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Attorneys for Plaintiff ALEJANDRO ESTRADA URENO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

ALEJANDRO ESTRADA URENO, an
individual, on behalf of himself, and on behalf
of all persons similarly situated,

Plaintiff,

v.

DWWH, INC. dba WEIR CANYON
HONDA, a California corporation; and DOES
1-50, Inclusive,

Defendants.

Case No. 30-2023-01316346-CU-OE-CXC

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT**

Hearing Date: October 18, 2024
Hearing Time: 9:00 AM

Judge: Hon. William D. Cluster
Dept.: CX101

Reservation ID: 74355182

1 I, JEAN-CLAUDE LAPUYADE, declare as follows:

2 1. I am the managing partner of the law firm of JCL Law Firm, APC, co-lead counsel of
3 record for Plaintiff ALEJANDRO ESTRADA URENO (“Plaintiff”) in this matter. As such, I am fully
4 familiar with the facts, pleadings and history of the matter. The following facts are within my own
5 personal knowledge, and if called as a witness, I could testify competently to the matters stated herein.

6 2. This declaration is being submitted in support of Plaintiff’s Motion to Approve PAGA
7 Settlement with Defendants DWWH, INC. dba WEIR CANYON HONDA and DWWA, Inc. dba Weir
8 Canyon Accura (“Defendants”).

9 3. A true and correct copy of the fully executed Joint Stipulation of Settlement of PAGA
10 Action and Release of PAGA Claims (“Agreement”) is attached hereto as **Exhibit #1.**

11 4. A true and correct copy of Plaintiff Ureno’s January 20, 2023 PAGA Notice is attached
12 hereto as **Exhibit #2.**

13 5. A true and correct copy of Plaintiff’s March 19, 2024 Amended PAGA Notice is attached
14 hereto as **Exhibit #3.**

15 6. A true and correct copy of the August 6, 2024 proof of filing of Motion to Approve PAGA
16 Settlement with the LWDA is attached hereto as **Exhibit #4.**

17 7. A true and correct copy of the JCL Law Firm, APC, “Time and Billing Journal” as of
18 August 2, 2024, is attached hereto as **Exhibit #5.**

19 8. A true and correct copy of the JCL Law Firm, APC, “Transaction Summary” as of August
20 2, 2024, is attached hereto as **Exhibit #6.**

21 9. A true and correct copy of the JCL Law Firm, APC, Firm Resume is attached hereto as
22 **Exhibit #7.**

23 INTRODUCTION

24 10. An objective evaluation of the proposed Settlement confirms that the relief negotiated on
25 behalf of the Aggrieved Employees and the LWDA is fair and reasonable. The Settlement is a product
26 of informed, adversarial, and non-collusive and mediated negotiations between experienced counsel.
27 As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval.
28

1 Accordingly, Plaintiff and PAGA Counsel respectfully request this Court grant approval of the
2 Agreement.

3 **PROCEDURAL AND FACTUAL BACKGROUND**

4 11. On January 20, 2023, Plaintiff Ureno, on behalf of himself and on behalf of other
5 “Aggrieved Employees,” served Defendant DWWH, Inc. and the LWDA with a Notice of Violations
6 (“PAGA Notice”) and draft complaint memorializing claims against Defendants for alleged violations
7 of the California Labor Code, including causes of action for unfair competition in violation of Business
8 & Professions Code sections 17200, *et seq.*; failure to pay minimum wages in violation of Labor Code
9 sections 1194, 1197 and 1197.1; failure to pay overtime wages in violation of Labor Code sections
10 510; failure to provide required meal periods in violation of Labor Code sections 226.7 and 512; failure
11 to provide required rest periods in violation of Labor Code sections 226.7 and 512; failure to provide
12 accurate itemized wage statements in violation of Labor Code section 226; failure to provide wages
13 when due in violation of Labor Code sections 201, 202, and 203; and failure to reimburse employees
14 for required expenses in violation of Labor Code section 2802 (LWDA Case Number LWDA-CM-
15 930537-23).

16 12. On March 19, 2024, Plaintiff served Defendant DWWH, Inc., Defendant DWWA, Inc.
17 and the LWDA with an amended PAGA Notice identifying DWWH Inc. as a DOE Defendant.
18 Following Plaintiff’s submission of both the original and amended PAGA Notices, the 65-day “waiting
19 period” on Plaintiff’s right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A),
20 lapsed without the LWDA notifying Plaintiff that they intended to investigate the claims in the PAGA
21 Notices. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to
22 the claims in the respective PAGA Notices.

23 13. On March 30, 2023, Plaintiff Ureno filed a PAGA and class action complaint against
24 Defendant DWWH, Inc. in the Superior Court for Orange, Case Number 30-2023-01316346 (the
25 “Ureno Action”). The complaint alleged nine causes of action for (1) Unfair Competition in Violation
26 of Cal. Bus. & Prof Code §§ 17200 *et seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal.
27 Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Labor
28 Code § 510; (4) Failure to Provide Required Meal Periods in Violation of Cal. Labor Code §§ 226.7

1 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Labor Code §§ 226.37 and
2 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Labor Code § 226;
3 (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201-203; (8) Failure to
4 Reimburse Employees for Required Expenses in Violation of Cal. Labor Code § 2802; and (9) Violation
5 of the Private Attorneys General Act. Plaintiff's Counsel subsequently learned of the existence of an
6 arbitration agreement by and between the Parties that purportedly bars Plaintiff's proposed class action
7 claims. Accordingly, on May 2, 2023, Plaintiff dismissed the class and individual claims and filed a
8 First Amended Complaint containing a single cause of action for Violation of the Private Attorneys
9 General Act.

10 14. On January 24, 2024, the Parties attended a full-day mediation with experienced wage
11 and hour class and PAGA action mediator, Gig Kyriacou, Esq. In advance of the mediation, Defendants
12 provided Plaintiff with sufficient information to properly evaluate Defendants' liability exposure for
13 civil penalties to the Aggrieved Employees. The data and documents Defendants produced included,
14 but was not limited to, the total number Aggrieved Employees and pay periods, written wage and hour
15 policies, employee handbooks, and a sample of all time and payroll records for the Aggrieved
16 Employees.

17 15. At the conclusion of the mediation, and with the assistance of the mediator, the Parties
18 reached a settlement. The Parties subsequently executed a binding and enforceable Memorandum of
19 Understanding ("MOU"). After reaching an agreement in the principle, the Parties drafted and
20 negotiated a long-form Settlement which is the subject of the instant motion. The Settlement was
21 negotiated in light of all known facts and circumstances and the uncertainty associated with litigation –
22 including the risk of Plaintiff not being able to maintain representative claims, the difficulty of proving
23 Plaintiff's claims in a manageable trial, the merits of Defendants' potential defenses, and the significant
24 delay and potential appellate issues inherent to litigation – and was reached after extensive arm's length
25 negotiations, with the assistance of mediator.

26 16. On March 29, 2024, Plaintiff amended his complaint to add a Doe Defendant: Doe 1, as
27 DWWA, Inc. dba Weir Canyon Acura.
28

1 17. The Settlement is intended to fully and finally resolve the Released PAGA Claims
2 asserted by Plaintiff on behalf of the Aggrieved Employees and State of California. This is only a
3 settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the
4 individual claims, if any, of the Aggrieved Employees other than that of Plaintiff. This Settlement does
5 not release any claim that is not a PAGA claim. Nor does this Settlement waive Defendants' right to
6 assert *res judicata* or other available defense to any asserted claim or lawsuit.

7 18. Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
8 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion
9 for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will
10 submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement
11 within ten (10) days after entry of judgment or order.

12 **THE SETTLEMENT IS FAIR AND REASONABLE**

13 19. The Gross Settlement Amount of \$130,000.00 is fair and reasonable and, therefore,
14 should be approved.

15 20. Here, *without stacking* the PAGA penalties, Defendants' liability exposure is estimated
16 at approximately \$583,885.00 in PAGA penalties.

17 21. Plaintiff's expert consultant estimated Defendants' exposure as follows:

Claim	Penalty Amount	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
<i>Regular Rate of Pay</i>	\$50	766	22.3%	\$38,320.00
<i>Meal Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50	2,156	62.8%	\$107,812.50
<i>Rest Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50	2,570	74.8%	\$128,512.50
<i>Unpaid Wages</i> Cal. Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197, 1997.1 1198 and 558	\$50	1,718	50%	\$85,900.00
<i>Business Reimbursement Violations</i> Cal. Labor Code § 2802	\$50	1,718	50%	\$85,900.00

<i>Wage Statement Violations</i> Cal. Labor Code § 226(a)	\$50	2,748.8	80%	\$137,440.0 0
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22. Plaintiff alleges that Defendants failed to include non-discretionary incentive compensation when calculating the regular rate of pay for purposes of overtime and redeemed sick pay. Specifically, Plaintiff's expert found additional compensation identified as "11 Other," "25 Bonus," "6 Commission," "7 Bonus," "15 EOM Bonuses (Monthly)" and "9 Special Pay (Monthly)" that were not properly included in the regular rate of pay calculation for purposes of calculating and paying overtime and sick pay. Defendants contend that not all of the additional compensation listed can be properly categorized as non-discretionary. Accordingly, Plaintiff applied a 20% discount to the projected penalties for this claim. After applying a 20% discount, Plaintiff estimates Defendant's exposure for this claim to be \$38,320.

23. Plaintiff alleges that the wage statements furnished by Defendants to the Aggrieved Employees were facially non-compliant with Labor Code Section 226(a) because they failed to include the applicable hourly rates in effect with respect to compensation identified as "Regular Pay" and "Overtime". Defendants contend that a tailored calculator was prepared for applicable Aggrieved Employees to ensure that all calculations for "Regular Pay" were performed correctly and that these calculators were attached to all applicable Aggrieved Employees paystubs thereby nullifying any argument of facial non-compliance. Accordingly, Plaintiff applied a 20% discount to projected penalties for this claim. After applying a 20% discount, Plaintiff estimates Defendants' exposure for this claim to be \$137,440. This number was calculated by multiplying an 80% violation rate of the number of total pay periods by a violation rate of \$50.

24. Plaintiff alleges that Defendants failed to provide meal periods, in violation of Labor Code 512. Specifically, Plaintiff alleges that as a result of understaffing, he and the Aggrieved Employees often had to skip meal breaks or take these breaks after their fifth hour of work. Moreover, Plaintiff alleges that his breaks and the breaks of other Aggrieved Employees were cut short or interrupted in order to assist Defendants' customers. Plaintiff also alleges that second meal breaks were also never offered when he or other Aggrieved Employees worked for more than 10 hours. Based on the timekeeping data provided by Defendants, Plaintiff's expert estimated that over 83% of pay periods

1 included at least one unique meal break violation. Defendants contend that the Aggrieved Employees
2 had substantial control over their schedules, and to the extent non-compliant meal breaks were recorded,
3 this encompasses scenarios in which Aggrieved Employees opted to delay, shorten or skip their own
4 meal period for a variety of reasons, including to earn additional commission. To account for this
5 possibility, Plaintiff applied a 25% discount to Defendants' maximum exposure. Taking into account
6 this discount, Plaintiff estimates Defendants' exposure for this claim to be \$107,812.50.

7 25. This number was calculated by multiplying a 62.8% violation rate of the number of total
8 pay periods by a violation rate of \$50. The \$50 penalty rate was used for a number of reasons in this
9 instance. First, Defendants argued that increased civil penalties for subsequent violations do not apply
10 unless the plaintiff can present evidence that the Labor Commission or a court notified the employer
11 that it was in violation of the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157,
12 1209 ["Until the employer has been notified that it is violating a Labor Code provision ... the employer
13 cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject
14 to penalties."].) Separately, Defendants also argued that courts have considerable discretion to reduce
15 the penalty awards under PAGA. *See, e.g. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504
16 (reducing the maximum PAGA penalty amount by 90%, at \$5 per pay period). Accordingly, it is
17 unlikely that Plaintiff would recover full penalty amounts even if they prevailed in establishing the
18 underlying Labor Code violations. Pursuant to California Labor Code section 558(a)(1), an employer
19 is subject to a penalty of \$50 for violations of a Labor Code section regulating hours and days of work,
20 including meal period and rest period violations. Thus, because section 558(a)(1) specifically provides
21 for a civil penalty, Plaintiff used a \$50 penalty per violation for the meal and rest break claims.

22 26. Plaintiff further alleges that Defendants failed to provide rest breaks. Specifically,
23 Plaintiff alleges that Defendants never informed Aggrieved Employees of their right to take rests breaks,
24 that Defendants' rest period policy improperly stated that employees could waive rest breaks, and that
25 neither he nor the Aggrieved Employees took rest breaks. Defendants argue that its rest period policy
26 is fully compliant with California law, that employees were not asked to waive rest breaks, and that
27 Plaintiff's rest break claim would have mainly relied on the testimony of Aggrieved Employees, making
28 it a riskier claim.

1 27. Establishing liability likely would have entailed competing testimony stating either rest
2 breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D.
3 Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the Court,
4 plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient for this
5 Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D.
6 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the
7 written policy does not generate uniform practices.”).

8 28. In light of the defenses raised by Defendants, Plaintiff applied a 25% discount to
9 Defendants’ maximum exposure. Taking into account this discount, Plaintiff estimates Defendants’
10 exposure for this claim to be \$128,512. This number was calculated by multiplying a 75% violation
11 rate of the number of total pay periods by a violation rate of \$50. A \$50 multiplier was used for the
12 same reasons as outlined above.

