

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
Rachel Newman (State Bar #350826)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com
rachel@zakaylaw.com

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ZAID MAHROOM, an individual, in his
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiffs,

v.

RUSICH BROTHERS ENTERPRISES, INC.
dba VALLEY KIA and VALLEY AUTO
CENTER, a California corporation; and DOES
1-50, Inclusive,

Defendants.

Case No: CIVSB2405284

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

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

1 PLAINTIFF ZAID MAHROOM (“PLAINTIFF”), an individual, in his representative
2 capacity on behalf of the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *infra*, against RUSICH BROTHERS ENTERPRISES, INC. dba VALLEY
4 KIA and VALLEY AUTO CENTER (“DEFENDANT” and/or “DEFENDANTS”), alleges on
5 information and belief, except for his own acts and knowledge which are based on personal
6 knowledge, the following:

7 **INTRODUCTION**

8 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys
9 General Act of 2004, California Labor Code § 2698, et seq. (“PAGA”) on behalf of other current
10 and former aggrieved employees of DEFENDANTS for engaging in a pattern and practice of
11 wage and hour violations under the California Labor Code.

12 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
13 decreased their employment-related costs by systematically violating California wage and hour
14 laws.

15 3. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order
16 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

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

27 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of
28 all current and former aggrieved employees of DEFENDANTS in California seeking all civil
penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

5. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

THE PARTIES

6. Defendant RUSICH BROTHERS ENTERPRISES, INC. dba VALLEY KIA and VALLEY AUTO CENTER (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

7. DEFENDANT owns and operates car dealerships, including the county of San Bernardino, where PLAINTIFF worked.

8. PLAINTIFF was employed by DEFENDANT in California from December of 2022 to July of 2023 as a non-exempt employee, paid in part an hourly wage, commission-based compensation, non-discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

9. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to all current and former non-exempt, exempt, commission-based and/or piece-rate based employees employed by DEFENDANT in California (the "AGGRIEVED EMPLOYEES") during the time period of February 9, 2023, until the present ("PAGA PERIOD").

10. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code § 2699(c) because he was employed by DEFENDANTS and suffered one or more of the alleged Labor Code violations committed by DEFENDANTS.

11. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code and the applicable Industrial Welfare Commission Wage Order.

12. Each of the fictitiously named defendant participated in the acts alleged in this Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting

1 forth the true names and capacities of these fictitiously named Defendants when their true names
2 are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the
3 fictitious Defendants have participated in the acts alleged in this Complaint.

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

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

16 **JOINT EMPLOYER**

17 15. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to
18 enforce any provision of the California Labor Code that provides for a civil penalty. (Lab. Code
19 § 2699(a).)

20 16. Section 558 of the California Labor Code provides that “any employer or other
21 person acting on behalf of an employer who violates, or causes to be violated, a section of this
22 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
23 Commissions shall be subject to a civil penalty...” (Lab. Code § 558(a).);

24 17. Section 1197.1 of the Labor Code provides that “[a]ny employer or other person
25 acting either individually or as an officer, agent, or employee of another person, who pays or
26 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
27 local law, or by an order of the commission shall be subject to a civil penalty...” (Lab. Code §
28 1197.1(a).)

1 18. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have
2 held that a corporate employer's owners, officers and directors, are subject to civil penalties for
3 the employer's failure to pay appropriate wages to its employees, and, since liability under either
4 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings
5 are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez*
6 *v. Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
7 Cal.App.4th 1112, 1145-1146.

8 19. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS,
9 and each of them, are subject to civil penalties for their failure to pay PLAINTIFF and the
10 aggrieved employees the appropriate wages as complained of herein and proximately caused the
11 complaints, injuries, and damages alleged herein.

12 20. At all relevant times, each Defendant, whether named or fictitious, was the agent,
13 employee or other person acting on behalf of each other Defendant, and, in participating in the
14 acts alleged in this Complaint, acted within the scope of such agency or employment and ratified
15 the acts of the other.

16 21. Each Defendant, whether named or fictitious, exercised control over
17 PLAINTIFF's wages, working hours, and/or working conditions.

18 22. Each Defendant, whether named or fictitious, acted in all respects pertinent to this
19 action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or
20 policy, and the acts of each Defendant are legally attributable to the other DEFENDANT.

21 **JURISDICTION AND VENUE**

22 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
23 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
24 Court has jurisdiction over PLAINTIFF'S claims for civil penalties under the Private Attorney
25 General Act of 2004, California Labor Code §2698, *et seq.*

26 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, reside
28 in this County, and DEFENDANTS (i) currently maintain and at all relevant times maintained

1 offices and facilities in this County and/or conduct substantial business in this County, and (ii)
2 committed the wrongful conduct herein alleged in this County against PLAINTIFF and
3 AGGRIEVED EMPLOYEES.

4 **THE CONDUCT**

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

23 **A. Meal Period Violations**

24 26. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. From time to time during the PAGA
28 PERIOD, DEFENDANT required PLAINTIFF and The AGGRIEVED EMPLOYEES to work

1 without paying them for all the time they were under DEFENDANT's control. Specifically,
2 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
3 PLAINTIFF'S off-duty meal break due to PLAINTIFF's rigorous work schedule and
4 DEFENDANT's understaffing. PLAINTIFF was from time to time interrupted by work
5 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. As
6 a result, the PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited minimum wage and
7 overtime compensation by regularly working without their time being accurately recorded and
8 without compensation at the applicable minimum wage and overtime rates. DEFENDANT's
9 uniform policy and practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all
10 time worked is evidenced by DEFENDANT's business records.

11 27. From time to time during the PAGA PERIOD, as a result of their rigorous work
12 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and the AGGRIEVED
13 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
14 were not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED
15 EMPLOYEES are required to perform work as ordered by DEFENDANT for more than five (5)
16 hours during some shifts without receiving a meal break. Further, DEFENDANT fails to provide
17 PLAINTIFF and the AGGRIEVED EMPLOYEES with a second off-duty meal period for some
18 workdays in which these employees are required by DEFENDANT to work ten (10) hours of
19 work. The nature of the work performed by PLAINTIFF and the AGGRIEVED EMPLOYEES
20 does not qualify for the limited and narrowly construed "on-duty" meal period exception. When
21 they were provided with meal periods, PLAINTIFF and the AGGRIEVED EMPLOYEES were,
22 from time to time, required to remain on premises, on duty and on call. DEFENDANT's failure
23 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES Members with legally required
24 meal breaks is evidenced by DEFENDANT's business records. PLAINTIFF and the
25 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and
26 in accordance with DEFENDANT's strict corporate policy and practice.

