

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

HUTCHINSON MOTORS, INC., a California corporation; MICHAEL C. STEAD, INC., a California corporation; MICHAEL STEAD'S AUTO DEPOT, INC., a California corporation; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ZHI H. HUANG, an individual, in his representative capacity on behalf of the State of California and fellow Aggrieved Employees,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, Contra Costa, Wakefield Taylor Courthouse
725 Court Street
Martinez, CA 94553

CASE NUMBER: C23-01698
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 7/12/2023 3:36 PM

(Fecha)

Clerk, by /s/ T. Jacobsen-Rios

(Secretario)

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

[SEAL]



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Per local Rule, This case is assigned to
Judge Treat, Charles S, for all purposes.

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

SUMMONS ISSUED

ZHI H. HUANG, an individual, in his
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiff,

v.

HUTCHINSON MOTORS, INC., a California
corporation; MICHAEL C. STEAD, INC., a
California corporation; MICHAEL STEAD'S
AUTO DEPOT, INC., a California corporation;
and DOES 1-50, Inclusive,

Defendants.

Case No: C23-01698

REPRESENTATIVE ACTION
COMPLAINT FOR:

1) VIOLATION OF THE PRIVATE
ATTORNEY GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.

1 Plaintiff ZHI H. HUANG (“PLAINTIFF”), an individual, in his representative capacity on
2 behalf of the State of California and fellow Aggrieved Employees, acting as a private attorney
3 general under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”)
4 only, alleges on information and belief, except for his own acts and knowledge which are based on
5 personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against HUTCHINSON MOTORS, INC.,
8 MICHAEL C. STEAD, INC., MICHAEL STEAD’S AUTO DEPOT, INC. (“DEFENDANT”
9 and/or “DEFENDANTS”) seeking only to recover PAGA civil penalties for himself, and on
10 behalf of all current and former aggrieved employees that worked for DEFENDANT.
11 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
12 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
13 violations, PLAINTIFF does not seek underlying general and/or special damages for those
14 violations in this action, but simply the civil penalties permitted by California Labor Code § 2699.
15 Notwithstanding, PLAINTIFF is not abandoning his right to pursue his individual claims for, *inter*
16 *alia*, Defendant’s alleged wage violations, and/or general or special damages arising from those
17 violations, and she fully intends to, at a future date, pursue claims for those individual claims and
18 damages.

19 2. California has enacted the PAGA to permit an individual to bring an action on
20 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
21 nature of this action.

22 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT’S
23 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any
24 other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be
25 construed as attempting to obtain any relief that would not be available in a PAGA-only action.

26 **THE PARTIES**

27 4. Defendant HUTCHINSON MOTORS, INC. (“Defendant Hutchinson Motors”) is
28 a California corporation that at all relevant times mentioned herein conducted and continues to
conduct substantial and regular business in the state of California.

1 5. Defendant MICHAEL C. STEAD, INC. (“Defendant Michael C. Stead, Inc.”) is
2 a California corporation that at all relevant times mentioned herein conducted and continues to
3 conduct substantial and regular business in the state of California.

4 6. Defendant MICHAEL STEAD’S AUTO DEPOT, INC. (“Defendant Michael
5 Stead’s Auto Depot”) is a California corporation that at all relevant times mentioned herein
6 conducted and continues to conduct substantial and regular business in the state of California.

7 7. Defendant Hutchinson Motors, Defendant Michael C. Stead, Inc. and Defendant
8 Michael Stead’s Auto Depot were the joint employers of PLAINTIFF as evidenced by the
9 documents issued to PLAINTIFF and by the company PLAINTIFF performed work for
10 respectively and are therefore jointly responsible as employers for the conduct alleged herein as
11 “DEFENDANTS” and/or “DEFENDANT.”

12 8. DEFENDANTS own and operate car dealerships in California, including in the
13 county of Contra Costa, where PLAINTIFF worked.

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

24 10. The agents, servants, and/or employees of the Defendants and each of them acting
25 on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as
26 the agent, servant and/or employee of the Defendants, and personally participated in the conduct
27 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
28 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all

1 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
2 AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the
3 Defendants' agents, servants and/or employees.

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

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

15 13. PLAINTIFF was employed by DEFENDANTS in California from November of
16 2021 to March of 2023, paid in part commission-based compensation and in part an hourly wage,
17 non-discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant
18 meal and rest periods.

19 14. PLAINTIFF, and such persons that may be added from time to time who satisfy
20 the requirements and exhaust the administrative procedures under the Private Attorney General
21 Act, bring this Representative Action on behalf of the State of California with respect to himself
22 and all individuals who are or previously were employed by DEFENDANT in California (the
23 "AGGRIEVED EMPLOYEES") during the time period of May 3, 2022 until the present (the
24 "PAGA PERIOD").

25 15. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
26 or formerly employed by DEFENDANT during the PAGA Period, brings this representative
27 action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of
28 California Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3
226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199,

1 2802, and 2804, and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and
2 all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
3 2699, *et seq.*

4 **JURISDICTION AND VENUE**

5 16. This has jurisdiction over this Action pursuant to California Code of Civil
6 Procedure, Section 410.10.

7 17. Venue is proper in this Court pursuant to California Code of Civil Procedure,
8 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
9 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities
10 in this County and/or conduct substantial business in this County, and (ii) committed the wrongful
11 conduct herein alleged in this County against the AGGRIEVED EMPLOYEES.