13 29. Plaintiff alleged that Defendants required Plaintiff and the Aggrieved Employees to use
14 their personal cell phones and personal vehicles for Defendants’ benefit. Specifically, Plaintiff and
15 Aggrieved Employees were required to use their personal cell phones to communicate with Defendants’
16 supervisors and to respond to customer phone calls and emails, and Defendants did not reimburse or
17 otherwise compensate them for these expenses incurred. Defendants contend that Plaintiff and
18 Aggrieved Employees were not required to use their personal cell phones for work-related purposes. In
19 addition, post-Plaintiff’s employment, Defendants contend that following upgrades requiring a multi-
20 factor authentication program to sign on to work computers with cell phones, employees were provided
21 reasonable expense reimbursements. Plaintiff estimated that Defendants’ total exposure for this claim
22 was approximately \$85,900 in penalties. This was calculated by multiplying a 50% violation rate by
23 the total number of pay periods by a violation rate of \$50 per pay period. Plaintiff used a 50% violation
24 rate for this claim to reflect its belief that Aggrieved Employees incurred cell phone expenses
25 approximately once per month.

26 30. Plaintiff alleges that Defendants failed to pay all minimum and overtime wages when he
27 and Aggrieved Employees worked off the clock. Specifically, Plaintiff alleged that his meal periods
28 were regularly interrupted, causing him to work while clocked out for his meal period. Additionally,

1 Plaintiff would regularly be called in to work on his days off without recording his time and would not
2 be properly compensated for time delivering paperwork to clients, as well as contacting clients and
3 coworkers while off the clock. Plaintiff estimates that Defendants' total exposure for this claim was
4 approximately \$85,900 in penalties. This was calculated using a 50% violation rate multiplied by a \$50
5 penalty.

6 31. In light of the above, the Gross Settlement Amount is approximately 22% of Defendants'
7 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery of
8 PAGA penalties through continued litigation.

9 32. Defendants' maximum exposure to PAGA penalties is not a realistic outcome of the
10 litigation because it fails to account for the risks of continued litigation including, but not limited to,
11 Defendants' defenses. Here, Defendants argue that it can only be assessed civil penalties for actual
12 violations of the Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties,
13 Plaintiff would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane*
14 *Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language
15 [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
16 suffered a violation of the Labor Code by the defendant."].) To do this, Plaintiff would need to prove
17 each Aggrieved Employee was subject to the alleged Labor Code violation.

18 33. Lastly, the maximum penalty figure does not consider that Courts have complete
19 discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if,
20 based on the facts and circumstances of the particular case, to do otherwise would result in an award
21 that is unjust, arbitrary and oppressive, or confiscatory." (Cal. Lab. Code § 2699(e)(2)).

22 34. Given Defendants' defenses to the claimed Labor Code violations at issue, and the risks
23 and costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount
24 is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length.

25 35. The LWDA has been provided notice of this motion and the PAGA settlement, and the
26 decision of LWDA to accept the PAGA settlement and not oppose the motion should be given
27 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and
28 protect its own rights.

1 **THE ATTORNEYS' FEES AND EXPENSES FAIR AND REASONABLE**

2 36. PAGA Counsel seeks approval of attorneys' fees in the amount of \$43,333.33 (one-third
3 of the Gross Settlement Amount) and attorneys' expenses not to exceed \$20,000.00¹ for reimbursement
4 of actually incurred litigation expenses. PAGA does not have any requirements for reviewing attorneys'
5 fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a matter
6 of contract for a contingent representation. Nevertheless, should this Court review the requested
7 attorneys' fees, the requested fees and costs are reasonable for experienced wage and hour counsel.

8 37. At the time this case was brought, the result was far from certain. Defendants' defenses
9 to the merits of the case created difficulties with proof and complex legal issues for PAGA Counsel to
10 overcome. Here, as noted above in section IV(A), several defenses asserted by Defendants presents
11 serious threats to the claims of Plaintiff and the Aggrieved Employees. While Plaintiff believes that
12 these defenses could be overcome, Defendants maintains that these defenses have merit and therefore
13 present a serious risk to recovery. The Settlement was possible because, in PAGA Counsels' eyes,
14 PAGA Counsel was able to persuade Defendants that there was an appreciable risk that Plaintiff would
15 prevail on the factual and legal issues underlying liability and overcome difficulties in proof as to
16 monetary relief.

17 38. Attached hereto as Exhibit #4 is a true and correct copy of the JCL Law Firm, APC, Time
18 and Billing Journal as of August 2, 2024. The time and billing journal includes time for Managing
19 Attorney Jean-Claude Lapuyade, Esq. To the best of my knowledge, each entry was made
20 contemporaneously and in the ordinary and usual course of business. The attached Billing Journal
21 shows that the JCL Law Firm, APC billed a total of 41.1 hours (41 hours and 6 minutes) for a total of
22 \$22,605 successfully litigating this action at a rate of \$550 (Managing Attorney).

23 39. The JCL Law Firm's rates are comparable to those judicially approved for other
24 plaintiff's firms, such as Baron & Budd (rates ranging from \$775 for the requested partner to \$390-
25 \$630 for non-partners), Western Comden Casselman & Essensten (rates ranging from \$670-\$750 for
26 partners and \$300-\$500 for associates), and Blood Hurst & Rearden (\$510-\$6N95 for partners). See
27

28 ¹ As detailed *infra*, at the time of filing this motion, PAGA Counsel incurred \$15,586.05 litigating this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

1 Aarons v. BMW of North America, No. 11-7667-PSG, 2014 U.S. Dist. LEXIS 118442, *40-41 (C.D.
2 Cal. Apr. 29, 2014). Other Southern California courts have approved hourly rates in the requested range.
3 See e.g., *Kearney v. Hyundai Motor Am.*, 2013 U.S. Dist. LEXIS 91636, *24 (C.D. Cal. June 28, 2013)
4 (approving hourly rates of \$650 -\$800 for senior attorneys in consumer class action); *Parkinson v.*
5 *Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010)(approving hourly rates between
6 \$445 and \$675); *Faigman v. AT&T Mobility, LLC*, 2011 U.S. Dist. LEXIS 15825, *2 (N.D. Cal. Feb.
7 15, 2011)(Approving hourly rates of \$650 an hour for partners and \$500 for associates); *Richard v.*
8 *Ameri-Force Mgmt. Servs., Inc.*, No 37-2008-00096019 (San Diego Superior Court, August 27,
9 2010)(\$695 to \$750 an hour for partners and \$495 for associates); *Barrera v. Gamestop*, No. CV 09-
10 1399 (C.D. Cal. Nov. 29, 2010)(\$700 for partners and \$475 for associates); *Anderson v. Nextel Retail*
11 *Stores, LLC*, No. CV 07-4480 (C.D. Cal. June 20, 2010)(\$655- \$750 for partners and \$300 – 515 for
12 associates); *Luquetta v. Regents of Cal.*, CGC-05-443007 (San Francisco Sup. Ct.) (approving 2012
13 partner rates between \$550 and \$850 per hour); and *Holoway v. Best Buy Co.*, C-05-5056-PJH
14 (MEJ)(N.D. Cal.)(approving 2011 partner rates between \$825 and \$700, and associates hourly rates
15 between \$355 and \$405 an hour).

16 40. Moreover, JCL Law Firm, APC’s billing rates have been approved multiple times within
17 the last twelve months by California Superior Court judges. (See Exhibit #7.)

18 41. Additionally, the attorneys and staff at co-counsel the Zakay Law Group, APLC (“ZLG”),
19 billed \$31,337.5 for 63.7 hours successfully litigating this action. A true and accurate copy of the ZLG
20 time and billing entries is attached to the Declaration of Shani O. Zakay, Esq. filed concurrently
21 herewith.

22 42. Collectively, PAGA Counsel spent a total of 104.8 hours successfully litigating this
23 matter for a total combined loadstar of \$53,942.5. Thus, the Attorneys’ Fee request is equal to PAGA
24 Counsel’s loadstar with a negative 0.8 multiplier.

25 ///

26 ///

27 ///

28 ///

43. PAGA Counsel's loadstar is summarized by firm below:

<u>FIRM</u>	<u>Hours</u>	<u>Total</u>
JCL Law Firm, APC	41.1	\$22,605.00
ZLG	63.7	\$31,337.50
Total	104.8	\$53,942.50

THE ATTORNEYS' EXPENSES SHOULD BE APPROVED

44. Prior to incurring costs for filing of this motion, PAGA Counsel collectively expended \$15,586.05 prosecuting this action (JCL Law Firm, APC - \$7,113.42; Zakay Law Group, APLC - \$8,472.63).

45. PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation fees; and expert costs, which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 5th day of August 2024, at San Diego, California.

JCL LAW FIRM, APC

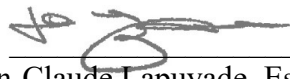
By: 
Jean-Claude Lapuyade, Esq.

EXHIBIT 1

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff

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ALEJANDRO ESTRADA URENO, an
individual, in his representative capacity on
behalf of the State of California and fellow
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v.

DWWH, INC. dba WEIR CANYON HONDA,
a California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 30-2023-01316346-CU-OE-CXC

**STIPULATION OF SETTLEMENT OF
PAGA CLAIMS AND RELEASE OF
PAGA CLAIMS**

This Stipulation of Settlement of PAGA Claims and Release of PAGA Claims is entered into by and between Plaintiff ALEJANDRO ESTRADA URENO (“Plaintiff”) individually and in his representative capacity on behalf of the State of California and fellow Aggrieved Employees and Defendants DWWH, INC. dba WEIR CANYON HONDA and DWWA, INC. dba WEIR CANYON ACURA (hereinafter “Defendants”):

I. DEFINITIONS

- A. “Actions” shall mean the following: *Alejandro Estrada Ureno v. DWWH, Inc. dba Weir Canyon Honda*, filed in Orange County Superior Court on May 2, 2023, Case No. 30-2023-01316346-CU-OE-CXC as well as Plaintiff’s written notice to the Labor and Workforce Development Agency (“PAGA Notice of Claims”) dated January 20, 2023. (hereinafter collectively referred to as “The Action”).
- B. “Aggrieved Employees” shall mean all persons currently or formerly employed by Defendants as non-exempt, hourly-paid employees as well as those individuals who fall under the inside-salesperson exemptions in the State of California during the PAGA Period.
- C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of PAGA Actions and Release of PAGA Claims.
- D. “Court” means the Superior Court for the State of California, County of Orange.
- E. “Defendants” shall mean DWWH, Inc. dba Weir Canyon Honda and DWWA, Inc. dba Weir Canyon Acura.

1 F. "Effective Date" means the date upon which the following has occurred: (i) the long
2 form Settlement Agreement has been executed by Plaintiff, Defendants, PAGA
3 Counsel and Defendants' Counsel; (ii) Notice of the Settlement has been sent to the
4 LWDA; (iii) the Court has given approval to the Settlement; (v) the Court has entered
5 the Court's Final Order and Judgment; and (vi) the later of the following events: (A)
6 when the period for filing any appeal, writ or other appellate proceeding opposing the
7 Settlement has elapsed without any appeal, writ or other appellate proceeding having
8 been filed; (B) when any appeal, writ or other appellate proceeding opposing the
9 Settlement has been dismissed finally and conclusively with no right to pursue further
10 remedies or relief; or (C) when any appeal, writ or other appellate proceeding has
11 upheld the Court's Final Order and Judgment with no right to pursue further remedies
12 or relief. If the Court declines to approve the Settlement, the parties will cooperate to
13 negotiate reasonable revisions to the settlement terms in order to seek approval.
14 Should such attempts fail, then the entire Settlement Agreement is deemed void and
15 unenforceable as if no settlement of any claim was ever reached. All negotiations,
16 statements and proceedings and data relating thereto shall be protected by California
17 Evidence Code §1152 and shall be without prejudice to the rights of any of the Parties.

21 G. "Employee Data" means information regarding the Aggrieved Employees that
22 Defendants will in good faith compile from its records and provide to the Settlement
23 Administrator. It shall be formatted in the manner requested by the Settlement
24 Administrator and shall include sufficient information to effectuate this settlement,
25 including but not limited to: each Aggrieved Employee's full name; last known
26 address; Social Security Number; and the start and end dates of employment in order
27

1 for the Settlement Administrator to determine the number of Pay Periods worked
2 during the PAGA Period.

3
4 H. “Enhancement Payment” means a payment of Ten Thousand Dollars and Zero Cents
5 (\$10,000.00), or such lesser amount approved by the Court, for Plaintiff’s
6 participation in the Action.

7
8 I. “Funding Date” shall mean ten (10) calendar days after the Effective Date and is the
9 date Defendants transfer the Gross Settlement Amount into the QSF in accord with
10 the terms of this Agreement.

11
12 J. “Gross Settlement Amount” or “GSA” means One Hundred Thirty Thousand Dollars
13 (\$130,000.00) that Defendants must pay into the QSF in connection with this
14 Settlement, inclusive of the Aggrieved Employee Payment, LWDA Payment,
15 Plaintiff’s Counsel Award, Settlement Administration Costs, and Enhancement
16 Payment.

17
18 K. “LWDA” means the California Labor and Workforce Development Agency.

19
20 L. “Net Settlement Amount” or “NSA” means the amount remaining from the Gross
21 Settlement Amount deducting the Settlement Administration Costs, the Plaintiff’s
22 Counsel Award, and Enhancement Payment. The NSA shall be used to satisfy the
23 PAGA Representative’s claims for civil penalties arising under PAGA asserted on
24 behalf of the Aggrieved Employees and the LWDA. Twenty-five percent (25%) of
25 the NSA shall be allocated to the Aggrieved Employees (“Aggrieved Employee
26 Payment”) and distributed based on the pro rata number of Pay Periods worked by
27

each Aggrieved Employee during the PAGA Period. Seventy-five percent (75%) of the NSA shall be paid to the LWDA (“LWDA Payment”).

M. “Notice of PAGA Settlement” means the notice to be provided to the Aggrieved Employees by the Settlement Administrator in the form set forth as Exhibit A to this Agreement.

N. “PAGA” means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*

O. “PAGA Payment Ratio” means the respective Pay Periods worked during the PAGA Period for each Aggrieved Employee divided by the total of the Pay Periods for all Aggrieved Employees during the PAGA Period.

P. “PAGA Period” means the period between January 20, 2022 through March 15, 2024.

Q. “Parties” means Plaintiff and Defendants, collectively, and “Party” shall mean either Plaintiff or Defendants, individually.