27 **B. Rest Period Violations**
28

1 28. During the PAGA PERIOD, from time to time, PLAINTIFF and AGGRIEVED
2 EMPLOYEES were also required to work in excess of four (4) hours without being provided ten
3 (10) minute rest periods. Further, these employees were denied their first rest periods of at least
4 ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second
5 rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
6 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked
7 of ten (10) hours or more. When they did have an opportunity to take their rest breaks,
8 PLAINTIFF and the AGGRIEVED EMPLOYEES were often interrupted and required by
9 DEFENDANTS to work during their rest breaks. When they were provided with rest breaks,
10 PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time to time, required to remain
11 on premises, on duty and/or on call. PLAINTIFF and the AGGRIEVED EMPLOYEES were also
12 not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and
13 DEFENDANT's inadequate staffing, PLAINTIFF and the AGGRIEVED EMPLOYEES were
14 from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's
15 managers.

16 **C. Unreimbursed Business Expenses**

17 29. DEFENDANT as a matter of corporate policy, practice, and procedure,
18 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
19 and the AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF
20 and AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
21 DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify
22 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code
23 § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
24 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
25 her duties, or of his or her obedience to the directions of the employer, even though unlawful,
26 unless the employee, at the time of obeying the directions, believed them to be unlawful."

27 30. In the course of their employment, DEFENDANT required PLAINTIFF and
28 AGGRIEVED EMPLOYEES to use their personal cell phones and personal vehicles as a result

1 of and in furtherance of their job duties, including but not limited to sending and receiving work-
2 related communications from DEFENDANT and DEFENDANT's clients and using personal
3 vehicles to deliver paperwork to DEFENDANT and DEFENDANT's clients and to provide
4 transportation to DEFENDANT. However, DEFENDANT unlawfully failed to reimburse
5 PLAINTIFF and AGGRIEVED EMPLOYEES for the use of their personal cell phones and
6 personal vehicles. As a result, in the course of their employment with DEFENDANT, the
7 PLAINTIFF and AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that
8 included, but were not limited to, costs related to the use of their personal cell phones and personal
9 vehicles.

10 **D. Commission and Piece-Rate Violations**

11 31. From time-to-time during the PAGA PERIOD, PLAINTIFF and the
12 AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis. In those
13 instances where PLAINTIFF and the AGGRIEVED EMPLOYEES were paid in part on a
14 commission and/or piece-rate basis, PLAINTIFF and the AGGRIEVED EMPLOYEES were
15 entitled to be separately compensated for all non-productive time at an hourly rate that is no less
16 than the applicable minimum wage. Notwithstanding, in those instances where PLAINTIFF and
17 the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis,
18 DEFENDANT failed to separately compensate PLAINTIFF and the AGGRIEVED
19 EMPLOYEES for all non-productive time, including but not limited to, paid rest periods, at an
20 hourly rate that is no less than the applicable minimum wage. As a result, PLAINTIFF and the
21 AGGRIEVED EMPLOYEES forfeited minimum wages and overtime wages by DEFENDANT'S
22 failure to separately compensate their non-productive time at an hourly rate that is no less than
23 the applicable minimum wage.

24 32. Further, from time-to-time during the PAGA PERIOD, DEFENDANTS
25 improperly misclassified PLAINTIFF and the AGGRIEVED EMPLOYEES who were paid on a
26 draw versus commission basis as exempt from overtime compensation. During the PAGA
27 PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the
28 overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet

1 the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-
2 254.) As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES who were paid on a draw
3 versus commission basis forfeited overtime wages by DEFENDANTS' failure to accurately
4 classify them as non-exempt from overtime compensation.

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

6 33. During the PAGA PERIOD, from time-to-time DEFENDANT failed and
7 continues to fail to accurately pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all hours
8 worked.

9 34. During the PAGA PERIOD, from time-to-time DEFENDANT required
10 PLAINTIFF and the AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This
11 resulted in PLAINTIFF and the AGGRIEVED EMPLOYEES having to work while off-the-clock.

12 35. DEFENDANT directed and directly benefited from the undercompensated off-the-
13 clock work performed by PLAINTIFF and the AGGRIEVED EMPLOYEES.

14 36. DEFENDANT controlled the work schedules, duties, and protocols, applications,
15 assignments, and employment conditions of PLAINTIFF and the AGGRIEVED EMPLOYEES.

16 37. DEFENDANT was able to track the amount of time PLAINTIFF and the
17 AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track,
18 or pay PLAINTIFF and the AGGRIEVED EMPLOYEES all wages earned and owed for all the
19 work they performed.

20 38. PLAINTIFF and the AGGRIEVED EMPLOYEES were non-exempt employees,
21 subject to the requirements of the California Labor Code.

22 39. DEFENDANT's policies and practices deprived PLAINTIFF and the
23 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
24 the off-the-clock work activities. Because PLAINTIFF and the AGGRIEVED EMPLOYEES
25 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
26 DEFENDANT's policies and practices also deprived them of overtime pay.

27 40. DEFENDANT knew or should have known that PLAINTIFF and the
28 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

1 41. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited wages due
2 to them for all hours worked at DEFENDANT's direction, control, and benefit for the time spent
3 working while off-the-clock. DEFENDANT's uniform policy and practice to not pay PLAINTIFF
4 and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable
5 law is evidenced by DEFENDANT's business records.

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

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

12 43. DEFENDANTS' non-discretionary commission and bonus program provided the
13 AGGRIEVED EMPLOYEES, including PLAINTIFF, with commissions and/or bonus
14 compensation when the employees met the various performance goals set by DEFENDANT.
15 However, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and
16 the AGGRIEVED EMPLOYEES worked overtime and earned non-discretionary bonus and/or
17 commission wages, DEFENDANT failed to accurately include the non-discretionary bonus
18 compensation and/or commission wages as part of the employees' "regular rate of pay."

19 44. Management and supervisors described the bonus and commissions programs and
20 commission compensation program to potential and new employees as part of the compensation
21 package for new and used car salespersons including PLAINTIFF and the AGGRIEVED
22 EMPLOYEES. As a matter of law, the incentive and commission compensation received by
23 PLAINTIFF and AGGRIEVED EMPLOYEES must be included and correctly calculated into the
24 "regular rate of pay" for purposes of overtime and double time compensation, meal and rest period
25 premium payments, and sick pay. DEFENDANT's failure to do so has resulted in
26 DEFENDANT's systematic underpayment of overtime and double time compensation, meal and
27 rest period premium payments, and sick pay to PLAINTIFF and AGGRIEVED EMPLOYEES.
28 Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees

1 shall be calculated in the same manner as the regular rate of pay for the workweek in which the
2 employee uses paid sick time, whether or not the employee actually works overtime in that
3 workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive
4 compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in
5 violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor
6 Code Sections 201, 202, 203 and/or 204.

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

18 **G. Wage Statement Violations**

19 46. California Labor Code Section 226 requires an employer to furnish its employees
20 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
21 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
22 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
23 of the employee and only the last four digits of the employee's social security number or an
24 employee identification number other than a social security number, (8) the name and address of
25 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
26 period and the corresponding number of hours worked at each hourly rate by the employee.

