 is above the minimum wage; engaging, suffering, or permitting employees to work off the clock,
9 including, without limitation, by requiring employees: to perform pre-shift and post-shift tasks
10 and/or to make or respond to telephone calls, emails, and/or text messages off the clock; failing to
11 pay employees compensated on a piece-rate basis separately for rest and recovery periods and
12 nonproductive time separate from any piece-rate pay; failing to pay reporting time pay; accrued paid
13 time off and vacation time owed; and failing to pay split shift premiums, entitling Plaintiff and other
14 Aggrieved Employees to actual and liquidated damages.

15 57. As a direct and proximate result of the herein-described Labor Code violations,
16 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
17 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
18 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
19 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
20 subsequent violation.

21 Civil Penalties Under Labor Code § 2699

22 58. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
23 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
24 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
25 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
26 action brought by an aggrieved employee on behalf of himself or herself and other current or former
27 employees pursuant to the procedures specified in Labor Code section 2699.3.

28 59. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor

1 Code except those for which a civil penalty is specifically provided, the established civil penalty for
2 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
3 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
4 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
5 employee per pay period for each subsequent violation.

6 60. Moreover, Plaintiff and other Aggrieved Employees within the State of California
7 whom she seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
8 connection with their herein-described claims for civil penalties.

9 **REQUEST FOR JURY TRIAL**

10 A. Plaintiff hereby requests a trial by jury.

11 **PRAYER**

12 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for
13 judgment against Defendants as follows:

- 14 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
15 558.1, 1174.5, 1197.1, and 2699;
- 16 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
17 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699;
- 18 C. Pre-judgment and post-judgment interest;
- 19 D. For costs of suit incurred herein; and
- 20 E. Such other and further relief as the Court deems just and proper.

21 Dated: January 14, 2025

J. GILL LAW GROUP, P.C.

22
23 BY: /s/ Jasmin K. Gill

24 JASMIN K. GILL
YAFFA YERMIAN

25 Attorneys for Plaintiff LINA BERKES, as an
26 aggrieved employee, and on behalf of all other
27 aggrieved employees under the Labor Code
28 Private Attorneys' General Act of 2004,