R. “Pay Period” for purposes of calculating the distribution of the Aggrieved Employee Payment, as defined herein, means any biweekly period in which Aggrieved Employees received wages during his/her employment with Defendants during the PAGA Period.

S. “Plaintiff” or “PAGA Representative” shall mean ALEJANDRO ESTRADA URENO.

1 T. "Plaintiff's Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC
2 ("JCL") and Shani O. Zakay, Esq. of Zakay Law Group, APLC ("ZLG").
3

4 U. "Plaintiff's Counsel Award" means the award of attorneys' fees and reimbursement
5 of litigation expenses that the Court authorizes to be paid to Plaintiff's Counsel for
6 the services they have rendered to Plaintiff, the State of California, the LWDA and
7 the Aggrieved Employees consisting of attorneys' fees not to exceed one-third of the
8 Gross Settlement Amount *plus* actually incurred litigation costs up to \$20,000.00 as
9 documented by Plaintiff's Counsels' billing records. Plaintiff's Counsels' application
10 for the Plaintiff's Counsel Award is subject to Court approval, and a reduction in
11 attorneys' fees, costs, awarded by the Court is not a basis for Plaintiff to void, rescind,
12 or terminate this Agreement. The attorneys' fees portion of the Plaintiff's Counsel
13 Award shall be allocated between Plaintiff's Counsel as follows: 50% to JCL and
14 50% to ZLG. Any amount of attorney's fees not approve and/or reduced by the Court
15 will increase the NSA.
16
17

18 V. "QSF" means the Qualified Settlement Fund established, designated and maintained
19 by the Settlement Administrator to fund the Gross Settlement Amount.
20

21 W. "Released PAGA Claims" means a release from the Aggrieved Employees for PAGA
22 penalties arising from the labor code violations occurring during the PAGA Period
23 and alleged in Plaintiff's operative complaint and PAGA Notice of Claims to the
24 LWDA, including but not limited to PAGA penalties arising from: claims for failure
25 to pay overtime wages; failure to pay minimum wages; any claims for additional
26 wages owed due to "off the clock" work, rounding and/or any other theory; failure to
27

1 provide meal periods or compensation in lieu thereof; failure to provide rest periods
2 or compensation in lieu thereof; failure to timely pay all wages due; failure to pay all
3 wages earned at least twice during each calendar month; waiting time penalties; wage
4 statement violations failure to keep and maintain accurate payroll records; violation
5 of Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2,
6 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14,
7 1198, 1198.5, 1199, 2802, 2804, and the applicable Wage Order and/or claims for
8 attorneys' fees under Code of Civil Procedure section 1021.5 and/or claims for
9 interest under Civil Code Sections 3287(b) and 3289. The release also includes any
10 allegations brought in the Action (that includes Plaintiff's PAGA Notice of Claims),
11 or any amended Complaint, including a release from the State of California (to the
12 extent Plaintiff is permitted to provide such a release for the State of California for
13 the PAGA Period) of all PAGA claims alleged or could have been alleged in the
14 Action (which as defined includes Plaintiff's PAGA Notice of Claims to the LWDA)
15 based on the facts alleged in the Action (which as defined includes Plaintiff's PAGA
16 Notice of Claims to the LWDA) which occurred during the PAGA Period.
17
18
19

20 X. "Released Parties" shall mean Defendants and all of their past, present, and future
21 respective subsidiaries, dba's, affiliates, parents, predecessors, successors, investors,
22 and their current and former employees, managing agents, servants, staffing agencies,
23 PEOs, consultants, agents, directors, officers, members, independent contractors,
24 representatives, insurers, reinsurers, and attorneys.
25

26 Y. "Settlement" means the disposition of the Action pursuant to this Agreement.
27
28

1 Z. "Settlement Administrator" means Apex Class Action LLC, 18 Technology Drive,
2 Suite 164 Irvine, CA 92618; Tel: 1-800-355-0700. The Settlement Administrator
3 establishes, designates and maintains, as a QSF under Internal Revenue Code section
4 468B and Treasury Regulation section 1.468B-1, into which the amount of the Gross
5 Settlement Amount is deposited for the purpose of resolving the claims in the Action
6 on behalf of the LWDA and the Aggrieved Employees. The Settlement Administrator
7 shall maintain the funds until distribution in an account(s) segregated from the assets
8 of Defendants and any person related to Defendants. All accrued interest shall be paid
9 and distributed to the Aggrieved Employees as part of their respective share of the
10 Aggrieved Employee Payment.
11

12
13 AA. "Settlement Administration Costs" means the amount be paid for the costs of
14 administration of the Settlement from the Gross Settlement Amount not to exceed
15 \$4,900.00.
16

17 **II. RECITALS**

18
19 A. On January 20, 2023, Plaintiff filed a Notice of Violations with the Labor and
20 Workforce Development Agency (LWDA) and served the same on Defendant
21 DWWH, Inc.

22
23 B. On March 30, 2023, Plaintiff filed a wage and hour class action alleging nine causes
24 of action for violations of the Labor Code. On May 2, 2023, Plaintiff filed the
25 operative First Amended Complaint alleging a single cause of action for Violations
26 of the California Private Attorneys General Act ("PAGA").
27

- 1 C. On January 24, 2024, the Parties participated in mediation presided over by Gig
2 Kyriacou, Esq., an experienced mediator of wage and hour PAGA actions. The
3 mediation concluded with a settlement, which was memorialized in the form of a
4 Memorandum of Understanding (“MOU”).
5
- 6 D. On March 19, 2024, Plaintiff filed an Amended Notice of Violations with the LWDA
7 and filed an Amendment to the Complaint to Add Doe Defendant to add Defendant
8 DWWA, Inc. as a named Defendant.
9
- 10 E. This Agreement represents a compromise and settlement of highly disputed claims.
11 Nothing in this Agreement is intended or will be construed as an admission by
12 Defendants that the claims in the Action of Plaintiff or the Aggrieved Employees have
13 merit or that Defendants bear any liability to Plaintiff or the Aggrieved Employees on
14 those claims or any other claims, or as an admission by Plaintiff that Defendants’
15 defenses in the Actions have merit. Defendants generally and specifically denies any
16 and all liability or wrongdoing of any sort with regard to any of the claims alleged,
17 makes no concessions or admissions of liability of any sort, and contends that for any
18 purpose other than settlement, the Action is not appropriate for PAGA treatment.
19 Defendants assert a number of defenses to the claims and deny any wrongdoing or
20 liability arising out of any of the alleged facts or conduct in the Action, any federal,
21 state or local law, violating any regulations or guidelines promulgated pursuant to any
22 statute or any other applicable laws, regulations or legal requirements, breaching any
23 contract, violating or breaching any duty, engaging in any misrepresentation or
24 deception, or engaging in any other unlawful conduct with respect to its employees.
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Neither this Agreement, nor any document referred to or contemplated herein, nor any statements, discussions or communications, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of the Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law. Nor should this Agreement be construed as an admission that the Action was properly brought as a representative action under PAGA. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendants other than for settlement purposes only. Finally, nothing in this Agreement or in the Court's Approval Order shall be deemed a waiver of Defendants' right to enforce arbitration agreements of Aggrieved Employees in the future.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendant.

1. Settlement Consideration. In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendants and the Released

1 Parties will pay the Gross Settlement Amount of One Hundred Thirty
2 Thousand Dollars (\$130,000.00). The Parties agree that this is a non-
3 reversionary Settlement and that no portion of the Gross Settlement Amount
4 shall revert to Defendants. Except as provided for in Section III(A)(2),
5 Defendants shall not be required to pay more or less than the Gross Settlement
6 Amount.
7

8 2. Number of Aggrieved Employees and Pay Periods. At the time of mediation,
9 Defendants estimated that there were 125 Aggrieved Employees that
10 collectively worked approximately 3,436 Pay Periods (“Projected Pay
11 Periods”) during the PAGA Period. In the event the number of pay periods
12 worked increases by more than 10%, or more than 3,780 pay periods worked,
13 then Defendants shall, at their option, either (a) increase the GSA
14 proportionally by the pay periods in excess of the 10%; or (b) cap the PAGA
15 Release Period as of the date the number of pay periods reaches but does not
16 exceed 10%. Under option (a) an increase by more than 10% shall mean
17 should the number of pay periods increase by more than 10% through the
18 PAGA Period, this will increase the GSA proportionally over the 10%
19 increase. For example, if the number of pay periods increase by 11% through
20 the PAGA Period, and Defendants elect option (a) set forth above, then the
21 GSA shall increase by 1%.
22
23
24

25 3. Settlement Payment. Defendant shall pay, via wire transfer, the Gross
26 Settlement Amount to the Settlement Administrator on the Funding Date.
27

1 B. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
2 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
3 California release the Released Parties from the Released PAGA Claims for the PAGA
4 Period.
5

6 C. General Release by Plaintiff. As of the Funding Date, for the consideration set forth in
7 this Agreement and in exchange for the Enhancement Award provided for herein,
8 Plaintiff for himself, his spouses, heirs and assigns, fully and finally waives, releases,
9 acquits and forever discharges and promises to never assert in any forum against the
10 Release Parties, any and all charges, complaints, claims liabilities, obligations,
11 promises, agreements, controversies, damages, actions, causes of action, suits rights,
12 demands, costs, losses debts, penalties and expenses of any nature and description
13 whatsoever, whether known or unknown, suspected or unsuspected, asserted or that
14 might have been asserted, whether in tort, contract, equity, or otherwise arising out of
15 Plaintiff's employment with Defendants, payment of wages during that employment
16 and the cessation of that employment, including but not limited to any and all wage
17 claims, wrongful termination claims, disability claims, benefit claims, public policy
18 claims, retaliation claims, statutory claims, personal injury claims, emotional distress
19 claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit
20 claims, and/or any and all claims arising under any federal, state or local statute, rule,
21 ordinance or regulation, including, but not limited to claims for violation of the Fair
22 Labor Standards Act, the California Labor Code, the Wage Orders of California's
23 Industrial Welfare Commission, the PAGA, other state wage and hour laws, California
24 Civil Code, California Rules of Court, California Code of Civil Procedure, the
25 Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA),
26 the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of
27

1 1964, the California Fair Employment and Housing Act, the California Family Rights
2 Act, the Family Medical Leave Act, California's Whistleblower Protection Act,
3 California Business & Professions Code Section 17200 et seq., the California and U.S
4 Constitutions ("Plaintiff's Released Claims"). Plaintiff's Released Claims also include
5 but are not limited to, all claims for lost wages and benefits, emotional distress,
6 retaliation, punitive damages, and attorneys' fees and costs arising under federal, state,
7 or local laws for discrimination, harassment, retaliation, and wrongful termination.
8 Plaintiff's Released Claims includes all claims, whether known or unknown. Even if
9 Plaintiff discovers facts in addition to or different from those he now knows or believes
10 to be true with respect to the subject matter of Plaintiff's Release Claims, those claims
11 will remain released and forever barred. Plaintiff also waives and relinquishes any and
12 all claims, rights or benefits that he may have under California Civil Code § 1542,
13 which provides as follows:

14
15 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
16 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
17 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
18 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
19 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR***
20 ***OR RELEASED PARTY.***

21
22 Thus, notwithstanding the provisions of section 1542, and to implement a full and
23 complete release and discharge of the Released Parties, Plaintiff expressly
24 acknowledges this Settlement Agreement is intended to include in its effect, without
25 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
26 the time of signing this Settlement Agreement, and that this Settlement Agreement
27

1 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff
2 has read this Settlement Agreement, including this waiver of California Civil Code
3 section 1542, and that Plaintiff has consulted with or had the opportunity to consult
4 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically
5 about the waiver of section 1542, and that Plaintiff understands this Settlement
6 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters
7 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may
8 discover facts different from or in addition to those Plaintiff now knows or believes to
9 be true regarding the matters released or described in this Settlement Agreement, and
10 even so Plaintiff agrees that the releases and agreements contained in this Settlement
11 Agreement shall remain effective in all respects notwithstanding any later discovery
12 of any different or additional facts. Plaintiff expressly assumes any and all risk of any
13 mistake in connection with the true facts involved in the matters, disputes, or
14 controversies released or described in this Settlement Agreement or with regard to any
15 facts now unknown to Plaintiff relating thereto.

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18
19 D. Conditions Precedent: This Settlement will become final and effective only upon (1)
20 the Court entering an order approving the Settlement, and (2) Defendants fully fund
21 the Gross Settlement Amount.