27 47. From time to time during the PAGA PERIOD, DEFENDANT furnished
28 PLAINTIFF and the AGGRIEVED EMPLOYEES written wage statements that failed to

1 accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units
2 earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect
3 during the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation,
5 and the gross wages paid for those periods during the pay period, and (7) the total hours of other
6 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
7 pay period.

8 48. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
9 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply
10 with Cal. Lab. Code § 226.

11 49. As a result, DEFENDANT issued PLAINTIFF and the AGGRIEVED
12 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's
13 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
14 to clerical or inadvertent mistake.

15 **H. Unlawful Rounding Practices**

16 50. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
17 timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED EMPLOYEES
18 for the actual time these employees worked each day, including overtime hours. Specifically,
19 DEFENDANTS had in place an unlawful rounding policy and practice that resulted in
20 PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated for all of their time
21 worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally
22 round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and the
23 members of AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their
24 time worked, including the applicable overtime compensation for overtime worked. As a result,
25 PLAINTIFF and AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for
26 their time worked by working without their time being accurately recorded and without
27 compensation at the applicable overtime rates.

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

7 **I. Timekeeping Manipulation**

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

17 53. As a result, PLAINTIFF and other members of AGGRIEVED EMPLOYEES,
18 from time-to-time, forfeited time worked by working without their time being accurately recorded
19 and without compensation at the applicable pay rates.

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

27 55. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due
28 them for all hours worked at DEFENDANTS' direction, control, and benefit for the time the

1 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
2 PLAINTIFF and the members of AGGRIEVED EMPLOYEES wages for all hours worked in
3 accordance with applicable law is evidenced by DEFENDANTS' business records.

4 **J. Violations for Untimely Payment of Wages**

5 56. Pursuant to California Labor Code section 204, PLAINTIFF and the
6 AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their employment.
7 PLAINTIFF and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment
8 of all wages, including, but not limited to, overtime wages, minimum wages, meal period
9 premium wages, and rest period premium wages within permissible time period.

10 57. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
11 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to
12 Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall become
13 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
14 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
15 wages at the time of quitting." PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time
16 to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at
17 the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

18 **K. Unlawful Deductions**

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

23 **L. Sick Pay Violations**

24 59. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
25 July 1, 2015, works in California for the same employer for 30 or more days within a year from
26 the commencement of employment is entitled to paid sick days as specified in this section."
27 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
28 From time to time, DEFENDANT failed to have a policy or practice in place that provided

1 PLAINTIFF and the AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

2 60. California Labor Code Section 246(i) requires an employer to furnish its
3 employees with written wage statements setting forth the amount of paid sick leave available.
4 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
5 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements setting forth the
6 amount of paid sick leave available.

7 **M. Failure to Provide Personnel Files**

8 61. On August 15, 2023 and September 22, 2023, PLAINTIFF caused written requests
9 via certified mail to be delivered to DEFENDANTS for PLAINTIFF'S personnel and
10 employment records, including but not limited to: (1) payroll records; (2) employment contracts;
11 (3) itemized pay stubs; and (4) PLAINTIFF'S complete employment file.

12 62. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
13 personnel records, payroll records, employment contract, and entire employment file within thirty
14 (30) days of his requests stated above. In fact, as of the date of filing of this complaint,
15 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
16 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
17 PLAINTIFF with his employment file. Section 1198.5 states that employees (and former
18 employees) have the right to inspect personnel records maintained by the employer "related to the
19 employee's performance or to any grievance concerning the employee." Employers must allow
20 inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled to and
21 requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory
22 penalty, and an award of attorneys' fees and costs for bringing this action.

23 63. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally
24 required off-duty meal breaks to him and paid rest periods to him as required by the applicable
25 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed
26 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him from
27 being relieved of all of his duties for the legally required off-duty meal periods. Further,
28 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday

1 in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result,
2 DEFENDANT'S failure to provide PLAINTIFFS with the legally required second off-duty meal
3 period is evidenced by DEFENDANT's business records. From time to time, and as a result of
4 DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay
5 minimum wages due for all time worked and separate compensation for rest breaks, the wage
6 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,
7 Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all
8 required business expenses including for the use of his personal cell phone and personal vehicle.
9 To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums
10 due to him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages
11 owed to him under California Labor Code Section 203. The amount in controversy for
12 PLAINTIFF individually does not exceed \$75,000.

13 **FIRST CAUSE OF ACTION**

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

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

16 **(Alleged by PLAINTIFF against all Defendants)**

17 64. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
18 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

19 65. PAGA is a mechanism by which the State of California itself can enforce state
20 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
21 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
22 fundamentally a law enforcement action designed to protect the public and not to benefit private
23 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
24 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
25 PAGA, the California Legislature specified that "it was ... in the public interest to allow
26 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor
27 Code violations ..." Stats. 2003, ch. 906, § 1.
28

1 66. PLAINTIFF brings this Representative Action on behalf of the State of California
2 with respect to all current and former AGGRIEVED EMPLOYEES employed by
3 DEFENDANTS during the PAGA PERIOD.

4 67. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
5 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
6 meaning of Labor Code Section 2699(c).

7 68. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
8 like PLAINTIFF, on behalf of all current or former employees, to bring a civil action to recover
9 civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

10 69. PLAINTIFF complied with the procedures for bringing suit specified in Labor
11 Code Section 2699.3. By certified letter, return receipt requested, dated February 9, 2024,
12 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)
13 and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated,
14 including the facts and theories to support the alleged violations. See Exhibit #1.

15 70. As of the date of this Complaint, more than sixty-five (65) days after serving the
16 LWDA with notice and amended notice of DEFENDANTS’ violations, the LWDA has not
17 provided any notice by certified mail of its intent to investigate the DEFENDANTS’ alleged
18 violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor
19 Code Section 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause
20 of action.

21 71. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
22 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of
23 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246,
24 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14 1198, 1199, 2802, and 2804 in the
25 following amounts:

26 a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars
27 (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and
28 two hundred dollars (\$200) for AGGRIEVED EMPLOYEE per pay period for each
subsequent violation [penalty per Labor Code Section 2699(f)(2)];

1 b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two
2 hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial violation
3 and one thousand dollars for each subsequent violation [penalty per Labor Code Section
4 226.3];

5 c. For violations of Labor Code Sections 204, a civil penalty in the amount of one
6 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and
7 two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent
8 violation [penalty per Labor Code Section 210];

9 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the
10 amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the
11 initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED
12 EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

13 e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two
14 hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial
15 citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each
16 subsequent violation [penalty per Labor Code Section 226.3];

17 f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five
18 hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code
19 Section 1174.5].

20 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil
21 penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per
22 pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED
23 EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code
24 Section].

25 72. For all provisions of the Labor Code for which civil penalty is not specifically
26 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars
27 (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two
28 hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent
violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of

1 reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant
2 to Labor Code Section 2699(g)(1).

3 73. To the extent that any of the conduct and violations alleged herein did not affect
4 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
5 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
6 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
7 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor
8 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
9 committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).)