12 **THE CONDUCT**

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

14 18. Pursuant to the Industrial Welfare Commission Wage Orders and the California
15 Labor Codes, an employer shall not employ an employee for a work period of more than five (5)
16 hours per day without providing the employee with a meal period of not less than thirty (30)
17 minutes, except that if the total work period per day of the employee is no more than six (6) hours,
18 the meal period may be waived by mutual consent of both the employer and employee. An
19 employer shall not employ an employee for a work period of more than ten (10) hours per day
20 without providing the employee with a second meal period of not less than thirty (30) minutes,
21 except that if the total hours worked is no more than twelve (12) hours, the second meal period
22 may be waived by mutual consent of the employer and the employee only if the first meal period
23 was not waived. If an employer fails to provide an employee with a mandated meal period, the
24 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
25 compensation for each workday that the meal period is not provided.

26 19. From time-to-time during the PAGA PERIOD, as a result of understaffing and
27 their rigorous work schedule, PLAINTIFF and other AGGRIEVED EMPLOYEES were from
28 time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of

1 duty for meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to
2 time required to perform work as ordered by DEFENDANT for more than five (5) hours during
3 a shift without receiving an off-duty meal break. Further, DEFENDANT from time-to-time failed
4 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
5 from time to time in which these employees were required by DEFENDANT to work ten (10)
6 hours of work from time to time. PLAINTIFF and the other AGGRIEVED EMPLOYEES
7 therefore forfeited meal breaks without additional compensation and in accordance with
8 DEFENDANT's strict corporate policy and practice.

9 20. Further, pursuant to the Industrial Welfare Commission Wage Orders,
10 DEFENDANT was required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their
11 time worked, meaning the time during which an employee is subject to the control of an employer,
12 including all the time the employee suffered or permitted to work. DEFENDANT required
13 PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they
14 were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to
15 work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due
16 to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was
17 from time to time interrupted by work assignments while clocked out for what should have been
18 PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other AGGRIEVED
19 EMPLOYEES forfeited minimum wage and overtime compensation by regularly working
20 without their time being accurately recorded and without compensation at the applicable
21 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
22 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
23 DEFENDANT's business records.

24 21. Pursuant to the Industrial Welfare Commission Wage Orders and the California
25 Labor Codes, an employer shall authorize and permit all employees to take a rest periods, which
26 so far as practical shall be in the middle of each work period. Generally, an employer must provide
27 ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails
28

1 to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at
2 the employee's regular rate of pay for each workday that the rest period is not provided.

3 22. Additionally, during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
4 EMPLOYEES were from time-to-time required to work in excess of four (4) hours without being
5 provided duty-free, uninterrupted, ten (10) minute rest period. Further, for the same reasons, these
6 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
7 of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for
8 some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period
9 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
10 As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES were from time to time
11 required to remain on the premises, on-duty and on-call during their rest periods. PLAINTIFF and
12 other AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof.

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

15 23. State law provides that employees must be paid overtime at one-and-one-half times
16 their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were
17 compensated at an hourly rate plus commissions and/or non-discretionary incentive pay that was
18 tied to specific elements of an employee's performance and/or commissions.

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

26 25. Management and supervisors described the bonus and commissions programs and
27 commission compensation program to potential and new employees as part of the compensation
28 package for new and used car salespersons including PLAINTIFF and the AGGRIEVED

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

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

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

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

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

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

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

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

27 30. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
28 minimum wage and overtime compensation by regularly working without their time being

1 accurately recorded and without compensation at the applicable minimum wage and overtime
2 rates. DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
3 necessary wages for attending for performing work at DEFENDANTS' direction, request, and
4 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF
5 and other AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS'
6 business records.

7 31. DEFENDANTS directed and directly benefited from the uncompensated off-the-
8 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

9 32. DEFENDANTS controlled the work schedules, duties, protocols, applications,
10 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED
11 EMPLOYEES.

12 33. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
13 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document,
14 track, or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed
15 for all the work they performed, including pre-shift, post shift and during meal period off-the-
16 clock work, which included but was not limited to, assisting DEFENDANTS' customers,
17 performing keyholder duties, spending time waiting for DEFENDANTS' timekeeping system to
18 function, and receiving and/or responding to work-related communications.

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

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

26 36. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.
28

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

6 **E. Unreimbursed Business Expenses**

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

18 39. In the course of their employment, DEFENDANTS required PLAINTIFF and
19 other AGGRIEVED EMPLOYEES to use their personal cell phones and personal vehicles as a
20 result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of
21 their own personal cell phones and personal vehicles, PLAINTIFF and the AGGRIEVED
22 EMPLOYEES could not complete their essential job duties, including but not limited to, sending
23 and receiving work-related communications from DEFENDANTS and DEFENDANTS' clients
24 and using personal vehicles to deliver paperwork to DEFENDANT and DEFENDANTS' clients.
25 However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED
26 EMPLOYEES for their use of their personal cell phones and personal vehicles. As a result, in the
27 course of their employment with DEFENDANTS, the PLAINTIFF and other AGGRIEVED
28 EMPLOYEES incurred unreimbursed business expenses, but were not limited to, costs related to

1 the use of their personal cellular phones and personal vehicles, all on behalf of and for the benefit
2 of DEFENDANTS.