22
23 E. Nullification of Settlement Agreement. If this Settlement Agreement is (1) not
24 approved by the Court, fails to become effective, or is reversed, withdrawn, or in any
25 way prevents or prohibits Defendants from obtaining a complete resolution of the
26 Released PAGA Claims, (2) the Court does not approve a Material Term of the
27

1 Settlement (“Material Term” includes the defined Defendants, the amount of the GSA;
2 the time period of the Released PAGA Claims; any revisions to the escalator clause
3 contained in Provision III A.2. above), or (3) if Defendants fail to fully fund the Gross
4 Settlement Amount:
5

6 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
7 and shall not be admissible in any judicial, administrative or arbitral
8 proceeding for any purpose or with respect to any issue, substantive or
9 procedural; and
10

11 2. None of the Parties to this Settlement will be deemed to have waived any
12 claims, objections, defenses or arguments in the Actions.
13

14 F. Tax Liability. The Parties make no representations as to the tax treatment or legal
15 effect of the payments called for in this Agreement. The Aggrieved Employees are
16 not relying on any statement or representation by the Parties in this regard. Aggrieved
17 Employees understand and agree that they will be responsible for the payment of any
18 taxes and penalties assessed on their respective share of the Aggrieved Employee
19 Payments and will be solely responsible for any penalties or other obligations resulting
20 from their personal tax reporting of the Aggrieved Employees Payments.
21

22 G. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
23 the “acknowledging party” and each Party to this Agreement other than the
24 acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision
25 of this Agreement, and no written communication or disclosure between or among the
26
27

1 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
2 such communication or disclosure constitute or be construed or be relied upon as, tax
3 advice within the meaning of United States Treasury Department circular 230 (31 CFR
4 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
5 her or its own, independent legal and tax counsel for advice (including tax advice) in
6 connection with this Agreement, (b) has not entered into this Agreement based upon
7 the recommendation of any other Party or any attorney or advisor to any other Party,
8 and (c) is not entitled to rely upon any communication or disclosure by any attorney
9 or adviser to any other party to avoid any tax penalty that may be imposed on the
10 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
11 any limitation that protects the confidentiality of any such attorney's or adviser's tax
12 strategies (regardless of whether such limitation is legally binding) upon disclosure by
13 the acknowledging party of the tax treatment or tax structure of any transaction,
14 including any transaction contemplated by this Agreement.
15
16

17
18 H. Settlement Administrator. The Settlement Administrator shall be responsible for:
19 establishing and administering the QSF; calculating, processing and mailing payments
20 to Plaintiff's Counsel, LWDA and Aggrieved Employees; printing and mailing the
21 Notice of PAGA Settlement to the Aggrieved Employees as directed by the Court;
22 calculating, and distributing tax forms for the Aggrieved Employee Payments;
23 providing declaration(s) as necessary in support of approval of this Settlement; and
24 other tasks as the Parties mutually agree or the Court orders the Settlement
25 Administrator to perform. The Settlement Administrator shall keep the Parties timely
26 apprised of the performance of all Settlement Administrator responsibilities.
27

1 I. Employee Data. No later than seven (7) calendar days after the Effective Date,
2 Defendants shall provide the Settlement Administrator with the Employee Data. The
3 Settlement Administrator shall maintain the Employee Data as private and
4 confidential except to carry out its duties to administer the Settlement. In no event
5 will this information ever be shared with or provided to Plaintiff or Plaintiff's Counsel
6 unless necessary to ensure Plaintiff's Counsel's ability to fulfill any obligations
7 associated with this Settlement.
8

9
10 J. Funding and Allocation of the Gross Settlement Amount. Defendants are required to
11 pay the Gross Settlement Amount on or before the Funding Date.

12 1. Calculation of Individual Payments to the Aggrieved Employees. Using the
13 Employee Data, the Settlement Administrator shall add up the total number of
14 Pay Periods for all Aggrieved Employees during the PAGA Period. The
15 respective Pay Periods for each Aggrieved Employee will be divided by the
16 total Pay Periods for all Aggrieved Employees, resulting in the "PAGA
17 Payment Ratio" for each Aggrieved Employee. Each Aggrieved Employee's
18 PAGA Payment Ratio will then be multiplied by the Aggrieved Employee
19 Payment to calculate each Aggrieved Employee's estimated share of the
20 Aggrieved Employee Payment.
21

22
23 2. Allocation of Individual Aggrieved Employee Payments. For tax purposes,
24 individual Aggrieved Employee Payments shall be allocated and treated 100%
25 as penalties and interest. The individual Aggrieved Employee Payments shall
26 not be subject to wage withholdings and shall be reported on IRS Form 1099s.
27

1 3. No Credit Toward Benefit Plans. The individual Aggrieved Employee
2 Payments made to the Aggrieved Employees under this Settlement
3 Agreement, as well as any other payments made pursuant to this Settlement
4 Agreement, will not be utilized to calculate any additional benefits under any
5 benefit plans to which any Aggrieved Employee may be eligible, including,
6 but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock
7 purchase plans, vacation plans, sick leave plans, PTO plans, and any other
8 benefit plan. Rather, it is the Parties' intention that this Settlement Agreement
9 will not affect any rights, contributions, or amounts to which any Aggrieved
10 Employee may be entitled under any benefit plans.
11

12
13 4. Mailing. Individual Aggrieved Employee Payments shall be mailed by
14 regular First-Class U.S. Mail to the Aggrieved Employees' last known mailing
15 address no later than fifteen (15) calendar days after the Funding Date. Upon
16 receipt of the Employee Data, the Settlement Administrator will perform a
17 search based on the National Change of Address Database to update and
18 correct any known or identifiable address changes. No later than fourteen (14)
19 calendar days after receiving the Employee Data from Defendants, the
20 Settlement Administrator shall mail Individual Aggrieved Employee
21 Payments to all Aggrieved Employees via regular First-Class U.S. Mail. The
22 Settlement Administrator shall exercise its best judgment to determine the
23 current mailing address for each Aggrieved Employee. The address identified
24 by the Settlement Administrator as the current mailing address shall be
25 presumed to be the best mailing address for each Aggrieved Employee.
26
27

1 5. Undeliverable Aggrieved Employee Payments. Any Individual Aggrieved
2 Employee Payments returned to the Settlement Administrator as non-
3 delivered on or before the check cashing expiration deadline shall be re-mailed
4 to any forwarding address provided. If no forwarding address is provided, the
5 Settlement Administrator shall promptly attempt to determine a correct
6 address by lawful use of skip-tracing, or other search using the name, address
7 and/or Social Security number of the Aggrieved Employee involved, and shall
8 then perform a re-mailing, if another mailing address is identified by the
9 Settlement Administrator. In addition, if any Individual Aggrieved Employee
10 Payment, which is addressed to any Aggrieved Employee who is currently
11 employed by Defendants, is returned to the Settlement Administrator as non-
12 delivered and no forwarding address is provided, the Settlement Administrator
13 shall notify Defendants. Defendants will request that the currently employed
14 Aggrieved Employee provide a corrected address and transmit to the
15 Administrator any corrected address provided by the Aggrieved Employee.
16 Aggrieved Employees who received a re-mailed Individual Aggrieved
17 Employee Payment shall have their check expiration deadline extended fifteen
18 (15) days from the original check expiration deadline.

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20
21
22 6. Check Expiration Deadline. Any checks issued the Aggrieved Employees
23 shall remain valid and negotiable for one hundred and eighty (180) days from
24 the date of their issuance. If an Aggrieved Employee does not cash his or her
25 settlement check within 90 days, the Settlement Administrator will send a
26 letter to such persons, advising that the check will expire after the 180th day,

1 and invite that Aggrieved Employee to request reissuance in the event the
2 check was destroyed, lost or misplaced. In the event an individual Aggrieved
3 Employee Payment check has not been cashed within one hundred and eighty
4 (180) days, the Settlement Administrator shall cause the aggregate sum
5 represented by those uncashed checks to be sent to the California State
6 Controller's Office in the name of the Aggrieved Employee.
7

8
9 7. LWDA Payment. The Settlement Administrator shall transmit the LWDA
10 Payment to the LWDA as one lump sum payment, if by check, certified mail
11 return receipt requested to Plaintiff's Counsel, within fifteen (15) calendar
12 days of the Funding Date.

13
14 8. Plaintiff's Counsel Award. Defendants understand a motion by Plaintiff's
15 Counsel for attorneys' fees not to exceed one-third of the Gross Settlement
16 Amount currently estimated to be Forty-Three Thousand Three Hundred
17 Thirty-Three Dollars and Thirty-Three Cents (\$43,333.33) plus costs and
18 expenses supported by declaration not to exceed Twenty Thousand Dollars
19 (\$20,000.00), from the Gross Settlement Amount will be filed. Any portion
20 of the requested Plaintiff's Counsel Award that is not awarded to Plaintiff's
21 Counsel shall be part of the Net Settlement Amount and shall be distributed
22 to the LWDA and the Aggrieved Employees as provided in this Agreement.
23 The Settlement Administrator shall distribute and pay the Plaintiff's Counsel
24 Award to Plaintiff's Counsel from the Gross Settlement Amount no later than
25 fifteen (15) calendar days after the Funding Date. Plaintiff's Counsel shall be
26
27

solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff's Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Plaintiff's Counsel Award, Plaintiff and Plaintiff's Counsel shall not have the right to revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

9. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Settlement Administration Costs is \$4,900.00. The Settlement Administrator shall be paid the Settlement Administration Costs no later than fifteen (15) calendar days after the Funding Date.

K. Approval Motion. Plaintiff's Counsel and Plaintiffs shall use best efforts to file with the Court a Motion for Settlement Approval and Entering Judgment Finally Approving Settlement, within forty-five (45) days following the execution of this Agreement.

L. Notice of Settlement to LWDA. In connection with the Motion for Settlement Approval, Plaintiff's Counsel shall submit this Agreement to the LWDA pursuant to California Labor Code section 2699(1)(2). Plaintiff's Counsel shall within ten (10) days after the entry of the judgment or order approving this Settlement, submit the order approving the Settlement to the LWDA pursuant to California Labor Code section 2699(1)(3).

1 N. Review of Motion for Settlement Approval. Plaintiff's Counsel will provide an
2 opportunity for Counsel for Defendants to review the Motion for Settlement Approval,
3 including the Order Granting Approval of the Settlement, and Judgment Finally
4 Approving Settlement before filing with the Court. The Parties and their counsel will
5 cooperate with each other and use their best efforts to affect the Court's approval of
6 the Motion for Approval of the Settlement, and entry of Judgment.

7
8 O. Cooperation. The Parties and their counsel will cooperate with each other and use
9 their best efforts to implement the Settlement.
10

11 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
12 except such proceedings necessary to implement and complete the Settlement.
13

14 Q. Amendment or Modification. This Agreement may be amended or modified only by
15 a written instrument signed by counsel for all Parties or their successors-in-interest.
16

17 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
18 Agreement among these Parties, and no oral or written representations, warranties or
19 inducements have been made to any Party concerning this Agreement or its Exhibit
20 other than the representations, warranties and covenants contained and memorialized
21 in this Agreement and its Exhibit.
22

23 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
24 represent they are expressly authorized by the Parties whom they represent to negotiate
25 this Agreement and to take all appropriate action required or permitted to be taken by
26 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
27

documents required to effectuate the terms of this Agreement. The persons signing this Agreement on behalf of Defendants represents and warrants that he/she is authorized to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

T. Limited Disclosure: Plaintiff and his counsel agree that they have not and will not publish the Resolution. In response to any inquiries, Plaintiff will state that “the case was resolved and it was resolved confidentially.” Plaintiff’s counsel shall not report the Resolution in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Resolution on their website, and shall not contact any reporters or media regarding the Resolution. Despite this provision, Plaintiff’s counsel can discuss the Resolution with Plaintiff and the Aggrieved Employees and any filings with the Court and the LWDA.

U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties, as previously defined.

V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes shall be governed by and interpreted according to the laws of the State of California.

W. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.

1 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
2 is a fair, adequate and reasonable settlement of these Actions and have arrived at this
3 Settlement after extensive, non-collusive arms-length negotiations, taking into account
4 all relevant factors, present and potential.
5

6 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
7 respect to the interpretation, implementation and enforcement of the terms of this
8 Agreement and all orders and judgments entered in connection therewith, and the
9 Parties and their counsel submit to the jurisdiction of the Court for purposes of
10 interpreting, implementing and enforcing the settlement and all orders and judgments
11 entered in connection with this Agreement. Should either Party be required to enforce
12 the terms of this Settlement, the prevailing party shall be entitled to recover reasonable
13 attorneys' fees and costs upon noticed motion. The Parties intended this Agreement
14 to be binding and enforceable, pursuant to Code of Civil Procedure § 664.6.
15
16

17 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
18 the Court shall first attempt to construe the provisions valid to the fullest extent
19 possible consistent with applicable precedents so as to define all provisions of this
20 Agreement valid and enforceable.
21

22 AA. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
23 Released PAGA Claims have merit and give rise to liability on the part of Defendants.
24 Defendants claim that the Released PAGA Claims have no merit and do not give rise
25 to liability. This Agreement is a compromise of disputed claims. Nothing contained
26 in this Agreement and no documents referred to and no action taken to carry out this
27

Agreement may be construed or used as an admission by or against the Defendants or Plaintiff or Plaintiff's Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorneys' fees and costs.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 03/22/2024

Alejandro Estrada Ureno
Alejandro Estrada Ureno (Mar 22, 2024 14:31 PDT)
ALEJANDRO ESTRADA URENO

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: _____

DWWH, INC.

Printed Name

Title

DATED: _____

DWWA, INC.

Printed Name

Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: March 22, 2024

JCL LAW FIRM, A.P.C.

By: _____

1 Agreement may be construed or used as an admission by or against the Defendants or
2 Plaintiff or Plaintiff's Counsel as to the merits or lack thereof of the claims asserted.
3 Other than as may be specifically set forth herein, each Party shall be responsible for
4 and shall bear its/his own attorneys' fees and costs.
5

6 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

7
8 DATED: _____

ALEJANDRO ESTRADA URENO

9
10
11 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

12 DATED: 3/25/24

13 _____
DWWH, INC.

14 Glenn Quintos
15 Printed Name

16 COO
17 Title

18 DATED: 3/25/27

19 _____
DWWA, INC.

20 Glenn Quintos
21 Printed Name

22 COO
23 Title

24 IT IS SO AGREED AS TO FORM BY COUNSEL:

25 DATED: _____

JCL LAW FIRM, A.P.C.

26 By: _____
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Attorneys for the Plaintiff and the Aggrieved
Employees

DATED: _____

ZAKAY LAW GROUP, A.P.L.C.

By: _____

Attorneys for the Plaintiff and the Aggrieved
Employees

DATED: March 25, 2024

FISHER & PHILLIPS LLP

By:  _____

Attorneys for Defendants

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Attorneys for the Plaintiff and the Aggrieved
Employees

DATED: March 22, 2024

ZAKAY LAW GROUP, A.P.L.C.