10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

12 1. For reasonable attorney's fees and costs of suit to the extent permitted by law,
13 including pursuant to Labor Code § 2699, *et seq.*;

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

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

17 DATED: April 17, 2024

18 **JCL LAW FIRM, APC**

19 By: 

20 Jean-Claude Lapuyade
21 Attorney for PLAINTIFF
22
23
24
25
26
27
28

EXHIBIT 1



Client #

February 9, 2024

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

RUSICH BROTHERS ENTERPRISES, INC.
d/b/a VALLEY KIA and VALLEY AUTO CENTER

c/o Robert Morris
1200 California St., Ste #260
Redlands, CA 92374

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0951 5287 28

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s) and California Regulations, and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Zaid Mahroom (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant Rusich Brothers Enterprises, Inc., d/b/a Valley Kia and Valley Auto Center (“Defendant”). Plaintiff was employed by Defendants from December 2022 to July 2023, as a non-exempt employee, paid in part an hourly wage, received commission-based compensation, non-discretionary bonuses and entitled to payment of all minimum wages and the legally required breaks, among other things. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, failed to pay employees at the correct regular rate of pay, when applicable, failed to reimburse employees for necessary business expenditures and for all of their meal and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages and failed to provide Plaintiff and other aggrieved employees with compliant meal and rest breaks. Plaintiff further contends that Defendant failed to advise Plaintiff and the other aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiff and the other aggrieved employees for the non-productive time, including for their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 110. Further, Defendant improperly misclassified aggrieved employees who were paid on a draw versus commission basis as exempt from overtime compensation. Defendant included advanced draws in order to meet the salary-basis test for the overtime exemption. However, Defendant cannot rely on advanced draws in order to meet the salary-basis test for such an exemption. *See Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s) and California Regulations, and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt, exempt, commission-based and/or piece-rate based employees who worked for Defendants in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff 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 Plaintiff, (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 Defendants, 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. Plaintiff therefore incorporates 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.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff 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 Statute of 2004 on behalf of Plaintiff 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,

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line and a small flourish.

Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
Rachel Newman (State Bar #350826)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com
rachel@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ZAID MAHROOM, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

RUSICH BROTHERS ENTERPRISES, INC.
dba VALLEY KIA and VALLEY AUTO
CENTER, a California corporation; and DOES
1-50, Inclusive,

Defendants.

Case No: _____

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §17200 *et*
seq;
- 2) FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO REIMBURSE
8 EMPLOYEES FOR REQUIRED
9 EXPENSES IN VIOLATION OF
10 CALIFORNIA LABOR CODE §2802.

11 **DEMAND FOR A JURY TRIAL**

12 Plaintiff ZAID MAHROOM (“PLAINTIFF”), an individual, on behalf of himself and all other
13 similarly situated current and former employees, alleges on information and belief, except for his
14 own acts and knowledge which are based on personal knowledge, the following:

15 **THE PARTIES**

16 1. Defendant RUSICH BROTHERS ENTERPRISES, INC. dba VALLEY KIA and
17 VALLEY AUTO CENTER (“DEFENDANT” and/or “DEFENDANTS”) is a California
18 corporation that at all relevant times mentioned herein conducted and continues to conduct
19 substantial and regular business in the state of California.

20 2. DEFENDANT owns and operates car dealerships including in the county of San
21 Bernadino, where PLAINTIFF worked.

22 3. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
24 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
25 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the
26 true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
27 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
28 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter
collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one
or more of the events and happenings that proximately caused the injuries and damages
hereinafter alleged.

1 4. The agents, servants, and/or employees of the Defendants and each of them acting
2 on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as
3 the agent, servant and/or employee of the Defendant, and personally participated in the conduct
4 alleged herein on behalf of the Defendant with respect to the conduct alleged herein.
5 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
6 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
7 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
8 Defendants' agents, servants and/or employees.

9 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
10 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or
11 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
12 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
13 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
14 at all relevant times.

15 6. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
16 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
17 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
18 employee a wage less than the minimum fixed by California state law, and as such, are subject to
19 civil penalties for each underpaid employee.

20 7. PLAINTIFF was employed by DEFENDANTS in California from December of
21 2022 to July of 2023, paid in part an hourly wage, commission-based compensation, non-
22 discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal
23 and rest periods.

24 8. PLAINTIFF brings this Class Action on behalf of himself and a California class,
25 defined as all current and former non-exempt, exempt, piece-rate based, and/or commission-based
26 employees employed by DEFENDANTS in California ("CALIFORNIA CLASS") at any time
27 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
28 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the

1 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
2 (\$5,000,000.00).

3 9. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
4 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
5 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
6 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
7 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
8 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
9 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
10 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
11 other members of the CALIFORNIA CLASS who have been economically injured by
12 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
13 relief.

14 10. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
15 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
16 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

17 11. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
18 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
19 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
20 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and
21 equitable relief.

22 **JURISDICTION AND VENUE**

23 12. This has jurisdiction over this Action pursuant to California Code of Civil
24 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
25 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
26 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

27 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and

1 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities
2 in this County and/or conduct substantial business in this County, and (ii) committed the wrongful
3 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

4 **THE CONDUCT**

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

23 **A. Meal and Rest Period Violations**

24 15. Pursuant to the Industrial Welfare Commission Wage Orders and the California
25 Labor Codes, an employer shall not employ an employee for a work period of more than five (5)
26 hours per day without providing the employee with a meal period of not less than thirty (30)
27 minutes, except that if the total work period per day of the employee is no more than six (6) hours,
28 the meal period may be waived by mutual consent of both the employer and employee. An

1 employer shall not employ an employee for a work period of more than ten (10) hours per day
2 without providing the employee with a second meal period of not less than thirty (30) minutes,
3 except that if the total hours worked is no more than twelve (12) hours, the second meal period
4 may be waived by mutual consent of the employer and the employee only if the first meal period
5 was not waived. If an employer fails to provide an employee with a mandated meal period, the
6 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
7 compensation for each workday that the meal period is not provided.

8 16. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of
9 understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS
10 members were from time to time unable to take thirty (30) minute off duty meal breaks and were
11 not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS
12 Members were from time to time required to perform work as ordered by DEFENDANT for more
13 than five (5) hours during a shift without receiving an off-duty meal break. Further,
14 DEFENDANT from time-to-time failed to provide PLAINTIFF and CALIFORNIA CLASS
15 members with a second off-duty meal period from time to time in which these employees were
16 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and
17 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
18 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

19 17. Further, pursuant to the Industrial Welfare Commission Wage Orders,
20 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their
21 time worked, meaning the time during which an employee is subject to the control of an employer,
22 including all the time the employee suffered or permitted to work. DEFENDANT required
23 PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time
24 they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
25 to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due
26 to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was
27 from time to time interrupted by work assignments while clocked out for what should have been
28 PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS

1 members forfeited minimum wage and overtime compensation by regularly working without their
2 time being accurately recorded and without compensation at the applicable minimum wage and
3 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
4 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
5 records.