3 **F. Wage Statement Violations**

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

16 41. From time-to-time during the PAGA PERIOD, DEFENDANT furnished
17 PLAINTIFF and the AGGRIEVED EMPLOYEES written wage statements that failed to
18 accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units
19 earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect
20 during the pay period and the corresponding number of hours worked at each hourly rate by the
21 employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation,
22 and the gross wages paid for those periods during the pay period, and (7) the total hours of other
23 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
24 pay period.

25 42. In addition to the violations described above, DEFENDANTS, from time to time,
26 failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that
27 comply with Cal. Lab. Code § 226.
28

1 43. As a result, DEFENDANTS issued PLAINTIFF and the AGGRIEVED
2 EMPLOYEES with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further,
3 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
4 unintentional payroll error due to clerical or inadvertent mistake.

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

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

11 **H. Unlawful Deductions**

12 45. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
13 and AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so
14 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS
15 violated Labor Code § 221.

16 46. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
17 required off-duty meal breaks to him and paid rest periods to him as required by the applicable
18 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed
19 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him from
20 being relieved of all of his duties for the legally required off-duty meal periods. Further,
21 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
22 in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result,
23 DEFENDANT'S failure to provide PLAINTIFFS with the legally required second off-duty meal
24 period is evidenced by DEFENDANT's business records. From time to time, and as a result of
25 DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay
26 minimum wages due for all time worked and separate compensation for rest breaks, the wage
27 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,
28 Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all

1 required business expenses including for the use of his personal cell phone and personal vehicle.
2 To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums
3 due to him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages
4 owed to him under California Labor Code Section 203. The amount in controversy for
5 PLAINTIFF individually does not exceed \$75,000.

6 **FIRST CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§2698 et seq.)**

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

10 47. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
11 herein, the prior paragraphs of this Complaint.

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

21 49. PLAINTIFF, and such persons that may be added from time to time who satisfy
22 the requirements and exhaust the administrative procedures under the Private Attorney General
23 Act, bring this Representative Action on behalf of the State of California with respect to himself
24 and all employees who worked for Defendant in California during the time period of May 3, 2022,
25 until the present (the "AGGRIEVED EMPLOYEES").

26 50. On May 3, 2023, PLAINTIFF gave written notice by certified mail to the Labor
27 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
28 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,

1 attached hereto and incorporated by this reference herein. The statutory waiting period for
2 Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section
3 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to
4 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
5 EMPLOYEES as herein defined.

6 51. The policies, acts and practices heretofore described were and are an unlawful
7 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
8 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
9 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
10 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, (e) failed
11 to timely pay wages, (f) failed to reimburse AGGRIEVED EMPLOYEES for business expenses,
12 and (g) failed to provide AGGRIEVED EMPLOYEES with accurate wage statements, all in
13 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
14 limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3,
15 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5,
16 1199, 2802, 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory
17 penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as
18 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the
19 State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
20 EMPLOYEES.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

6 a. Recovery of civil penalties as prescribe by the Labor Code Private Attorneys
7 General Act of 2004;

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

9
10 DATED: July 12, 2023

ZAKAY LAW GROUP, APLC

11
12 By: 
13 Shani O. Zakay, Esq.
14 Attorney for PLAINTIFF
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EXHIBIT 1

May 3, 2023

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

HUTCHINSON MOTORS, INC.

c/o Mary Imhof
2555 North Main Street
Walnut Creek, CA 94597

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0114 2236 68

MICHAEL C. STEAD, INC.

c/o Sid Savarani
3280 Auto Plaza
Richmond, CA 94806

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0114 2236 75

MICHAEL STEAD'S AUTO DEPOT, INC.

c/o Sid Savarani
3291 Auto Plaza
Richmond, CA 94806

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0114 2236 99

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 Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff ZHI H. HUANG ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant HUTCHINSON MOTORS, INC. ("Defendant Hutchinson Motors"), Defendant MICHAEL C. STEAD, INC. ("Defendant Michael C. Stead, Inc.") and Defendant MICHAEL STEAD'S AUTO DEPOT, INC. ("Defendant Michael Stead's Auto Depot") (collectively, hereinafter, "Defendants"). Plaintiff was employed by Defendants in California from November of 2021 to March of 2023 as a non-exempt employee, paid in part by commission-based compensation, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages. Plaintiff further contends that Defendants 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, Defendants improperly misclassified aggrieved employees who were paid on a draw versus commission basis as exempt from overtime compensation. Defendants included advanced draws in order to meet the salary-basis test for the overtime exemption. However, Defendants 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 Defendants 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 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 Defendant Hutchinson Motors and/or Defendant Michael C. Stead, Inc. and/or Defendant Michael Stead's Auto Depot in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, 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, Defendants are 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 Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of 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.

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

EXHIBIT 1

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

ZHI H. HUANG, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

HUTCHINSON MOTORS, INC., a California
corporation; MICHAEL C. STEAD, INC., a
California corporation; MICHAEL STEAD'S
AUTO DEPOT, INC., 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;
6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802;
9) RETALIATION IN VIOLATION OF CAL. LAB. CODE §§ 98.6 & 1102.5.;
10) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.
DEMAND FOR A JURY TRIAL

Plaintiff ZHI H. HUANG ("PLAINTIFF"), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant HUTCHINSON MOTORS, INC. ("Defendant Hutchinson Motors") is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. Defendant MICHAEL C. STEAD, INC. ("Defendant Michael C. Stead, Inc.") is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

3. Defendant MICHAEL STEAD'S AUTO DEPOT, INC. ("Defendant Michael Stead's Auto Depot") is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

4. Defendant Hutchinson Motors, Defendant Michael C. Stead, Inc. and Defendant Michael Stead's Auto Depot were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as "DEFENDANTS" and/or "DEFENDANT."