By:  _____

Attorneys for the Plaintiff and the Aggrieved
Employees

DATED: _____

FISHER & PHILLIPS LLP

By: _____

Attorneys for Defendants

EXHIBIT 2

January 20, 2023

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

DWWH, INC. dba WEIR CANYON HONDA

c/o Glenn M Quintos

37 Kentworth

Irvine, CA 92602

Sent via Certified Mail and Return Receipt No. 7022 2410 0003 0424 4825

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, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff ALEJANDRO ESTRADA URENO (“Plaintiff”) and other aggrieved employees in a proposed lawsuit against Defendant DWWH, INC. dba WEIR CANYON HONDA (“Defendant”). Plaintiff has been employed by Defendant in California since July of 2022 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. Defendant, 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, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. Plaintiff further contends that Defendant failed to advise Plaintiff and the other aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiff and the other aggrieved employees for the non-productive time, including for their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 110. Further, Defendant improperly misclassified aggrieved employees who were paid on a draw versus commission basis as exempt from overtime compensation. Defendant included advanced draws in order to meet the salary-basis test for the overtime exemption. However, Defendant cannot rely on advanced draws in order to meet the salary-basis test for such an exemption. *See Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff

contends that Defendant's conduct violated Labor Code sections §§ 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, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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 in California during the relevant claim period.

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

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

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act 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 dark ink, appearing to read 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

ZAKAY LAW GROUP, APLC

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Jackland K. Hom (State Bar #327243)
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

ALEJANDRO ESTRADA URENO, an
individual, on behalf of himself and on behalf of
all persons similarly situated,
Plaintiff,

v.

DWWH, INC. dba WEIR CANYON HONDA,
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.

DEMAND FOR A JURY TRIAL

Plaintiff ALEJANDRO ESTRADA URENO (“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 DWWH, INC. dba WEIR CANYON HONDA (“DEFENDANT” or “DEFENDANT”) 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. DEFENDANTS owns and operate car dealerships in California, including in the county of Orange where PLAINTIFF worked.

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

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

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

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

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

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

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

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

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

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

22 **JURISDICTION AND VENUE**

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

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

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

4 **THE CONDUCT**

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

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

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

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

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

22 17. Further, pursuant to the Industrial Welfare Commission Wage Orders,
23 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their
24 time worked, meaning the time during which an employee is subject to the control of an employer,
25 including all the time the employee suffered or permitted to work. DEFENDANT required
26 PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time
27 they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
28 to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due

1 to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was
2 from time to time interrupted by work assignments while clocked out for what should have been
3 PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS
4 members forfeited minimum wage and overtime compensation by regularly working without their
5 time being accurately recorded and without compensation at the applicable minimum wage and
6 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
7 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
8 records.

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

15 19. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
16 CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4)
17 hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for
18 the same reasons, these employees were denied their first rest periods of at least ten (10) minutes
19 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
20 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
21 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
22 or more from time to time. Further, from time to time, DEFENDANT required PLAINTIFF and
23 other CALIFORNIA CLASS Members to maintain cordless communication devices on them
24 during what was supposed to be their off-duty rest break in order to receive and respond to work-
25 related communications. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
26 were from time to time required to remain on the premises, on-duty and on-call during their rest
27 periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with
28 one-hour wages in lieu thereof.

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

3 20. State law provides that employees must be paid overtime at one-and-one-half times
4 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS were compensated at
5 an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific
6 elements of an employee’s performance and/or commissions.

7 21. DEFENDANTS’ non-discretionary commission and bonus program provided the
8 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation
9 when the employees met the various performance goals set by DEFENDANT. However, when
10 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA
11 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,
12 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
13 commission wages as part of the employees’ “regular rate of pay.”.

14 22. Management and supervisors described the bonus and commissions programs and
15 commission compensation program to potential and new employees as part of the compensation
16 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA
17 CLASS. As a matter of law, the incentive and commission compensation received by
18 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
19 calculated into the “regular rate of pay” for purposes of overtime and double time compensation,
20 meal and rest period premium payments, and sick pay. DEFENDANT’s failure to do so has
21 resulted in DEFENDANT’s systematic underpayment of overtime and double time compensation,
22 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA
23 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time
24 for non-employees shall be calculated in the same manner as the regular rate of pay for the
25 workweek in which the employee uses paid sick time, whether or not the employee actually works
26 overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include
27 the incentive compensation as part of the “regular rate of pay” for purposes of sick pay
28

1 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
2 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

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

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

27 25. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS
28 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid

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

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

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

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

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

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

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

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

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

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

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

20 **E. Unreimbursed Business Expenses**

21 35. DEFENDANTS as a matter of corporate policy, practice, and procedure,
22 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
23 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and
24 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
25 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
26 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
27 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
28 necessary expenditures or losses incurred by the employee in direct consequence of the discharge

1 of his or her duties, or of his or her obedience to the directions of the employer, even though
2 unlawful, unless the employee, at the time of obeying the directions, believed them to be
3 unlawful.”

4 36. In the course of their employment, DEFENDANTS required PLAINTIFF and
5 other CALIFORNIA CLASS Members to use their personal cell phones and personal vehicles as
6 a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use
7 of their own personal cell phones and personal vehicles, PLAINTIFF and the CALIFORNIA
8 CLASS Members could not complete their essential job duties, including but not limited to,
9 sending and receiving work-related communications from DEFENDANTS and DEFENDANTS’
10 clients and using personal vehicles to deliver paperwork to DEFENDANT and DEFENDANTS’
11 clients. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
12 CALIFORNIA CLASS Members for their use of their personal cell phones and personal vehicles.
13 As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other
14 CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited
15 to, costs related to the use of their personal cellular phones and personal vehicles, all on behalf of
16 and for the benefit of DEFENDANTS.

17 **F. Wage Statement Violations**

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

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

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

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

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

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

25 **H. Unlawful Deductions**

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

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

21 **THE CALIFORNIA CLASS**

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

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

6 46. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
7 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
8 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
9 and illegal meal and rest period policies. Defendant further failed to reimburse for business
10 expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage
11 statements, and failed to maintain required records, and interest, statutory and civil penalties,
12 attorney’s fees, costs, and expenses.

13 47. The members of the class are so numerous that joinder of all class members is
14 impractical.

15 48. Common questions of law and fact regarding DEFENDANTS’ conduct, including
16 but not limited to, the off-the-clock work, unpaid mean and rest period premiums, failing to
17 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
18 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
19 minimum wage and overtime, exist as to all members of the class and predominate over any
20 questions affecting solely any individual members of the class. Among the questions of law and
21 fact common to the class are:

- 22 i. Whether DEFENDANTS maintained legally compliant meal period policies
23 and practices;
- 24 ii. Whether DEFENDANTS maintained legally compliant rest period policies
25 and practices;
- 26 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
27 CLASS Members accurate premium payments for missed meal and rest
28 periods;

- iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- vi. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- vii. Whether DEFENDANTS issued legally compliant wage statements;
- viii. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- ix. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- x. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

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

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

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

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

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

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

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

23 57. Class treatment provides manageable judicial treatment calculated to bring an
24 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
25 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 58. 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 59. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
9 § 17021.

10 60. 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 61. 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 62. 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 63. 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 64. 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 65. 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 66. 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 67. 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 68. 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 69. 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 70. 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 71. 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 72. 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 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 81. 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 82. 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 83. 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 84. 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 85. 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 86. 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 87. 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 88. 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 89. 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 90. 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 91. 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 92. 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 93. 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 94. 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 95. 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 96. 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 97. 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 98. 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 99. 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.

21 100. 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.

27 101. 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.

7 102. 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
23 103. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
25 Complaint.

26 104. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
27 required off-duty meal breaks to PLAINTIFF and the CALIFORNIA CLASS as required by the
28 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and

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

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

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

18 **FIFTH CAUSE OF ACTION**

19 **Failure To Provide Required Rest Periods**

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

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

22 107. 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.

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

1 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
2 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
3 or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour
4 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the
5 CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and
6 DEFENDANT's managers.

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

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

15 **SIXTH CAUSE OF ACTION**

16 **Failure To Provide Accurate Itemized Statements**

17 **(Cal. Lab. Code §§ 226)**

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

19 111. 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 1. Cal. Labor Code § 226 provides that an employer must furnish employees with an
23 "accurate itemized" statement in writing showing: (1) Gross wages earned; (2) Total hours
24 worked by the employee, except for any employee whose compensation is solely based on a salary
25 and who is exempt from payment of overtime under subdivision (a) of Section 515 or any
26 applicable order of the Industrial Welfare Commission; (3) The number of piece-rate units earned
27 and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions,
28 provided that all deductions made on written orders of the employee may be aggregated and

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

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

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

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

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

1 compliance with § 226 and 226.2.

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

14 **SEVENTH CAUSE OF ACTION**

15 **Failure To Pay Wages When Due**

16 **(Cal. Lab. Code §§ 203)**

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

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

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

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

28 115. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer discharges an

1 employee, the wages earned and unpaid at the time of discharge are due and payable
2 immediately.”

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

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

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

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

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

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

27 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
28 members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid

1 minimum and/or overtime wages and/or missed meal and rest breaks without being paid the
2 legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as
3 penalty for not timely paying all wages due at time of termination for all employees who
4 terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed
5 by law.

6 **EIGHTH CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§ 2802)**

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

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

13 122. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

1 and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS
2 for expenses resulting from using their personal cellular phones and personal vehicles for
3 DEFENDANTS within the course and scope of their employment for DEFENDANTS. These
4 expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by
5 DEFENDANTS' conduct to assert any waiver of their expectation. Although these expenses were
6 necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS,
7 DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the
8 CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and
9 regulations of California.

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

14 **PRAYER FOR RELIEF**

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

17 1. On behalf of the CALIFORNIA CLASS:

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

28 2. On behalf of the CALIFORNIA CLASS:

- 1 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
2 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
3 to Cal. Code of Civ. Proc. § 382;
- 4 b. Compensatory damages, according to proof at trial, including compensatory
5 damages for overtime compensation and separately owed rest periods, due to
6 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
7 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 8 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
9 the applicable IWC Wage Order;
- 10 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
11 which a violation occurs and one hundred dollars (\$100) per each member of the
12 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
13 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
14 violation of Cal. Lab. Code § 226
- 15 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
16 penalty from the due date thereof at the same rate until paid or until an action
17 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 18 3. On all claims:
- 19 a. An award of interest, including prejudgment interest at the legal rate;
- 20 b. Such other and further relief as the Court deems just and equitable; and
- 21 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 22

23 DATED: January 20, 2023

24 **ZAKAY LAW GROUP, APLC**

25 By: _____

26 Shani O. Zakay
27 Attorney for PLAINTIFF
28

DEMAND FOR A JURY TRIAL

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

DATED: January 20, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

7022 2430 0003 0424 4825

U.S. Postal Service® CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®	
Certified Mail Fee \$	Postmark Here 002-414 1/20 Estrada
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy) \$	
☐ Return Receipt (electronic) \$	
☐ Certified Mail Restricted Delivery \$	
☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$	
Total Postage and Fees \$	
Sent To DWWH, Inc. dba WEIR CANYON HONDA	
Street and Apt. No., or PO Box No.	
City, State, ZIP+4®	
PS Form 3800, April 2010 PSN 7530-02-000-9047 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DWWH, Inc. dba WEIRCANYON HONDA
c/o Glenn M Quintas
37 Kentworth
Irvine, CA 92602



9590 9402 7575 2098 0772 50

2. Article Number (Transfer from service label)

7022 2410 0003 0424 4825

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent☐ Addressee

B. Received by (Printed Name)

G. Quintas

C. Date of Delivery

1-23-23

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☒ No

1/20 Estrada 002-414

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☐ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery (over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation™☐ Restricted Delivery

Domestic Return Receipt

EXHIBIT 3

March 19, 2024

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

DWWH, INC. dba WEIR CANYON HONDA

c/o Glenn M Quintos
37 Kentworth
Irvine, CA 92602

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 0410 5649 08

DWWA, INC. dba WEIR CANYON ACURA

c/o Glenn M Quintos
37 Kentworth
Irvine, CA 92602

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 0410 5649 15

Re: Amended 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, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff ALEJANDRO ESTRADA URENO (“Plaintiff”) and other aggrieved employees in a proposed lawsuit against Defendants DWWH, INC. dba WEIR CANYON HONDA (“Defendant DWWH”) and DWWA, INC. dba WEIR CANYON ACURA (“Defendant DWWA”) (collectively “Defendants”).

The original claim in this case was submitted to the LWDA by Plaintiff on January 20, 2023, against Defendant DWWH. Plaintiff has since identified DOE Defendant 1 as DWWA, INC. dba WEIR CANYON ACURA who acted as Plaintiff’s joint employer. Therefore, Plaintiff amends his January 20, 2023 Notice to add Defendant DWWA as an additional employer and defendant in this case. Defendant DWWA will be added to Plaintiff’s complaint with the Orange County Superior Court in the same manner.

Plaintiff has been employed by Defendants in California since July of 2022 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, Plaintiff contends that Defendants failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 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, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all persons currently or formerly employed by Defendants as non-exempt, hourly-paid employees as well as those individuals who fall under the inside-salesperson exemptions in the State of California during the relevant claim period.

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) 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 Act 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 dark ink, appearing to read 'JC Lapuyade', with a long horizontal flourish extending to the right.

Jean-Claude Lapuyade, Esq.

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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jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

ALEJANDRO ESTRADA URENO, an
individual, in his representative capacity on
behalf of the State of California and fellow
Aggrieved Employees,

Plaintiff,

v.

DWWH, INC. dba WEIR CANYON HONDA,
a California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No: 30-2023-01316346-CU-OE-CXC

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

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

6 **INTRODUCTION**

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

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

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

25 **THE PARTIES**

26 4. Defendant DWWH, INC. dba WEIR CANYON HONDA (“DEFENDANT” or
27 “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted
28 and continues to conduct substantial and regular business in the state of California.

5. DEFENDANT owns and operate car dealerships in California, including in the

1 county of Orange where PLAINTIFF worked.

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

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

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

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

10. PLAINTIFF has been employed by DEFENDANTS in California since July of 2022, paid in part an hourly wage, commission-based compensation, non-discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

11. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to himself and all current and former non-exempt, exempt, piece-rate based, and/or commission-based employees employed by DEFENDANTS in California (the “AGGRIEVED EMPLOYEES”) during the time period of January 20, 2022 until the present (the “PAGA PERIOD”).

12. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANTS during the PAGA Period, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANTS' violation of 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, 2802, 2804, and the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

JURISDICTION AND VENUE

13. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10.

14. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs AGGRIEVED EMPLOYEES across California, including in this County, and committed the wrongful conduct herein alleged in this County against the AGGRIEVED EMPLOYEES.

THE CONDUCT

15. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate

1 PLAINTIFF and the AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to
2 pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, failed compensate
3 PLAINTIFF for off-the-clock work, failed to compensate PLAINTIFF and the AGGRIEVED
4 EMPLOYEES overtime, sick pay, and meal rest premiums at the correct regular rate, failed to
5 reimburse PLAINTIFF and the AGGRIEVED EMPLOYEES for business expenses, and failed to
6 issue to PLAINTIFF and the AGGRIEVED EMPLOYEES with accurate itemized wage
7 statements showing, among other things, all applicable hourly rates in effect during the pay
8 periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS'
9 uniform policies and practices are intended to purposefully avoid the accurate and full payment
10 for all time worked as required by California law which allows DEFENDANTS to illegally profit
11 and gain an unfair advantage over competitors who comply with the law. To the extent equitable
12 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the
13 PAGA PERIOD should be adjusted accordingly.

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

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

27 17. From time-to-time during the PAGA PERIOD, as a result of understaffing and
28 their rigorous work schedule, PLAINTIFF and the AGGRIEVED EMPLOYEES were from time

1 to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty
2 for meal periods. PLAINTIFF and the AGGRIEVED EMPLOYEES were from time to time
3 required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift
4 without receiving an off-duty meal break. Further, DEFENDANT from time-to-time failed to
5 provide PLAINTIFF and the AGGRIEVED EMPLOYEES with a second off-duty meal period
6 from time to time in which these employees were required by DEFENDANT to work ten (10)
7 hours of work from time to time. Further, from time to time, DEFENDANT required PLAINTIFF
8 and the AGGRIEVED EMPLOYEES to maintain cordless communication devices on them
9 during what was supposed to be their off-duty meal break in order to receive and respond to work-
10 related communications. PLAINTIFF and the AGGRIEVED EMPLOYEES therefore forfeited
11 meal breaks without additional compensation and in accordance with DEFENDANT's strict
12 corporate policy and practice.

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

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

7 20. Additionally, during the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
8 EMPLOYEES were from time-to-time required to work in excess of four (4) hours without being
9 provided duty-free, uninterrupted, ten (10) minute rest period. Further, for the same reasons, these
10 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
11 of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for
12 some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period
13 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
14 Further, from time to time, DEFENDANT required PLAINTIFF and the AGGRIEVED
15 EMPLOYEES to maintain cordless communication devices on them during what was supposed
16 to be their off-duty rest break in order to receive and respond to work-related communications.
17 As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES were from time to time required
18 to remain on the premises, on-duty and on-call during their rest periods. PLAINTIFF and the
19 AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof.

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

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

26 22. DEFENDANTS' non-discretionary commission and bonus program provided the
27 AGGRIEVED EMPLOYEES, including PLAINTIFF, with commissions and/or bonus
28 compensation when the employees met the various performance goals set by DEFENDANT.

1 However, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and
2 the AGGRIEVED EMPLOYEES worked overtime and earned non-discretionary bonus and/or
3 commission wages, DEFENDANT failed to accurately include the non-discretionary bonus
4 compensation and/or commission wages as part of the employees' "regular rate of pay."

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

21 24. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice and procedure, intentionally and knowingly failed to
24 compensate PLAINTIFF and the the AGGRIEVED EMPLOYEES at the correct rate of pay for
25 all overtime and double time compensation, meal and rest period premium payments, and sick
26 pay. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
27 payment of the correct overtime and double time compensation, meal and rest period premium
28 payments, and sick pay as required by California law which allowed DEFENDANTS to illegally

1 profit and gain an unfair advantage over competitors who complied with the law. To the extent
2 equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
3 DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

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

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

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

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

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

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

29. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the AGGRIEVED EMPLOYEES.

30. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments, and employment conditions of PLAINTIFF and the AGGRIEVED EMPLOYEES.

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

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

33. DEFENDANTS' policies and practices deprived PLAINTIFF and the AGGRIEVED EMPLOYEES of all minimum, regular, overtime, and double time wages owed

1 for the off-the-clock work activities. Because PLAINTIFF and the AGGRIEVED EMPLOYEES
2 typically worked over 40 hours in a workweek, and more than eight (8) hours per day,
3 DEFENDANTS' policies and practices also deprived them of overtime pay.

4 34. DEFENDANTS knew or should have known that PLAINTIFF and the
5 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

6 35. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited wages
7 due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
8 working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
9 PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
10 applicable law is evidenced by DEFENDANTS' business records.

11 **E. Unreimbursed Business Expenses**

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

23 37. In the course of their employment, DEFENDANTS required PLAINTIFF and the
24 AGGRIEVED EMPLOYEES to use their personal cell phones and personal vehicles as a result
25 of and in furtherance of their job duties as employees for DEFENDANT. But for the use of their
26 own personal cell phones and personal vehicles, PLAINTIFF and the AGGRIEVED
27 EMPLOYEES could not complete their essential job duties, including but not limited to, sending
28 and receiving work-related communications from DEFENDANTS and DEFENDANTS' clients

1 and using personal vehicles to deliver paperwork to DEFENDANT and DEFENDANTS' clients.
2 However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and the AGGRIEVED
3 EMPLOYEES for their use of their personal cell phones and personal vehicles. As a result, in the
4 course of their employment with DEFENDANTS, the PLAINTIFF and the AGGRIEVED
5 EMPLOYEES incurred unreimbursed business expenses, but were not limited to, costs related to
6 the use of their personal cellular phones and personal vehicles, all on behalf of and for the benefit
7 of DEFENDANTS.

8 **F. Wage Statement Violations**

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

21 39. From time-to-time during the PAGA PERIOD, DEFENDANT furnished
22 PLAINTIFF and the AGGRIEVED EMPLOYEES written wage statements that failed to
23 accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units
24 earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect
25 during the pay period and the corresponding number of hours worked at each hourly rate by the
26 employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation,
27 and the gross wages paid for those periods during the pay period, and (7) the total hours of other
28

1 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
2 pay period.

3 40. In addition to the violations described above, DEFENDANTS, from time to time,
4 failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that
5 comply with Cal. Lab. Code § 226.

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

10 **G. Unlawful Rounding Violations**

11 42. During the PAGA PERIOD, DEFENDANT did not have in place an immutable
12 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED
13 EMPLOYEE for the actual time these employees worked each day, including overtime hours.
14 Specifically, DEFENDANT had in place an unlawful rounding policy and practice that resulted
15 in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated for all their time
16 worked. As a result, DEFENDANT was able to and did in fact unlawfully, and unilaterally round
17 the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and the AGGRIEVED
18 EMPLOYEES in order to avoid paying these employees for all their time worked, including the
19 applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other
20 AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time worked
21 by working without their time being accurately recorded and without compensation at the
22 applicable overtime rates.

23 43. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
24 rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time
25 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding
26 policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as
27 ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
28 duty meal break. Additionally, DEFENDANT'S unlawful rounding policy and practice caused

1 PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANT for
2 more than ten (10) hours during a shift without receiving a second off-duty meal break.

3 **H. Timekeeping Manipulation**

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

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

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

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

28 ///

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

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

7 **J. Unlawful Deductions**

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

12 50. 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. To date,
26 DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums due to
27 him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages owed
28

1 to him under California Labor Code Section 203. The amount in controversy for PLAINTIFF
2 individually does not exceed \$75,000.

3 **FIRST CAUSE OF ACTION**

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

5 **(Cal. Lab. Code §§2698 et seq.)**

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

7 51. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

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

18 53. PLAINTIFF brings this Representative Action on behalf of the State of California
19 with respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
20 DEFENDANT during the PAGA PERIOD.

21 54. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
22 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the meaning
23 of Labor Code Section 2699(c).

24 55. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
25 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to
26 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

27 56. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
28 Section 2699.3. By certified letter, return receipt requested, dated January 20, 2023, PLAINTIFF

1 gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to
2 DEENDANT of the specific provisions of the Labor Code alleged to have been violated, including
3 the facts and theories to support the alleged violations. (See Exhibit #1.)

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

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

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

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

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

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

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

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

14 g. For violations of Labor Code Sections 1194, 1194.2, 1197,
15 1198 and 1199, a civil penalty in the amount of one hundred dollars
16 (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial
17 violation and two hundred dollars fifty (\$250) per AGGRIEVED
18 EMPLOYEE per pay period for each subsequent violation [penalty
19 per Labor Code Section].

20 59. For all provisions of the Labor Code for which civil penalty is not specifically
21 provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100)
22 for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars
23 (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation.
24 PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's
25 fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section
26 2699(g)(1).

27 60. To the extent that any of the conduct and violations alleged herein did not affect
28 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that

1 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
2 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
3 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor
4 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
5 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

6 **PRAYER FOR RELIEF**

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

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEYES:

- 11 a. Recovery of civil penalties as prescribe by the Labor Code Private Attorneys
12 General Act of 2004; and
13 b. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law.
14

15 DATED: May 2, 2023

16 **ZAKAY LAW GROUP, APLC**

17 By: 
18 Shani O. Zakay
19 Attorney for PLAINTIFF
20

21 **DEMAND FOR JURY TRIAL**

22 PLAINTIFF demands a jury trial on all issues triable to a jury.
23

24 DATED: May 2, 2023

25 **ZAKAY LAW GROUP, APLC**

26 By: 
27 Shani O. Zakay
28 Attorney for PLAINTIFF

EXHIBIT 1

January 20, 2023

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

DWWH, INC. dba WEIR CANYON HONDA

c/o Glenn M Quintos

37 Kentworth

Irvine, CA 92602

Sent via Certified Mail and Return Receipt No. 7022 2410 0003 0424 4825

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, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff ALEJANDRO ESTRADA URENO (“Plaintiff”) and other aggrieved employees in a proposed lawsuit against Defendant DWWH, INC. dba WEIR CANYON HONDA (“Defendant”). Plaintiff has been employed by Defendant in California since July of 2022 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. Defendant, 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, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. Plaintiff further contends that Defendant failed to advise Plaintiff and the other aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiff and the other aggrieved employees for the non-productive time, including for their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 110. Further, Defendant improperly misclassified aggrieved employees who were paid on a draw versus commission basis as exempt from overtime compensation. Defendant included advanced draws in order to meet the salary-basis test for the overtime exemption. However, Defendant cannot rely on advanced draws in order to meet the salary-basis test for such an exemption. *See Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff

contends that Defendant's conduct violated Labor Code sections §§ 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, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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 in California during the relevant claim period.

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

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

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act 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 dark ink, appearing to read 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

ALEJANDRO ESTRADA URENO, an
individual, on behalf of himself and on behalf of
all persons similarly situated,
Plaintiff,

v.

DWWH, INC. dba WEIR CANYON HONDA,
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.

DEMAND FOR A JURY TRIAL

Plaintiff ALEJANDRO ESTRADA URENO (“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 DWWH, INC. dba WEIR CANYON HONDA (“DEFENDANT” or “DEFENDANT”) 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. DEFENDANTS owns and operate car dealerships in California, including in the county of Orange where PLAINTIFF worked.

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

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

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

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

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

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

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

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

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

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

22 **JURISDICTION AND VENUE**

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

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

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

4 **THE CONDUCT**

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

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

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

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

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

22 17. Further, pursuant to the Industrial Welfare Commission Wage Orders,
23 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their
24 time worked, meaning the time during which an employee is subject to the control of an employer,
25 including all the time the employee suffered or permitted to work. DEFENDANT required
26 PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time
27 they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
28 to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due

1 to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was
2 from time to time interrupted by work assignments while clocked out for what should have been
3 PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS
4 members forfeited minimum wage and overtime compensation by regularly working without their
5 time being accurately recorded and without compensation at the applicable minimum wage and
6 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
7 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
8 records.

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

15 19. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
16 CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4)
17 hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for
18 the same reasons, these employees were denied their first rest periods of at least ten (10) minutes
19 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
20 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
21 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
22 or more from time to time. Further, from time to time, DEFENDANT required PLAINTIFF and
23 other CALIFORNIA CLASS Members to maintain cordless communication devices on them
24 during what was supposed to be their off-duty rest break in order to receive and respond to work-
25 related communications. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
26 were from time to time required to remain on the premises, on-duty and on-call during their rest
27 periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with
28 one-hour wages in lieu thereof.

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

3 20. State law provides that employees must be paid overtime at one-and-one-half times
4 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS were compensated at
5 an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific
6 elements of an employee’s performance and/or commissions.

7 21. DEFENDANTS’ non-discretionary commission and bonus program provided the
8 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation
9 when the employees met the various performance goals set by DEFENDANT. However, when
10 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA
11 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,
12 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
13 commission wages as part of the employees’ “regular rate of pay.”.

14 22. Management and supervisors described the bonus and commissions programs and
15 commission compensation program to potential and new employees as part of the compensation
16 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA
17 CLASS. As a matter of law, the incentive and commission compensation received by
18 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
19 calculated into the “regular rate of pay” for purposes of overtime and double time compensation,
20 meal and rest period premium payments, and sick pay. DEFENDANT’s failure to do so has
21 resulted in DEFENDANT’s systematic underpayment of overtime and double time compensation,
22 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA
23 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time
24 for non-employees shall be calculated in the same manner as the regular rate of pay for the
25 workweek in which the employee uses paid sick time, whether or not the employee actually works
26 overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include
27 the incentive compensation as part of the “regular rate of pay” for purposes of sick pay
28

1 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
2 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

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

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

27 25. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS
28 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid

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

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

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

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

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

25 29. DEFENDANTS controlled the work schedules, duties, protocols, applications,
26 assignments, and employment conditions of PLAINTIFF and the other members of the
27 CALIFORNIA CLASS.
28

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

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

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

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

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

20 **E. Unreimbursed Business Expenses**

21 35. DEFENDANTS as a matter of corporate policy, practice, and procedure,
22 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
23 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and
24 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
25 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
26 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
27 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
28 necessary expenditures or losses incurred by the employee in direct consequence of the discharge

1 of his or her duties, or of his or her obedience to the directions of the employer, even though
2 unlawful, unless the employee, at the time of obeying the directions, believed them to be
3 unlawful.”