6 18. Pursuant to the Industrial Welfare Commission Wage Orders and the California
7 Labor Codes, an employer shall authorize and permit all employees to take a rest periods, which
8 so far as practical shall be in the middle of each work period. Generally, an employer must provide
9 ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails
10 to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at
11 the employee's regular rate of pay for each workday that the rest period is not provided.

12 19. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
13 CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4)
14 hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for
15 the same reasons, these employees were denied their first rest periods of at least ten (10) minutes
16 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
17 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
18 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
19 or more from time to time. As a result, PLAINTIFF and the other CALIFORNIA CLASS
20 Members were from time to time required to remain on on-duty and on-call during their rest
21 periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with
22 one-hour wages in lieu thereof.

23 **B. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
24 **Sick Pay**

25 20. State law provides that employees must be paid overtime at one-and-one-half times
26 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS were compensated at
27 an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific
28 elements of an employee's performance and/or commissions.

1 21. DEFENDANTS' non-discretionary commission and bonus program provided the
2 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation
3 when the employees met the various performance goals set by DEFENDANT. However, when
4 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA
5 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,
6 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
7 commission wages as part of the employees' "regular rate of pay."

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

24 23. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
26 matter of company policy, practice and procedure, intentionally and knowingly failed to
27 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
28 of pay for all overtime and double time compensation, meal and rest period premium payments,

1 and sick pay. This uniform policy and practice of DEFENDANTS is intended to purposefully
2 avoid the payment of the correct overtime and double time compensation, meal and rest period
3 premium payments, and sick pay as required by California law which allowed DEFENDANTS to
4 illegally profit and gain an unfair advantage over competitors who complied with the law. To the
5 extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against
6 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

7 **C. Commission and Piece-Rate Violations**

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

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

D. Off-the-Clock Minimum Wage and Overtime Violations

26. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control.

27. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary wages for attending for performing work at DEFENDANTS' direction, request, and benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business records.

28. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

29. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments, and employment conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS.

30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed, including pre-shift, post shift and during meal period off-the-clock work.

31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

1 32. DEFENDANTS’ policies and practices deprived PLAINTIFF and the other
2 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
3 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
4 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
5 hours per day, DEFENDANTS’ policies and practices also deprived them of overtime pay.

6 33. DEFENDANTS knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

8 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
9 forfeited wages due them for all hours worked at DEFENDANTS’ direction, control and benefit
10 for the time spent working while off-the-clock. DEFENDANTS’ uniform policy and practice to
11 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
12 in accordance with applicable law is evidenced by DEFENDANTS’ business records.

13 **E. Unreimbursed Business Expenses**

14 35. DEFENDANTS as a matter of corporate policy, practice, and procedure,
15 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
16 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and
17 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
18 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
19 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
20 Lab. Code § 2802 expressly states that “an employer shall indemnify his or her employee for all
21 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
22 of his or her duties, or of his or her obedience to the directions of the employer, even though
23 unlawful, unless the employee, at the time of obeying the directions, believed them to be
24 unlawful.”

25 36. In the course of their employment, DEFENDANTS required PLAINTIFF and
26 other CALIFORNIA CLASS Members to use their personal cell phones and personal vehicles as
27 a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use
28 of their own personal cell phones and personal vehicles, PLAINTIFF and the CALIFORNIA

1 CLASS Members could not complete their essential job duties, including but not limited to,
2 sending and receiving work-related communications from DEFENDANTS and DEFENDANTS'
3 clients and using personal vehicles to deliver paperwork to DEFENDANT and DEFENDANTS'
4 clients and to provide transportation to DEFENDANTS' . However, DEFENDANTS unlawfully
5 failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their use of their
6 personal cell phones and personal vehicles. As a result, in the course of their employment with
7 DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
8 unreimbursed business expenses, but were not limited to, costs related to the use of their personal
9 cellular phones and personal vehicles, all on behalf of and for the benefit of DEFENDANTS.

10 **F. Wage Statement Violations**

11 37. California Labor Code Sections 226 and 226.2 require an employer to furnish its
12 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total
13 hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
14 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
15 paid, (7) the name of the employee and only the last four digits of the employee's social security
16 number or an employee identification number other than a social security number, (8) the name
17 and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during
18 the pay period and the corresponding number of hours worked at each hourly rate by the
19 employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation,
20 and the gross wages paid for those periods during the pay period, and (11) the total hours of other
21 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
22 pay period.

23 38. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANT
24 furnished PLAINTIFF and the CALIFORNIA CLASS written wage statements that failed to
25 accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units
26 earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect
27 during the pay period and the corresponding number of hours worked at each hourly rate by the
28 employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation,

1 and the gross wages paid for those periods during the pay period, and (7) the total hours of other
2 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
3 pay period.

4 39. In addition to the violations described above, DEFENDANTS, from time to time,
5 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
6 that comply with Cal. Lab. Code § 226.

7 40. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS
8 with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS’
9 violations are knowing and intentional, were not isolated or due to an unintentional payroll error
10 due to clerical or inadvertent mistake.

11 **G. Violations for Untimely Payment of Wages**

12 41. Pursuant to California Labor Code section 204, PLAINTIFF and the
13 CALIFORNIA CLASS members were entitled to timely payment of wages during their
14 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
15 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
16 meal period premium wages, and rest period premium wages within permissible time period.

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

25 43. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
26 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
27 employment ended during the CLASS PERIOD.

28 **H. Timekeeping Manipulation**

1 44. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
2 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
3 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
4 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
5 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
6 unilaterally alter the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and
7 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
8 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
9 missed rest breaks.

10 45. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
11 time-to-time, forfeited time worked by working without their time being accurately recorded and
12 without compensation at the applicable pay rates.

13 46. The mutability of the timekeeping system also allowed DEFENDANT to alter
14 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's
15 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
16 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
17 were not at all times provided an off-duty meal break. This practice is a direct result of
18 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
19 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

20 47. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
21 forfeited wages due them for all hours worked at DEFENDANT'S direction, control and benefit
22 for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy and
23 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
24 hours worked in accordance with applicable law is evidenced by DEFENDANT'S business
25 records.

26 **I. Unlawful Rounding Practices**

27 48. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
28 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other

1 CALIFORNIA CLASS Members for the actual time these employees worked each day,
2 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
3 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
4 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
5 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
6 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
7 these employees for all their time worked, including the applicable overtime compensation for
8 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
9 time to time, forfeited compensation for their time worked by working without their time being
10 accurately recorded and without compensation at the applicable overtime rates.

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

17 **J. Sick Pay Violations**

18 50. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
19 July 1, 2015, works in California for the same employer for 30 or more days within a year from
20 the commencement of employment is entitled to paid sick days as specified in this section."
21 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From
22 time to time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF
23 and other members of the CALIFORNIA CLASS with sick days and/or paid sick leave.