1 5. DEFENDANTS own and operate car dealerships in California, including in the
2 county of Contra Costa, where PLAINTIFF worked.

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

13 7. The agents, servants, and/or employees of the Defendants and each of them acting
14 on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as
15 the agent, servant and/or employee of the Defendants, and personally participated in the conduct
16 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
17 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
18 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
19 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
20 Defendants’ agents, servants and/or employees.

21 8. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
22 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or
23 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
24 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
25 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
26 at all relevant times.

27 9. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
28 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,

1 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
2 employee a wage less than the minimum fixed by California state law, and as such, are subject to
3 civil penalties for each underpaid employee.

4 10. PLAINTIFF was employed by DEFENDANTS in California from November of
5 2021 to March of 2023, paid in part commission-based compensation and in part an hourly wage,
6 non-discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant
7 meal and rest periods.

8 11. PLAINTIFF brings this Class Action on behalf of himself and a California class,
9 defined as all current and former non-exempt, exempt, piece-rate based, and/or commission-based
10 employees employed by Defendant Hutchinson Motors and/or Defendant Michael C. Stead, Inc.
11 and/or Defendant Michael Stead's Auto Depot in California ("CALIFORNIA CLASS") at any
12 time during the period beginning four (4) years prior to the filing of this Complaint and ending on
13 the date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
14 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
15 (\$5,000,000.00).

16 12. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
17 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
18 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
19 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
20 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
21 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
22 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
23 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
24 other members of the CALIFORNIA CLASS who have been economically injured by
25 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
26 relief.

27 13. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
28 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain

1 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

2 14. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
3 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
4 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
5 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and
6 equitable relief.

7 **JURISDICTION AND VENUE**

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

12 16. Venue is proper in this Court pursuant to California Code of Civil Procedure,
13 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
14 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities
15 in this County and/or conduct substantial business in this County, and (ii) committed the wrongful
16 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

17 **THE CONDUCT**

18 17. In violation of the applicable sections of the California Labor Code and the
19 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
20 matter of company policy, practice and procedure, intentionally, knowingly and systematically
21 failed to provide legally compliant meal and rest periods, failed to accurately compensate
22 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
23 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
24 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate
25 PLAINTIFF and other members of the CALIFORNIA CLASS overtime, sick pay, and meal rest
26 premiums at the correct regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA
27 CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of
28 the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things,

1 all applicable hourly rates in effect during the pay periods and the corresponding amount of time
2 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
3 purposefully avoid the accurate and full payment for all time worked as required by California
4 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
5 competitors who comply with the law. To the extent equitable tolling operates to toll claims by
6 the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted
7 accordingly.

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

9 18. Pursuant to the Industrial Welfare Commission Wage Orders and the California
10 Labor Codes, an employer shall not employ an employee for a work period of more than five (5)
11 hours per day without providing the employee with a meal period of not less than thirty (30)
12 minutes, except that if the total work period per day of the employee is no more than six (6) hours,
13 the meal period may be waived by mutual consent of both the employer and employee. An
14 employer shall not employ an employee for a work period of more than ten (10) hours per day
15 without providing the employee with a second meal period of not less than thirty (30) minutes,
16 except that if the total hours worked is no more than twelve (12) hours, the second meal period
17 may be waived by mutual consent of the employer and the employee only if the first meal period
18 was not waived. If an employer fails to provide an employee with a mandated meal period, the
19 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
20 compensation for each workday that the meal period is not provided.

21 19. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of
22 understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS
23 members were from time to time unable to take thirty (30) minute off duty meal breaks and were
24 not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS
25 Members were from time to time required to perform work as ordered by DEFENDANT for more
26 than five (5) hours during a shift without receiving an off-duty meal break. Further,
27 DEFENDANT from time-to-time failed to provide PLAINTIFF and CALIFORNIA CLASS
28 members with a second off-duty meal period from time to time in which these employees were

1 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and
2 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
3 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

4 20. Further, pursuant to the Industrial Welfare Commission Wage Orders,
5 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their
6 time worked, meaning the time during which an employee is subject to the control of an employer,
7 including all the time the employee suffered or permitted to work. DEFENDANT required
8 PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time
9 they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
10 to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due
11 to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was
12 from time to time interrupted by work assignments while clocked out for what should have been
13 PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS
14 members forfeited minimum wage and overtime compensation by regularly working without their
15 time being accurately recorded and without compensation at the applicable minimum wage and
16 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
17 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
18 records.

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

25 22. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
26 CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4)
27 hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for
28 the same reasons, these employees were denied their first rest periods of at least ten (10) minutes

1 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
2 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
3 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
4 or more from time to time. As a result, PLAINTIFF and the other CALIFORNIA CLASS
5 Members were from time to time required to remain on the premises, on-duty and on-call during
6 their rest periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
7 with one-hour wages in lieu thereof.