4 36. In the course of their employment, DEFENDANTS required PLAINTIFF and
5 other CALIFORNIA CLASS Members to use their personal cell phones and personal vehicles as
6 a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use
7 of their own personal cell phones and personal vehicles, PLAINTIFF and the CALIFORNIA
8 CLASS Members could not complete their essential job duties, including but not limited to,
9 sending and receiving work-related communications from DEFENDANTS and DEFENDANTS’
10 clients and using personal vehicles to deliver paperwork to DEFENDANT and DEFENDANTS’
11 clients. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
12 CALIFORNIA CLASS Members for their use of their personal cell phones and personal vehicles.
13 As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other
14 CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited
15 to, costs related to the use of their personal cellular phones and personal vehicles, all on behalf of
16 and for the benefit of DEFENDANTS.

17 **F. Wage Statement Violations**

18 37. California Labor Code Sections 226 and 226.2 require an employer to furnish its
19 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total
20 hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
21 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
22 paid, (7) the name of the employee and only the last four digits of the employee’s social security
23 number or an employee identification number other than a social security number, (8) the name
24 and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during
25 the pay period and the corresponding number of hours worked at each hourly rate by the
26 employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation,
27 and the gross wages paid for those periods during the pay period, and (11) the total hours of other
28

1 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
2 pay period.

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

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

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

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

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

25 **H. Unlawful Deductions**

26 42. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
27 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
28

1 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
2 DEFENDANTS violated Labor Code § 221.

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

21 **THE CALIFORNIA CLASS**

22 44. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
23 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class
24 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of all current and former non-exempt,
25 exempt, exempt, piece-rate based, and/or commission-based employees employed by
26 DEFENDANT in California ("CALIFORNIA CLASS") at any time during the period beginning
27 four (4) years prior to the filing of this Complaint and ending on the date as determined by the
28

1 Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of
2 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

6 46. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
7 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
8 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
9 and illegal meal and rest period policies. Defendant further failed to reimburse for business
10 expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage
11 statements, and failed to maintain required records, and interest, statutory and civil penalties,
12 attorney’s fees, costs, and expenses.

13 47. The members of the class are so numerous that joinder of all class members is
14 impractical.

15 48. Common questions of law and fact regarding DEFENDANTS’ conduct, including
16 but not limited to, the off-the-clock work, unpaid mean and rest period premiums, failing to
17 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
18 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
19 minimum wage and overtime, exist as to all members of the class and predominate over any
20 questions affecting solely any individual members of the class. Among the questions of law and
21 fact common to the class are:

- 22 i. Whether DEFENDANTS maintained legally compliant meal period policies
23 and practices;
- 24 ii. Whether DEFENDANTS maintained legally compliant rest period policies
25 and practices;
- 26 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
27 CLASS Members accurate premium payments for missed meal and rest
28 periods;

- 1 iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
2 CLASS Members accurate overtime wages;
- 3 v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
4 CLASS Members at least minimum wage for all hours worked;
- 5 vi. Whether Defendants failed to compensate PLAINTIFF and the
6 CALIFORNIA CLASS Members for required business expenses;
- 7 vii. Whether DEFENDANTS issued legally compliant wage statements;
- 8 viii. Whether DEFENDANTS committed an act of unfair competition by
9 systematically failing to record and pay PLAINTIFF and the other members
10 of the CALIFORNIA CLASS for all time worked;
- 11 ix. Whether DEFENDANTS committed an act of unfair competition by
12 systematically failing to record all meal and rest breaks missed by
13 PLAINTIFF and other CALIFORNIA CLASS Members, even though
14 DEFENDANTS enjoyed the benefit of this work, required employees to
15 perform this work and permits or suffers to permit this work;
- 16 x. Whether DEFENDANTS committed an act of unfair competition in
17 violation of the UCL, by failing to provide the PLAINTIFF and the other
18 members of the CALIFORNIA CLASS with the legally required meal and
19 rest periods.

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

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

24 51. PLAINTIFF will fairly and adequately represent and protect the interests of the
25 CALIFORNIA CLASS Members.

26 52. PLAINTIFF retained able class counsel with extensive experience in class action
27 litigation.

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

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

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

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

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

23 57. Class treatment provides manageable judicial treatment calculated to bring an
24 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
25 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 58. 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 59. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
9 § 17021.

10 60. 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 61. 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 62. 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 63. 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 64. 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 65. 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 66. 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 67. 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 68. 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 69. 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 70. 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 71. 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 72. 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 73. 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 74. 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 75. 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 76. 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 77. 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 78. 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 79. 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 80. 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 81. 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 82. 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 83. 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 84. 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 85. 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 86. 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 87. 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 88. 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 89. 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 90. 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 91. 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 92. 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 93. 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 94. 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 95. 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 96. 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 97. 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 98. 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 99. 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.

21 100. 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.

27 101. 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.

7 102. 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
23 103. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
25 Complaint.

26 104. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
27 required off-duty meal breaks to PLAINTIFF and the CALIFORNIA CLASS as required by the
28 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and

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

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

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

18 **FIFTH CAUSE OF ACTION**

19 **Failure To Provide Required Rest Periods**

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

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

22 107. 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.

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

1 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
2 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
3 or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour
4 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the
5 CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and
6 DEFENDANT's managers.

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

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

15 **SIXTH CAUSE OF ACTION**

16 **Failure To Provide Accurate Itemized Statements**

17 **(Cal. Lab. Code §§ 226)**

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

19 111. 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 1. Cal. Labor Code § 226 provides that an employer must furnish employees with an
23 "accurate itemized" statement in writing showing: (1) Gross wages earned; (2) Total hours
24 worked by the employee, except for any employee whose compensation is solely based on a salary
25 and who is exempt from payment of overtime under subdivision (a) of Section 515 or any
26 applicable order of the Industrial Welfare Commission; (3) The number of piece-rate units earned
27 and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions,
28 provided that all deductions made on written orders of the employee may be aggregated and

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

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

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

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

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

1 compliance with § 226 and 226.2.

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

14 **SEVENTH CAUSE OF ACTION**

15 **Failure To Pay Wages When Due**

16 **(Cal. Lab. Code §§ 203)**

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

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

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

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

28 115. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer discharges an

1 employee, the wages earned and unpaid at the time of discharge are due and payable
2 immediately.”

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

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

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

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

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

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

27 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
28 members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid

1 minimum and/or overtime wages and/or missed meal and rest breaks without being paid the
2 legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as
3 penalty for not timely paying all wages due at time of termination for all employees who
4 terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed
5 by law.

6 **EIGHTH CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§ 2802)**

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

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

13 122. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

1 and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS
2 for expenses resulting from using their personal cellular phones and personal vehicles for
3 DEFENDANTS within the course and scope of their employment for DEFENDANTS. These
4 expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by
5 DEFENDANTS' conduct to assert any waiver of their expectation. Although these expenses were
6 necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS,
7 DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the
8 CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and
9 regulations of California.

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

14 **PRAYER FOR RELIEF**

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

17 1. On behalf of the CALIFORNIA CLASS:

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

28 2. On behalf of the CALIFORNIA CLASS:

- 1 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
2 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
3 to Cal. Code of Civ. Proc. § 382;
- 4 b. Compensatory damages, according to proof at trial, including compensatory
5 damages for overtime compensation and separately owed rest periods, due to
6 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
7 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 8 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
9 the applicable IWC Wage Order;
- 10 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
11 which a violation occurs and one hundred dollars (\$100) per each member of the
12 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
13 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
14 violation of Cal. Lab. Code § 226
- 15 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
16 penalty from the due date thereof at the same rate until paid or until an action
17 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 18 3. On all claims:
- 19 a. An award of interest, including prejudgment interest at the legal rate;
- 20 b. Such other and further relief as the Court deems just and equitable; and
- 21 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 22

23 DATED: January 20, 2023

24 **ZAKAY LAW GROUP, APLC**

25 By:  _____

26 Shani O. Zakay
27 Attorney for PLAINTIFF
28

DEMAND FOR A JURY TRIAL

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

DATED: January 20, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
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JCL LAW FIRM, APC

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Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiff ALEJANDRO ESTRADA URENO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

ALEJANDRO ESTRADA URENO, an individual, in his representative capacity on behalf of the State of California and fellow Aggrieved Employees,

Plaintiff,

v.

DWWH, INC. dba WEIR CANYON HONDA, a California corporation; and DOES 1-50, Inclusive,

Defendants.

Case No.: 30-2023-01316346-CU-OE-CXC

**AMENDMENT TO THE COMPLAINT
TO ADD DOE DEFENDANT**

Complaint Filed: March 30, 2023
FAC Filed: May 2, 2023

Judge: William D. Cluster
Dept.: CX104

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiff, ALEJANDRO ESTRADA URENO, having learned the true name of the
3 Defendant designated in the operative Complaint as DOE 1, hereby substitutes the true name
4 for the fictitious name wherever it appears in the operative Complaint as follows:

5 DOE 1 – DWWA, INC. dba WEIR CANYON ACURA

7 DATED: March 18, 2024

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

9 By: 
10 Jean-Claude Lapuyade
Attorney for PLAINTIFF

11 **IT IS SO ORDERED.**

12 1. DWWA, INC. dba WEIR CANYON ACURA, a California corporation, is hereby
13 named and designated in the operative Complaint as DOE 1.

16 DATE:

17 _____
18 JUDGE OF THE SUPERIOR COURT
19
20
21
22
23
24
25
26
27
28

EXHIBIT 4

EXHIBIT 5

JCL Law Firm

Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
Estrada v. DWWH (002-414)							
01/17/2023	No	Jean Claude Lapuyade	Legal Research - LWDA Filing Requirements	550.00	1:30	825.00	825.00
01/19/2023	No	Jean Claude Lapuyade	Drafted, Revised and Edited LWDA Notice	550.00	3:00	1,650.00	2,475.00
06/02/2023	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Responsive Pleading Deadline	550.00	0:24	220.00	2,695.00
06/07/2023	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re M&C Call	550.00	0:18	165.00	2,860.00
06/16/2023	No	Jean Claude Lapuyade	Law and Motion - R&R Stip to Stay	550.00	1:30	825.00	3,685.00
06/19/2023	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Mediation	550.00	0:12	110.00	3,795.00
07/06/2023	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Mediation	550.00	0:12	110.00	3,905.00
07/26/2023	No	Jean Claude Lapuyade	Case Management - Drafted , Revised and Edited Joint CMS	550.00	1:30	825.00	4,730.00
08/09/2023	No	Jean Claude Lapuyade	Law and Motion - R&R COurt's MO Re CMC	550.00	0:18	165.00	4,895.00
08/29/2023	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Stip to Stay and Mediation Data	550.00	0:54	495.00	5,390.00
10/30/2023	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Tolling Agreement	550.00	0:48	440.00	5,830.00
11/30/2023	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Data Demand	550.00	0:24	220.00	6,050.00
12/07/2023	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data	550.00	0:24	220.00	6,270.00
01/02/2024	No	Jean Claude Lapuyade	Discovery - R&R Mediation Time and Payroll Data	550.00	3:54	2,145.00	8,415.00
01/03/2024	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data	550.00	0:24	220.00	8,635.00
01/05/2024	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data	550.00	0:18	165.00	8,800.00
01/08/2024	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Class Data	550.00	0:24	220.00	9,020.00
01/15/2024	No	Jean Claude Lapuyade	Discovery - Emails to/from Expert Re Data Analysis	550.00	0:24	220.00	9,240.00
01/16/2024	No	Jean Claude Lapuyade	Discovery - R&R Expert Report	550.00	1:54	1,045.00	10,285.00
01/16/2024	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Policy Documents	550.00	0:12	110.00	10,395.00
01/17/2024	No	Jean Claude Lapuyade	Law and Motion - Revised and Edited Mediation Brief	550.00	2:30	1,375.00	11,770.00
01/19/2024	No	Jean Claude Lapuyade	Discovery - TCW Expert Re Data Analysis	550.00	0:24	220.00	11,990.00
01/19/2024	No	Jean Claude Lapuyade	Law and Motion - Revised and Edited Mediation Brief	550.00	2:48	1,540.00	13,530.00
01/20/2024	No	Jean Claude Lapuyade	Discovery - R&R Wage and Hour Policies Produced for Mediation	550.00	3:06	1,705.00	15,235.00
01/22/2024	No	Jean Claude Lapuyade	Discovery - R&R Expert Report and Emails to/from Expert Re Same	550.00	1:54	1,045.00	16,280.00
01/24/2024	No	Jean Claude Lapuyade	Mediation - Attended Mediation	550.00	8:00	4,400.00	20,680.00
01/25/2024	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re MOU	550.00	0:48	440.00	21,120.00
01/29/2024	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re MOU	550.00	0:12	110.00	21,230.00
01/30/2024	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re MOU	550.00	0:36	330.00	21,560.00
03/04/2024	No	Jean Claude Lapuyade	Case Mamagenent - Emails to/from OC Re CMC	550.00	0:18	165.00	21,725.00
03/14/2024	No	Jean Claude Lapuyade	Settlement - Reviewed and Revised SAR with Defense Edits	550.00	0:36	330.00	22,055.00
03/18/2024	No	Jean Claude Lapuyade	Pleadings - Revised and Edited Amended LWDA Notice	550.00	1:00	550.00	22,605.00
Total for Estrada v. DWWH (002-414)					41:06	\$22,605.00	