24 51. California Labor Code Section 246(i) requires an employer to furnish its
25 employees with written wage statements setting forth the amount of paid sick leave available.
26 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF
27 and other members of the CALIFORNIA CLASS with wage statements setting forth the amount
28 of paid sick leave available.

1 **K. Unlawful Deductions**

2 52. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
3 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
4 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
5 DEFENDANTS violated Labor Code § 221.

6 **L. Failure to Provide Personnel Files**

7 53. On August 15, 2023 and September 22, 2023, PLAINTIFF caused written requests
8 via certified mail to be delivered to DEFENDANTS for PLAINTIFF'S personnel and
9 employment records, including but not limited to: (1) payroll records; (2) employment contracts;
10 (3) itemized pay stubs; and (4) PLAINTIFF'S complete employment file.

11 54. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
12 personnel records, payroll records, employment contract, and entire employment file within thirty
13 (30) days of his requests stated above. In fact, as of the date of filing of this complaint,
14 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
15 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
16 PLAINTIFF with his employment file. Section 1198.5 states that employees (and former
17 employees) have the right to inspect personnel records maintained by the employer "related to the
18 employee's performance or to any grievance concerning the employee." Employers must allow
19 inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled to and
20 requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory
21 penalty, and an award of attorneys' fees and costs for bringing this action.

22 55. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally
23 required off-duty meal breaks to him and paid rest periods to him as required by the applicable
24 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed
25 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him from
26 being relieved of all of his duties for the legally required off-duty meal periods. Further,
27 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
28 in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result,

1 DEFENDANT’S failure to provide PLAINTIFFS with the legally required second off-duty meal
2 period is evidenced by DEFENDANT’s business records. From time to time, and as a result of
3 DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay
4 minimum wages due for all time worked and separate compensation for rest breaks, the wage
5 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,
6 Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all
7 required business expenses including for the use of his personal cell phone and personal vehicle.
8 To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums
9 due to him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages
10 owed to him under California Labor Code Section 203. The amount in controversy for
11 PLAINTIFF individually does not exceed \$75,000.

12 **THE CALIFORNIA CLASS**

13 56. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
14 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class
15 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of all current and former non-exempt,
16 exempt, piece-rate based, and/or commission-based employees employed by DEFENDANT in
17 California ("CALIFORNIA CLASS") at any time during the period beginning four (4) years prior
18 to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS
19 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
20 Members is under five million dollars (\$5,000,000.00).

21 57. To the extent equitable tolling operates to toll claims by the CALIFORNIA
22 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
23 accordingly.

24 58. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
25 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
26 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
27 and illegal meal and rest period policies. Defendant further failed to reimburse for business
28 expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage

1 statements, and failed to maintain required records, and interest, statutory and civil penalties,
2 attorney's fees, costs, and expenses.

3 59. The members of the class are so numerous that joinder of all class members is
4 impractical.

5 60. Common questions of law and fact regarding DEFENDANTS' conduct, including
6 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to
7 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
8 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
9 minimum wage and overtime, exist as to all members of the class and predominate over any
10 questions affecting solely any individual members of the class. Among the questions of law and
11 fact common to the class are:

- 12 i. Whether DEFENDANTS maintained legally compliant meal period policies
13 and practices;
- 14 ii. Whether DEFENDANTS maintained legally compliant rest period policies
15 and practices;
- 16 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
17 CLASS Members accurate premium payments for missed meal and rest
18 periods;
- 19 iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
20 CLASS Members accurate overtime wages;
- 21 v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
22 CLASS Members at least minimum wage for all hours worked;
- 23 vi. Whether Defendants failed to compensate PLAINTIFF and the
24 CALIFORNIA CLASS Members for required business expenses;
- 25 vii. Whether DEFENDANTS issued legally compliant wage statements;
- 26 viii. Whether DEFENDANTS committed an act of unfair competition by
27 systematically failing to record and pay PLAINTIFF and the other members
28 of the CALIFORNIA CLASS for all time worked;

- ix. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- x. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

61. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

62. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same interests as the other members of the class.

63. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

64. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

65. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests of the other CALIFORNIA CLASS Members.

66. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

67. The questions of law and fact common to the CALIFORNIA CLASS Members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

68. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover,

1 since the damages suffered by individual members of the class may be relatively small, the
2 expense and burden of individual litigation makes it practically impossible for the members of the
3 class individually to redress the wrongs done to them. Without class certification and
4 determination of declaratory, injunctive, statutory and other legal questions within the class
5 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
6 create the risk of:

- 7 i. Inconsistent or varying adjudications with respect to individual members of the
8 CALIFORNIA CLASS which would establish incompatible standards of
9 conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- 10 ii. Adjudication with respect to individual members of the CALIFORNIA
11 CLASS which would as a practical matter be dispositive of the interests of the
12 other members not party to the adjudication or substantially impair or impeded
13 their ability to protect their interests.

14 69. Class treatment provides manageable judicial treatment calculated to bring an
15 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
16 the conduct of DEFENDANTS.

17 **FIRST CAUSE OF ACTION**

18 **Unlawful Business Practices**

19 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

20 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

21 70. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
22 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
23 Complaint.

24 71. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
25 § 17021.

26 72. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
27
28

1 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
2 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
3 as follows:

4 Any person who engages, has engaged, or proposes to engage in
5 unfair competition may be enjoined in any court of competent
6 jurisdiction. The court may make such orders or judgments,
7 including the appointment of a receiver, as may be necessary to
8 prevent the use or employment by any person of any practice which
constitutes unfair competition, as defined in this chapter, or as may
be necessary to restore to any person in interest any money or
property, real or personal, which may have been acquired by means
of such unfair competition.

9 Cal. Bus. & Prof. Code § 17203.

10 73. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
11 in a business practice which violates California law, including but not limited to, the applicable
12 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
13 including Sections 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198
14 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
15 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
16 constitute unfair competition, including restitution of wages wrongfully withheld.

17 74. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair
18 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
19 substantially injurious to employees, and were without valid justification or utility for which this
20 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
21 Business & Professions Code, including restitution of wages wrongfully withheld.

22 75. By the conduct alleged herein, DEFENDANT's practices were deceptive and
23 fraudulent in that DEFENDANT's uniform policy and practice failed to pay all minimum and
24 overtime wages due, failed to provide the legally mandated meal and rest periods, failed to pay
25 the required amount of compensation for missed meal and rest periods, and failed to reimburse
26 necessary business expenses incurred due to a systematic business practice that cannot be
27 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
28 requirements in violation of Cal. Bus. Code §§ 17200, et seq., and for which this Court should

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

3 76. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 77. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
8 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to
9 provide all legally required meal and rest breaks to PLAINTIFF and the other members of the
10 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

11 78. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
13 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
14 each workday in which a second off-duty meal period was not timely provided for each ten (10)
15 hours of work.

16 79. PLAINTIFF further demands on behalf of himself and each member of the
17 CALIFORNIA CLASS one (1) hour of pay for each workday in which a rest period was not given
18 and a premium was not timely provided as required by law.