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

10 23. State law provides that employees must be paid overtime at one-and-one-half times
11 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS were compensated at
12 an hourly rate plus commissions and/or non-discretionary incentive pay that was tied to specific
13 elements of an employee’s performance and/or commissions.

14 24. DEFENDANTS’ non-discretionary commission and bonus program provided the
15 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation
16 when the employees met the various performance goals set by DEFENDANT. However, when
17 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA
18 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,
19 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
20 commission wages as part of the employees’ “regular rate of pay.”

21 25. Management and supervisors described the bonus and commissions programs and
22 commission compensation program to potential and new employees as part of the compensation
23 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA
24 CLASS. As a matter of law, the incentive and commission compensation received by
25 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
26 calculated into the “regular rate of pay” for purposes of overtime and double time compensation,
27 meal and rest period premium payments, and sick pay. DEFENDANT’s failure to do so has
28 resulted in DEFENDANT’s systematic underpayment of overtime and double time compensation,

1 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA
2 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time
3 for non-employees shall be calculated in the same manner as the regular rate of pay for the
4 workweek in which the employee uses paid sick time, whether or not the employee actually works
5 overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include
6 the incentive compensation as part of the "regular rate of pay" for purposes of sick pay
7 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
8 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

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

21 27. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
22 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those
23 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission
24 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately
25 compensated for all non-productive time at an hourly rate that is no less than the applicable
26 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA
27 CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to
28 separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,

1 including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable
2 minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum
3 wages and overtime wages by DEFENDANT'S failure to separately compensate their non-
4 productive time at an hourly rate that is no less than the applicable minimum wage.

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

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

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

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

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

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

6 33. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
7 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
8 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
9 wages earned and owed for all the work they performed, including pre-shift, post shift and during
10 meal period off-the-clock work, which included but was not limited to, assisting DEFENDANTS'
11 customers, performing keyholder duties, spending time waiting for DEFENDANTS' timekeeping
12 system to function, and receiving and/or responding to work-related communications.

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

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

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

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

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1 **E. Unreimbursed Business Expenses**

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

13 39. In the course of their employment, DEFENDANTS required PLAINTIFF and
14 other CALIFORNIA CLASS Members to use their personal cell phones and personal vehicles as
15 a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use
16 of their own personal cell phones and personal vehicles, PLAINTIFF and the CALIFORNIA
17 CLASS Members could not complete their essential job duties, including but not limited to,
18 sending and receiving work-related communications from DEFENDANTS and DEFENDANTS’
19 clients and using personal vehicles to deliver paperwork to DEFENDANT and DEFENDANTS’
20 clients. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
21 CALIFORNIA CLASS Members for their use of their personal cell phones and personal vehicles.
22 As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other
23 CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited
24 to, costs related to the use of their personal cellular phones and personal vehicles, all on behalf of
25 and for the benefit of DEFENDANTS.

26 **F. Wage Statement Violations**

27 40. California Labor Code Sections 226 and 226.2 require an employer to furnish its
28 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total

1 hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
2 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
3 paid, (7) the name of the employee and only the last four digits of the employee's social security
4 number or an employee identification number other than a social security number, (8) the name
5 and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during
6 the pay period and the corresponding number of hours worked at each hourly rate by the
7 employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation,
8 and the gross wages paid for those periods during the pay period, and (11) the total hours of other
9 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
10 pay period.

11 41. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANT
12 furnished PLAINTIFF and the CALIFORNIA CLASS written wage statements that failed to
13 accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units
14 earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect
15 during the pay period and the corresponding number of hours worked at each hourly rate by the
16 employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation,
17 and the gross wages paid for those periods during the pay period, and (7) the total hours of other
18 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
19 pay period.

20 42. In addition to the violations described above, DEFENDANTS, from time to time,
21 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
22 that comply with Cal. Lab. Code § 226.

23 43. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS
24 with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS'
25 violations are knowing and intentional, were not isolated or due to an unintentional payroll error
26 due to clerical or inadvertent mistake.

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

2 44. Pursuant to California Labor Code section 204, PLAINTIFF and the
3 CALIFORNIA CLASS members were entitled to timely payment of wages during their
4 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
5 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
6 meal period premium wages, and rest period premium wages within permissible time period.

7 **H. Unlawful Deductions**

8 45. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
9 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
10 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
11 DEFENDANTS violated Labor Code § 221.

12 46. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
13 required off-duty meal breaks to him and paid rest periods to him as required by the applicable
14 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed
15 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him from
16 being relieved of all of his duties for the legally required off-duty meal periods. Further,
17 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
18 in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result,
19 DEFENDANT'S failure to provide PLAINTIFFS with the legally required second off-duty meal
20 period is evidenced by DEFENDANT's business records. From time to time, and as a result of
21 DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay
22 minimum wages due for all time worked and separate compensation for rest breaks, the wage
23 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,
24 Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all
25 required business expenses including for the use of his personal cell phone and personal vehicle.
26 To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums
27 due to him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages
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owed to him under California Labor Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed \$75,000.

I. Plaintiff's Individual Claims

47. PLAINTIFF was employed by DEFENDANT in California from November of 2021 to March of 2023. On or around March 8, 2023, PLAINTIFF was wrongfully terminated from his employment with DEFENDANT.