19 80. By and through the unlawful and unfair business practices described herein,
20 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
21 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
22 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
23 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
24 to unfairly compete against competitors who comply with the law.

25 81. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
28 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business

practices in violation of Cal. Bus. & Prof. Code §§ 17200, et seq.

82. PLAINTIFF and the other members of the CALIFORNIA CLASS were entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all time worked.

83. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

84. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

85. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

86. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages.

1 87. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
2 policy, an employer must timely pay its employees for all hours worked.

3 88. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a less wage than
5 the minimum so fixed is unlawful.

6 89. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
7 including minimum wage compensation and interest thereon, together with the costs of suit.

8 90. As set forth above, during the CLASS PERIOD, DEFENDANT maintained a
9 uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA
10 CLASS without regard to the correct amount of time they worked. As set forth herein,
11 DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely
12 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

13 91. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
16 and the other members of the CALIFORNIA CLASS regarding minimum wage pay.

17 92. In committing these violations of the California Labor Code, DEFENDANT
18 inaccurately calculated the correct time worked and consequently underpaid the actual time
19 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
20 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
21 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
22 laws and regulations.

23 93. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
24 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
25 minimum wage compensation for their time worked for DEFENDANT.

26 94. During the CLASS PERIOD, PLAINTIFF and the other members of the
27 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
28 failure to pay all earned wages.

1 95. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
2 compensation to the PLAINTIFF and the other members of the CALIFORNIA CLASS for the
3 true time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
4 suffered and will continue to suffer an economic injury in amounts which are presently unknown
5 to them and which will be ascertained according to proof at trial.

6 96. DEFENDANT knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA CLASS were under compensated for their time worked.
8 DEFENDANT systematically elected, either through intentional malfeasance or gross
9 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
10 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
11 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
12 for their time worked.

13 97. In performing the acts and practices herein alleged in violation of California labor
14 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
15 and provide them with the requisite compensation, DEFENDANT acted and continues to act
16 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
17 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
18 consequences to them, and with the despicable intent of depriving them of their property and legal
19 rights, and otherwise causing them injury in order to increase company profits at the expense of
20 these employees.

21 98. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
22 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
23 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
24 California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
26 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
27 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
28 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS

Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

(Cal. Lab. Code §§ 510, 1194 and 1198)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

99. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

100. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to properly compensate the members of the CALIFORNIA CLASS for all overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek during the CLASS PERIOD.

101. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

102. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amount specified by law.

103. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

104. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid

1 for all the time they worked, including overtime work.

2 105. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
3 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
4 implementing a uniform policy and practice that failed to accurately record overtime worked by
5 PLAINTIFF and the other members of the CALIFORNIA CLASS, and denied accurate
6 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime
7 worked, including, the work performed in excess of eight (8) hours in a workday and/or forty (40)
8 hours in any workweek.

9 106. In committing these violations of the California Labor Code, DEFENDANT acted
10 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
11 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
12 laws and regulations.

13 107. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
14 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
15 compensation for all overtime worked.

16 108. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
17 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other
19 members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement
20 that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF
21 bring this Action on behalf of himself and the CALIFORNIA CLASS based on DEFENDANT's
22 violations of non-negotiable, non-waivable rights provided by the State of California.

23 109. During the CLASS PERIOD, PLAINTIFF and the other members of the
24 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
25 failure to pay all earned wages.

26 110. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
27 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
28 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even

1 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
2 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay
3 using the applicable overtime rate as evidenced by DEFENDANT's business records and
4 witnessed by employees.

5 111. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
6 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
7 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
8 suffered and will continue to suffer an economic injury in amounts which are presently unknown
9 to them and which will be ascertained according to proof at trial.

10 112. DEFENDANT knew or should have known that PLAINTIFF and the other
11 members of the CALIFORNIA CLASS are under compensated for their overtime worked.
12 DEFENDANT systematically elected, either through intentional malfeasance or gross
13 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
14 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
15 PLAINTIFF and the other members of the CALIFORNIA CLASS the applicable overtime rate.

16 113. In performing the acts and practices herein alleged in violation of California labor
17 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
18 and provide them with the requisite overtime compensation, DEFENDANT acted and continue
19 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
20 the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
21 consequences to them, and with the despicable intent of depriving them of their property and legal
22 rights, and otherwise causing them injury in order to increase company profits at the expense of
23 these employees.

24 114. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
25 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
26 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
27 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
28 overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who

1 have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201
2 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
3 Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

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11 **FOURTH CAUSE OF ACTION**

12 **Failure To Provide Required Meal Periods**

13 **(Cal. Lab. Code §§ 226.7 & 512)**

14 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

15 115. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
16 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
17 Complaint.

18 116. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
19 required off-duty meal breaks to PLAINTIFF and the CALIFORNIA CLASS as required by the
20 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and
21 the CALIFORNIA CLASS did not prevent these employees from being relieved of all of their
22 duties for the legally required off-duty meal periods. As a result of their rigorous work schedules,
23 PLAINTIFF and the CALIFORNIA CLASS were often not fully relieved of duty by
24 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
25 PLAINTIFF and the CALIFORNIA CLASS with legally required meal breaks prior to their fifth
26 (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF
27 and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without
28 additional compensation and in accordance with DEFENDANT's strict corporate policy and

1 practice.

2 117. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
3 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
4 who were not provided a meal period, in accordance with the applicable Wage Order, one
5 additional hour of compensation at each employee's regular rate of pay for each workday that a
6 meal period was not provided.

7 118. As a proximate result of the aforementioned violations, PLAINTIFF and
8 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
9 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

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11 **FIFTH CAUSE OF ACTION**

12 **Failure To Provide Required Rest Periods**

13 **(Cal. Lab. Code §§ 226.7 & 512)**

14 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

15 119. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
16 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
17 Complaint.

18 120. During the CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were
19 also required to work in excess of four (4) hours without being provided ten (10) minute rest
20 periods. Further, these employees were denied their first rest periods of at least ten (10) minutes
21 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
22 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
23 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
24 or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour
25 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the
26 CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and
27 DEFENDANT's managers.

28 121. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable

1 IWC Wage Order by failing to compensate PLAINTIFF and the CALIFORNIA CLASS who were
2 not provided a rest period, in accordance with the applicable Wage Order, one additional hour of
3 compensation at each employee's regular rate of pay for each workday that rest period was not
4 provided.

5 122. As a proximate result of the aforementioned violations, PLAINTIFF and the
6 CALIFORNIA CLASS have been damaged in an amount according to proof at trial, and seek all
7 wages earned and due, interest, penalties, expenses and costs of suit.

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11 **SIXTH CAUSE OF ACTION**

12 **Failure To Provide Accurate Itemized Statements**

13 **(Cal. Lab. Code §§ 226)**

14 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

15 123. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
16 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
17 Complaint.