48. Throughout his employment with DEFENDANT, PLAINTIFF was treated differently and unfairly by DEFENDANT and its agents, all in retaliation against PLAINTIFF for various protected activities.

49. During his employment, PLAINTIFF complained to DEFENDANT about DEFENDANT'S unlawful practices. Specifically, PLAINTIFF complained to DEFENDANT that he was not receiving compensation, including commission-based compensation, in accordance with his compensation plan with DEFENDANTS. PLAINTIFF believed DEFENDANTS' failure to pay him in accordance with the compensation plan was unlawful. PLAINTIFF reported the unlawful conduct to DEFENDANT, but PLAINTIFF'S report fell on deaf ears. Rather, after PLAINTIFF reported to management that he was not being compensated, including for commission-based compensation, in accordance with his compensation plan, DEFENDANT terminated PLAINTIFF'S employment on or around March 8, 2023.

50. PLAINTIFF is informed and believes, and upon such information and belief alleges that, during PLAINTIFF'S employment with DEFENDANT, DEFENDANT wrongfully terminated him because of his reports and complaints of DEFENDANT'S unlawful policies and practices with respect to failing to pay compensation, including commission-based compensation, in accordance with compensation plans.

51. PLAINTIFF is informed and believes, and upon such information and belief alleges that, during PLAINTIFF'S employment with DEFENDANT and at the time of his termination, DEFENDANT maintained a hostile work environment directed at PLAINTIFF because of his reports and complaints regarding DEFENDANT'S unlawful failure to pay compensation, including commission-based compensation, in accordance with compensation plans.

52. PLAINTIFF is informed and believes, and upon such information and belief alleges that, DEFENDANT'S conduct in wrongfully terminating PLAINTIFF'S employment was part of a pattern of behavior by DEFENDANT aimed at retaliation against PLAINTIFF.

53. PLAINTIFF is informed and believes, and upon such information and belief alleges that, DEFENDANT wrongfully terminated him for reasons that violate public policy.

54. PLAINTIFF is informed and believes, and upon such information and belief alleges that he was harmed as a result of the wrongful termination and that the unlawful and retaliatory practices of DEFENDANT were substantial factors in causing PLAINTIFF'S harm.

55. PLAINTIFF is informed and believes, and upon such information and belief alleges that, DEFENDANTS intentionally created or knowingly permitted these working conditions, including but not limited to, retaliatory employment practices against employees who reported unlawful failures to pay compensation, including commission-based compensation, in accordance with compensation plans.

THE CALIFORNIA CLASS

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

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

58. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to

1 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
2 and illegal meal and rest period policies. Defendant further failed to reimburse for business
3 expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage
4 statements, and failed to maintain required records, and interest, statutory and civil penalties,
5 attorney's fees, costs, and expenses.

6 59. The members of the class are so numerous that joinder of all class members is
7 impractical.

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

- 15 i. Whether DEFENDANTS maintained legally compliant meal period policies
16 and practices;
- 17 ii. Whether DEFENDANTS maintained legally compliant rest period policies
18 and practices;
- 19 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
20 CLASS Members accurate premium payments for missed meal and rest
21 periods;
- 22 iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
23 CLASS Members accurate overtime wages;
- 24 v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
25 CLASS Members at least minimum wage for all hours worked;
- 26 vi. Whether Defendants failed to compensate PLAINTIFF and the
27 CALIFORNIA CLASS Members for required business expenses;
- 28 vii. Whether DEFENDANTS issued legally compliant wage statements;

- 1 viii. Whether DEFENDANTS committed an act of unfair competition by
2 systematically failing to record and pay PLAINTIFF and the other members
3 of the CALIFORNIA CLASS for all time worked;
- 4 ix. Whether DEFENDANTS committed an act of unfair competition by
5 systematically failing to record all meal and rest breaks missed by
6 PLAINTIFF and other CALIFORNIA CLASS Members, even though
7 DEFENDANTS enjoyed the benefit of this work, required employees to
8 perform this work and permits or suffers to permit this work;
- 9 x. Whether DEFENDANTS committed an act of unfair competition in
10 violation of the UCL, by failing to provide the PLAINTIFF and the other
11 members of the CALIFORNIA CLASS with the legally required meal and
12 rest periods.

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

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

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

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

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

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

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

4 68. A class action is superior to other available methods for the fair and efficient
5 adjudication of this controversy because joinder of all class members is impractical. Moreover,
6 since the damages suffered by individual members of the class may be relatively small, the
7 expense and burden of individual litigation makes it practically impossible for the members of the
8 class individually to redress the wrongs done to them. Without class certification and
9 determination of declaratory, injunctive, statutory and other legal questions within the class
10 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
11 create the risk of:

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

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

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

8 71. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
9 § 17021.

10 72. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
12 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
13 as follows:

14 Any person who engages, has engaged, or proposes to engage in
15 unfair competition may be enjoined in any court of competent
16 jurisdiction. The court may make such orders or judgments,
17 including the appointment of a receiver, as may be necessary to
18 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.

19 Cal. Bus. & Prof. Code § 17203.

20 73. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
21 in a business practice which violates California law, including but not limited to, the applicable
22 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
23 including Sections 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198
24 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
25 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
26 constitute unfair competition, including restitution of wages wrongfully withheld.

27 74. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
28 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or

1 substantially injurious to employees, and were without valid justification or utility for which this
2 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
3 Business & Professions Code, including restitution of wages wrongfully withheld.

4 75. By the conduct alleged herein, DEFENDANT's practices were deceptive and
5 fraudulent in that DEFENDANT's uniform policy and practice failed to pay all minimum and
6 overtime wages due, failed to provide the legally mandated meal and rest periods, failed to pay
7 the required amount of compensation for missed meal and rest periods, and failed to reimburse
8 necessary business expenses incurred due to a systematic business practice that cannot be
9 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
10 requirements in violation of Cal. Bus. Code §§ 17200, et seq., and for which this Court should
11 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
12 restitution of wages wrongfully withheld.

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

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

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

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

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

7 81. All the acts described herein as violations of, among other things, the Industrial
8 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
9 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
10 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
11 practices in violation of Cal. Bus. & Prof. Code §§ 17200, et seq.

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

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

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

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1 **SECOND CAUSE OF ACTION**

2 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

28 92. In committing these violations of the California Labor Code, DEFENDANT

1 inaccurately calculated the correct time worked and consequently underpaid the actual time
2 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
3 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
4 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
5 laws and regulations.

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

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

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

17 96. DEFENDANT knew or should have known that PLAINTIFF and the other
18 members of the CALIFORNIA CLASS were under compensated for their time worked.
19 DEFENDANT systematically elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
21 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
22 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
23 for their time worked.

24 97. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
26 and provide them with the requisite compensation, DEFENDANT acted and continues to act
27 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
28 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the

1 consequences to them, and with the despicable intent of depriving them of their property and legal
2 rights, and otherwise causing them injury in order to increase company profits at the expense of
3 these employees.

4 98. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
5 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
6 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
7 California Labor Code and/or other applicable statutes. To the extent minimum wage
8 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
9 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
10 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
11 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
12 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
13 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
14 recover statutory costs.

15 **THIRD CAUSE OF ACTION**

16 **Failure To Pay Overtime Compensation**

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

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

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

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

28 101. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public

1 policy, an employer must timely pay its employees for all hours worked.

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

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

10 104. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and CALIFORNIA
11 CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid
12 for all the time they worked, including overtime work.

13 105. 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 failed to accurately record overtime worked by
16 PLAINTIFF and the other members of the CALIFORNIA CLASS, and denied accurate
17 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime
18 worked, including, the work performed in excess of eight (8) hours in a workday and/or forty (40)
19 hours in any workweek.

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

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

27 108. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
28 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF

1 and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement
3 that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF
4 bring this Action on behalf of himself and the CALIFORNIA CLASS based on DEFENDANT's
5 violations of non-negotiable, non-waivable rights provided by the State of California.

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

9 110. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
10 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
11 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
12 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
13 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay
14 using the applicable overtime rate as evidenced by DEFENDANT's business records and
15 witnessed by employees.

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

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

27 113. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked

1 and provide them with the requisite overtime compensation, DEFENDANT acted and continue
2 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
3 the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
4 consequences to them, and with the despicable intent of depriving them of their property and legal
5 rights, and otherwise causing them injury in order to increase company profits at the expense of
6 these employees.

7 114. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
8 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
9 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
10 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
11 overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who
12 have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201
13 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
14 Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
15 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
16 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
17 recover statutory costs.

18 **FOURTH CAUSE OF ACTION**

19 **Failure To Provide Required Meal Periods**

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

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

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

25 116. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
26 required off-duty meal breaks to PLAINTIFF and the CALIFORNIA CLASS as required by the
27 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and
28 the CALIFORNIA CLASS did not prevent these employees from being relieved of all of their

1 duties for the legally required off-duty meal periods. As a result of their rigorous work schedules,
2 PLAINTIFF and the CALIFORNIA CLASS were often not fully relieved of duty by
3 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
4 PLAINTIFF and the CALIFORNIA CLASS with legally required meal breaks prior to their fifth
5 (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF
6 and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without
7 additional compensation and in accordance with DEFENDANT's strict corporate policy and
8 practice.

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

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

17 **FIFTH CAUSE OF ACTION**

18 **Failure To Provide Required Rest Periods**

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

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

21 119. 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.

24 120. During the CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were
25 also required to work in excess of four (4) hours without being provided ten (10) minute rest
26 periods. Further, these employees were denied their first rest periods of at least ten (10) minutes
27 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
28 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,

1 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
2 or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour
3 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the
4 CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and
5 DEFENDANT's managers.

6 121. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
7 IWC Wage Order by failing to compensate PLAINTIFF and the CALIFORNIA CLASS who were
8 not provided a rest period, in accordance with the applicable Wage Order, one additional hour of
9 compensation at each employee's regular rate of pay for each workday that rest period was not
10 provided.

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

14 **SIXTH CAUSE OF ACTION**

15 **Failure To Provide Accurate Itemized Statements**

16 **(Cal. Lab. Code §§ 226)**

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

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

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

1 employee is paid;; (7) The name of the employee and his or her social security number, except
2 that by January 1, 2008, only the last four digits of his or her social security number or an
3 employee identification number other than a social security number may be shown on the itemized
4 statement; (8) The name and address of the legal entity that is the employer, and (9) All applicable
5 hourly rates in effect during the pay period and the corresponding number of hours worked at
6 each hourly rate by the employee.