18 1. Cal. Labor Code § 226 provides that an employer must furnish employees with an
19 "accurate itemized" statement in writing showing: (1) Gross wages earned; (2) Total hours
20 worked by the employee, except for any employee whose compensation is solely based on a salary
21 and who is exempt from payment of overtime under subdivision (a) of Section 515 or any
22 applicable order of the Industrial Welfare Commission; (3) The number of piece-rate units earned
23 and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions,
24 provided that all deductions made on written orders of the employee may be aggregated and
25 shown as one item; (5) Net wages earned; (6) The inclusive dates of the period for which the
26 employee is paid; (7) The name of the employee and his or her social security number, except
27 that by January 1, 2008, only the last four digits of his or her social security number or an
28 employee identification number other than a social security number may be shown on the itemized

1 statement; (8) The name and address of the legal entity that is the employer, and (9) All applicable
2 hourly rates in effect during the pay period and the corresponding number of hours worked at
3 each hourly rate by the employee.

4 2. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF
5 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements
6 which failed to accurately show, among other things, (1) Gross wages earned; (2) Total hours
7 worked by the employee, (3) The number of piece-rate units earned and any applicable piece rate
8 if the employee is paid on a piece-rate basis; (4) All deductions; (5) Net wages earned; and (6) all
9 applicable hourly rates in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate.

11 3. Further, during the CLASS PERIOD, DEFENDANTS also failed to provide
12 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
13 wage statements in compliance with Cal. Labor Code Section 226.2, which failed to accurately
14 show, among other things: (1) the total hours of compensable rest and recovery periods; and (2)
15 the total hours of other nonproductive time, the rate of compensation for the nonproductive time
16 and the gross wages paid for the nonproductive time during the applicable pay period.

17 4. PLAINTIFFS and the members of the CALIFORNIA CLASS were injured by
18 DEFENDANTS' violations in that they could not promptly and easily determine from the wage
19 statement alone, the amount of gross or net wages paid, the total hours worked, the number pf
20 piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during
21 the pay period and the corresponding number of hours worked at each hourly rate to the employee
22 during the applicable pay period.

23 5. DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and
24 intentional in that DEFENDANTS willfully intended to issue wage statements that were out of
25 compliance with § 226 and 226.2.

26 124. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor
27 Code § 226 and 226.2, causing injury and damages to the PLAINTIFF and the other members of
28 the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended

1 calculating the correct rates for the overtime worked and the amount of employment taxes which
2 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
3 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
4 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
5 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
6 pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor
7 Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more
8 than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
9 CALIFORNIA CLASS herein).

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11 **SEVENTH CAUSE OF ACTION**

12 **Failure To Pay Wages When Due**

13 **(Cal. Lab. Code §§ 203)**

14 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

15 125. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
16 incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

17 126. Cal. Lab. Code § 200 provides, in relevant part, that:

18 As used in this article:(a) "Wages" includes all amounts for labor
19 performed by employees of every description, whether the amount is
20 fixed or ascertained by the standard of time, task, piece, Commission
21 basis, or other method of calculation. (b) "Labor" includes labor, work,
22 or service whether rendered or performed under contract, subcontract,
23 partnership, station plan, or other agreement if the labor to be paid for
24 is performed personally by the person demanding payment.

25
26 127. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer discharges an
27 employee, the wages earned and unpaid at the time of discharge are due and payable
28 immediately.”

128. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

129. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members' employment contract.

130. Cal. Lab. Code § 203 provides, in relevant part, that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

131. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

132. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid minimum and/or overtime wages and/or missed meal and rest breaks without being paid the legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as

1 penalty for not timely paying all wages due at time of termination for all employees who
2 terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed
3 by law.

4 **EIGHTH CAUSE OF ACTION**

5 **Failure To Reimburse Employees For Required Expenses**

6 **(Cal. Lab. Code §§ 2802)**

7 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

8 133. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
9 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
10 Complaint.

11 134. Cal. Lab. Code § 2802 provides, in relevant part, that:

12 An employer shall indemnify his or her employee for all necessary
13 expenditures or losses incurred by the employee in direct
14 consequence of the discharge of his or her duties, or of his or her
15 obedience to the directions of the employer, even though unlawful,
16 unless the employee, at the time of obeying the directions, believed
17 them to be unlawful.

18 135. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
19 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
20 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
21 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
22 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
23 using their personal cellular phones and personal vehicles all on behalf of and for the benefit of
24 DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were
25 required by DEFENDANTS to use their personal cell phones and personal vehicles to execute
26 their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice
27 and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS
28 for expenses resulting from using their personal cellular phones and personal vehicles for

1 DEFENDANTS within the course and scope of their employment for DEFENDANTS. These
2 expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by
3 DEFENDANTS' conduct to assert any waiver of their expectation. Although these expenses were
4 necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS,
5 DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the
6 CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and
7 regulations of California.

8 136. PLAINTIFF therefore demands reimbursement on behalf of the members of the
9 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
10 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
11 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
14 severally, as follows:

15 1. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
17 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
18 b. An order temporarily, preliminarily and permanently enjoining and restraining
19 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
20 c. An order requiring DEFENDANT to pay all overtime wages and all sums
21 unlawfully withheld from compensation due to PLAINTIFF and the other members
22 of the CALIFORNIA CLASS; and
23 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
24 for restitution of the sums incidental to DEFENDANT's violations due to
25 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

26 2. On behalf of the CALIFORNIA CLASS:

- 27 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
28 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant

1 to Cal. Code of Civ. Proc. § 382;

- 2 b. Compensatory damages, according to proof at trial, including compensatory
3 damages for overtime compensation and separately owed rest periods, due to
4 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
5 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 6 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
7 the applicable IWC Wage Order;
- 8 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
9 which a violation occurs and one hundred dollars (\$100) per each member of the
10 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
11 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
12 violation of Cal. Lab. Code § 226
- 13 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
14 penalty from the due date thereof at the same rate until paid or until an action
15 therefore is commenced, in accordance with Cal. Lab. Code § 203.

16 An award of penalties, attorneys' fees and costs of suit, as allowable under the law

17 3. On behalf of the State of California and with respect to all AGGRIEVED
18 EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private
19 Attorneys General Act of 2004;

20 4. On all claims:

- 21 a. An award of interest, including prejudgment interest at the legal rate;
- 22 b. Such other and further relief as the Court deems just and equitable; and
- 23 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

24
25 DATED: February __, 2024

ZAKAY LAW GROUP, APLC
JCL LAW FIRM, APC

27 By: _____
28 Shani O. Zakay, Esq.
Jean-Claude Lapuyade, Esq.

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Attorneys for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: February __, 2024

ZAKAY LAW GROUP, APLC
JCL LAW FIRM, APC

By: _____
Shani O. Zakay, Esq.
Jean-Claude Lapuyade, Esq.

Attorneys for PLAINTIFF

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- Print your name and address on the reverse so that we can return the card to you.
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d/b/a valley kia and valley Auto center
c/o Robert Morris
1200 California St., Ste #260
Redlands, CA 92374



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