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

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

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

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

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

SEVENTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code §§ 203)

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

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

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

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

127. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable

1 immediately.”

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

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

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

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

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

23
24 131. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
25 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

26 132. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
27 members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid
28 minimum and/or overtime wages and/or missed meal and rest breaks without being paid the

1 legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as
2 penalty for not timely paying all wages due at time of termination for all employees who
3 terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed
4 by law.

5 **EIGHTH CAUSE OF ACTION**

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

7 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

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

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

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

13 **NINTH CAUSE OF ACTION**

14 **RETALIATION - Cal. Lab. Code §§ 98.6, 1102.5 and 6310**

15 **(Alleged by PLAINTIFF and against all DEFENDANTS)**

16 137. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
17 herein, the prior paragraphs of this Complaint.

18 138. At all relevant times, California Labor Code section 98.6 was in effect and was
19 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
20 employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the
21 employee may disclose illegality regarding unlawful conduct related to the failure to pay
22 compensation, including commission-based compensation, in accordance with compensation plans.

23 139. At all relevant times, California Labor Code section 1102.5 was in effect and was
24 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
25 employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the
26 employee may disclose illegality.

27
28 ///

1 140. PLAINTIFF raised complaints of illegality while he worked for DEFENDANT, and
2 DEFENDANT retaliated against him by taking adverse employment actions including wrongfully
3 terminating PLAINTIFF.

4 141. As a proximate result of DEFENDANT's willful, knowing, and intentional
5 violation(s) of Labor Code sections 98.6 and 1102.5, PLAINTIFF has suffered and continues to
6 suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his damage
7 in a sum according to proof.

8 142. As a result of DEFENDANT's adverse employment actions against PLAINTIFF,
9 PLAINTIFF has suffered general and special damages in sums according to proof.

10 143. DEFENDANT's misconduct was committed intentionally, in a malicious,
11 oppressive manner, and fraudulent manner, entitling PLAINTIFF to punitive damages against
12 DEFENDANT.

13 **TENTH CAUSE OF ACTION**

14 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

15 **(Alleged by PLAINTIFF and against all Defendants)**

16 144. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
17 herein, the prior paragraphs of this Complaint.

18 145. PLAINTIFF's wrongful termination on or about March 8, 2023 was for a pretextual
19 reason(s) to disguise DEFENDANT's unlawful employment practices directed at PLAINTIFF.

20 146. Within the State of California there exists a substantial and fundamental public
21 policy, set forth in the California Labor Code § 98.6 et seq., which forbids retaliation and wrongful
22 termination. This public policy of the state is one that benefits the public at large and guarantees
23 the rights of an employee to perform their work free from retaliation.

24 147. Within the State of California there exists a substantial and fundamental public
25 policy, set forth in the California Labor Code § 1102.5 et seq., which forbids retaliation and
26 wrongful termination. This public policy of the state is one that benefits the public at large and
27 guarantees the rights of an employee to perform their work free from retaliation.

28 148. The motivating reason(s) for PLAINTIFF's termination was PLAINTIFF'S
complaints to DEFENDANT regarding DEFENDANT'S unlawful conduct related to the failure to

1 pay compensation, including commission-based compensation, in accordance with compensation
2 plans. PLAINTIFF's wrongful termination from his position of employment was in violation of the
3 public policies of the State of California.

4 149. As a result of DEFENDANT's actions, PLAINTIFF has suffered substantial losses
5 in earnings and employment benefits and emotional distress in an amount to be determined
6 according to proof at trial.

7 150. In doing the acts herein alleged, DEFENDANT acted with malice and oppression,
8 and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled to exemplary
9 and punitive damages from DEFENDANT in an amount to be determined to punish DEFENDANT
10 and to deter such wrongful conduct in the future.

11 151. PLAINTIFF was harmed by DEFENDANT's wrongful and illegal termination of
12 his employment.

13 152. The wrongful termination of the employment of PLAINTIFF was and is a
14 substantial factor causing harm to PLAINTIFF.

15 **PRAYER FOR RELIEF**

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

18 1. On behalf of the CALIFORNIA CLASS:

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

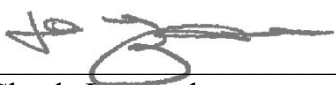
2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
 - e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On PLAINTIFF'S individual claims:
 - a. For all special damages which were sustained as a result of DEFENDANTS' conduct, including but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the practices of DEFENDANTS.
 - b. For all exemplary damages, according to proof, which were sustained as a result of DEFENDANTS' conduct.
 - c. An award of interest, including prejudgment interest at the legal rate.
 - d. Such other and further relief as the Court deems just and equitable.
 - e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
 4. On all claims:

- 1 a. An award of interest, including prejudgment interest at the legal rate;
2 b. Such other and further relief as the Court deems just and equitable; and
3 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
4

5 DATED: May 3, 2023

6 **JCL LAW FIRM, APC**

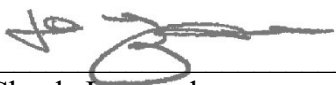
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8 By: 
9 Jean-Claude Lapuyade
10 Attorney for PLAINTIFF

11 **DEMAND FOR A JURY TRIAL**

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

13 DATED: May 3, 2023

14 **JCL LAW FIRM, APC**

15
16 By: 
17 Jean-Claude Lapuyade
18 Attorney for PLAINTIFF
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