EXHIBIT 6

JCL Law Firm

Transaction Report

All Dates

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	AMOUNT	BALANCE
Estrada v. DWWH (002-414)						
10/31/2022	Journal Entry	Oct. 2022 Postage		Copies for October 2022	0.70	0.70
10/31/2022	Journal Entry	Oct. 2022 Postage		Postage for October 2022	15.64	16.34
11/30/2022	Journal Entry	Nov. 2022 Postage		Copies for November 2022	0.10	16.44
01/23/2023	Check	3105	LWDA	Filing Fee	75.00	91.44
01/31/2023	Journal Entry	Jan 2023 Postage		Copies for January 2023	4.30	95.74
01/31/2023	Journal Entry	Jan 2023 Postage		Postage for January 2023	10.01	105.75
04/30/2023	Journal Entry	April 2023 Postage		Copies for April 2023	1.40	107.15
05/02/2023	Check	3246	Knox Attorney Services, Inc.	Inv 4398965	125.55	232.70
05/31/2023	Journal Entry	May 2023 Postage		Postage for May 2023	5.22	237.92
05/31/2023	Journal Entry	May 2023 Postage		Copies for May 2023	9.00	246.92
07/31/2023	Journal Entry	July 2023 Postage		Copies for July 2023	0.40	247.32
08/31/2023	Journal Entry	August 2023 Postage		Copies for August 2023	0.30	247.62
01/03/2024	Check	3592	Kyriacou Mediation	Mediation Deposit	5,250.00	5,497.62
01/31/2024	Journal Entry	Jan. 2024 Postage		Copies for January 2024	0.40	5,498.02
02/05/2024	Check	3649	Berger Consulting Group	Inv.9411	1,580.00	7,078.02
02/29/2024	Journal Entry	Feb 2024 Postage		Postage for February 2024	0.64	7,078.66
03/31/2024	Journal Entry	Mar 2024 Postage		Copies for March 2024	12.80	7,091.46
03/31/2024	Journal Entry	Mar 2024 Postage		Postage for March 2024	21.76	7,113.22
04/30/2024	Journal Entry	April 2024 Postage		Copies for April 2024	0.20	7,113.42
Total for Estrada v. DWWH (002-414)					\$7,113.42	
TOTAL					\$7,113.42	

EXHIBIT 7

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291

FIRM RESUME

Areas of Practice: Employee Class Actions, Wage and Hour Class Actions, Civil Litigation, and Unlawful Housing Practices.

ATTORNEY BIOGRAPHIES

Jean-Claude Lapuyade, Esq.
California Bar Number 248676
Founding Partner

Biography:

Mr. Lapuyade is a San Diego based labor and employment attorney representing aggrieved California employees and the victims of unlawful housing practices throughout the State of California. Mr. Lapuyade's litigation practice focuses on representing California employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, and misclassification, wrongful termination cases and tenants in unlawful housing class actions. Mr. Lapuyade prides himself on providing his clients with aggressive, attentive and result driven representation through the litigation process, trial and arbitration. Since 2007, Mr. Lapuyade successfully recovered in excess of \$200 million in monetary awards for his clients.

Mr. Lapuyade served as co-editor of the Insurance Column for Consumer Attorneys of San Diego from 2011 to 2014. As editor, Mr. Lapuyade was responsible for publishing monthly articles in the Trial Bar News periodical analyzing complex insurance coverage issues. Mr. Lapuyade is a four-time recipient of the Super Lawyers Rising Star by Thomson Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to 5 percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California
- U.S. District Court Central District of California
- U.S. District Court Eastern District of California
- U.S. District Court Northern District of California

Professional Associations:

- California Employment Lawyers Association, 2007 to Present
- Consumer Attorneys of San Diego, 2007 to 2020
- American Bar Association, Section of Litigation, Member, 2007 to 2020
- American Bar Association, Labor & Employment Section, Member, 2007 to 2020
- American Bar Association, Tort, Trial & Insurance Section, Member, 2007 to 2020
- California Bar Association, Labor & Employment Section, Member, 2007 to Present
- California Bar Association, Litigation Section, Member, 2007 to Present

Education:

- **California Western School of Law**
 - J.D. - 2006
 - Honors: Deans Merit Scholarship, California Western School of Law 2005 - 2006
- **University of Arizona**
 - B.A. - 2001
 - Major: History

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2015 - 2018
- Distinguished Advocate Award for Outstanding Oral Advocacy, 2005 - 2006

Sydney Castillo-Johnson, Esq.
California Bar Number 343881
Associate Attorney

Biography:

Ms. Castillo-Johnson is a San Diego based labor and employment attorney representing California employees throughout the state of California. Ms. Castillo-Johnson's litigation practice focuses on representing current and former employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, misclassification, and wrongful termination.

Ms. Castillo-Johnson volunteered her time at California Western School of Law first as a student intern and later as a student manager with the Community Law Project which offers legal services to the low-income community of San Diego.

Education:

- **California Western School of Law**
 - J.D.- 2022
 - Honors:
 - Dean's Honor List: Spring 2021, Fall 2021
 - Public Service Honor Society Fall 2021
 - 3L Academic Merit Scholarship
 - Dean's Diversity, Service, and Leadership Scholarship
 - Activities: Community Law Project Student Manager
- **Azusa Pacific University**
 - B.A. – 2018
 - Major: Criminal Justice

Monnett De La Torre, Esq.
California Bar Number 272884
Senior Associate

Biography:

Ms. De La Torre is a San Diego and Ventura County based labor and employment attorney representing aggrieved California employees throughout the State of California. Ms. De La Torre's litigation practice focuses on representing California employees in wage and hour class and representative actions for unpaid wages, missed meal and rest breaks, misclassification, penalties, and wrongful termination cases. Ms. De La Torre has extensive experience handling internal workplace investigations. Ms. De La Torre has handled matters before the Department of Fair Employment and Housing, Equal Employment Opportunity Commission and Department of Labor.

Ms. De La Torre is a two-time recipient of the Super Lawyers Rising Star by Thomas Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to five percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California

Professional Associations:

- California Employment Lawyers Association, 2022 to Present
- Consumer Attorneys of San Diego, 2010-2015
- American Bar Association, Labor & Employment Section, Member, 2015 to Present
- California Bar Association, Labor & Employment Section, Member, 2015 to Present
- San Diego La Raza Lawyers Association, 2010-2015
- Ventura County Bar Association, 2015-Present
- Women Lawyers of Ventura County, 2015-Present

Education:

- **New England School of Law**
 - J.D.- 2010

- Honors:
 - Dean's List Consecutive years
- **University of California, San Diego**
 - B.A.- 2006
 - Major: Economics
 - Minor: Latin American Studies

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2021 and 2022
- Pacific Cost Business Times, "Top 40 under 40" Award
- Daily Transcripts "Top Young Attorney: nominee, consecutive years"

REPORTED CASES

- *Blanchette et al., v. Superior Court (GHA Homes)*, 8 Cal.App.5th 521, 2017
- *Chmurny v. State*, 392 Md. 159, 2006

EXAMPLES OF THE JCL LAW FIRM'S
REPRESENTATIVE CLASS ACTION & REPRESENTATIVE CASES

- *Ware v. Shake Shack Enterprises, LLC*, Alameda Superior Court Case No. 21CV002063 (October 19, 2023) Hon. Brad Seligman approved a \$1,330,000.00 class action and PAGA action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Trinh v. Precision Metal Products, Inc., et al.*, San Diego Superior Court Case No. 37-2022-00000965-CU-OE-CTL (October 16, 2023) Hon. Matthew C. Braner approved a \$450,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off the clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Anderson v. Barton Myers Associates, Inc., et al.*, Los Angeles Superior Court Case No. 21STCV43314 (October 12, 2023) Hon. Elihu M. Berl approved a \$900,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *DeSanctis v. Douglas Products and Packaging Company, LLC*, Contra Costa Superior Court Case No. C21-01874 (October 11, 2023) Hon. Charles S. Treat approved a \$372,500.00 class action and PAGA action settlement for, *inter alia*, failure to pay for all hours worked. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Jackson v. White Fir, LLC, et al.*, Sacramento Superior Court Case No. 34-2021-00301656 (October 6, 2023) Hon. Lauri A. Damrell approved a \$750,000.00 class action and PAGA action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Kneisly v. SR Machining, Inc., et al.*, Riverside Superior Court Case No. CVRI2201491 (October 5, 2023) Hon. Harold W. Hopp approved a \$220,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Mendez v. Bondz, Inc., et al.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0007486 (September 14, 2023) Hon. George J. Abdallah, Jr. approved a \$180,000.00 class action and PAGA action settlement for, *inter alia*, failure to comply with piece-rate laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Baray v. Curation Foods, Inc., et al.*, Santa Barbara Superior Court Case No. 21CV02834 (August 29, 2023) Hon. James F. Rigali approved a \$495,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Rodriguez, et al. v. Ferma Greenbox, Inc., et al.*, Alameda Superior Court Case No. RG21101104 (August 23, 2023) Hon. Evelio Grillo approved a \$200,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *O'Quinn v. Laugh Factory, Inc.*, Los Angeles Superior Court Case No. 19STCV28155 (August 1, 2023) Hon. Carolyn B. Kuhl approved a \$144,000.00 class action and PAGA action settlement for, *inter alia*, unlawful tip pooling. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Toler v. Total Testing Solutions, LLC*, Los Angeles Superior Court Case No. 21STCV38452 (July 27, 2023) Hon. Elihu M. Berle approved a \$160,000.00 class action and PAGA action settlement for meal and

rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.

- *Rodriguez v. EAH, Inc.*, Santa Cruz Superior Court Case No. 21CV00884 (July 25, 2023) Hon. Marjorie Carter approved a \$1,450,000.00 class action and PAGA action settlement for, *inter alia*, failure to compensate overtime and redeemed sick pay at the regular rate of pay. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Neutall v. Urban Alchemy*, San Francisco Superior Court Case No. CGC-20-588622 (July 13, 2023) Hon. Richard B. Ulmer approved a \$980,000.00 class action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel.
- *Rodriguez v. RM Parks Place, Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2021-6050 (June 7, 2023) Hon. Erin Guy Castillo approved a \$175,000.00 class action and PAGA action settlement for, *inter alia*, wage statement violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Chrestensen v. Northeastern Rural Health Clinics* Lassen, Superior Court Case No. 63703 (April 13, 2023) Hon. Leonard J. La Casse approved a \$270,000.00 class action and PAGA action settlement for, *inter alia*, unpaid overtime wages. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Hernandez, et al. v. Parenting Network, Inc.*, Tulare Superior Court Case No. VCU287027 (March 14, 2023) Hon. Bret Hilman approved a \$225,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Sarmiento v. Caduceus Healthcare Inc.*, San Diego Superior Court Case No. 37-2021-00002597 (March 10, 2023) Hon. Richard S. Whitney approved a \$315,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Garces, et al. v. DriverDo, LLC*, Los Angeles Superior Court Case No. 19STCV32773 (January 24, 2023) Hon. Carolyn B. Kuhl approved a \$700,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *De Jesus v. Guardian Angel Home Care, Inc.*, San Diego Superior Court Case No. 37-2020-00021049-CU-OE-CTL (July 29, 2022) Hon. Ronald F. Frazier approved a \$300,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Kaur v. Aces 2020 I, LLC, et al.*, Contra Costa Superior Court Case No. MSC20-02482 (December 22, 2022) Hon. Edward G. Weil approved a \$585,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Molina v. Hawaiian Airlines, Inc.*, Los Angeles Superior Court Case No. 20STCV28079 (November 23, 2022) Hon. Maren Nelson approved a \$250,000 class action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the Plaintiff.
- *Lang Jr. v. Pathways Community Services LLC*, San Diego Superior Court Case No. 37-2019-00049969-CU-OE-CTL (September 9, 2022) Hon. James A. Mangione approved a \$160,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Martinello v. Century Wilshire, Inc.*, Los Angeles Superior Court Case No. 20STCV32613 (March 1, 2022) Hon. Carolyn Kuhl approved a \$550 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel.
- *Wilson v. Spreen Inc. (dba Spreen Honda)*, San Bernardino Superior Court Case No. CIVSB2119857 (April 6, 2022) Hon. David Cohn approved a \$300,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Ledesma v. TVJ Sons I, Inc.; Porter and Howard, Inc.* Santa Barbara Superior Court Case No. 20CV03573 (November 10, 2021) Hon. Jed Beebe approved a \$350,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC represented the State of California and the Aggrieved Employees.
- *Jacobs v. Rush Media Company, LLC; XLT Management Services, Inc.*, Los Angeles Superior Court Case No. 20STCV32350 (May 2, 2022) Hon. Daniel J. Buckley appointed the JCL Law Firm, APC as Class Counsel and approved a \$330,000 class action settlement for, *inter alia*, independent contractor misclassification.
- *Chavez v. HTL Conrad Domestic, LLC; HTL Conrad Domestic Employer, LLC*, San Diego Superior Court Case No. 37-2020-00016193-CU-OE-CTL (June 9, 2022) Hon. John S. Meyer approved a \$850,000 PAGA action settlement for, *inter alia*, failure to compensate overtime at the regular rate of pay. The JCL Law Firm, APC acted as representative PAGA counsel for the State of California and the Aggrieved Employees.
- *Renteria v. Love's Country Stores of California*, San Bernardino Superior Court Case No. CIVDS20164481 (June 14, 2022) Hon. David Cohn approved a \$2.2 million dollar class action and PAGA action settlement

for, *inter alia*, unpaid overtime and sick pay. The JCL Law Firm, APC acted as Class Counsel and as representative PAGA counsel for the State of California.

- *Lopez v. Adidas America, Inc.*, Ventura Superior Court Case No. 56-2021-005498444-CU-OE-VTA (April 4, 2022) Hon. Mark Borrell approved a \$1.5 million dollar class action and PAGA action settlement for, *inter alia*, inaccurate overtime calculations, and appointed the JCL Law Firm, APC as Class Counsel.
- *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No. 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq. as Class Counsel.)
- *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq. as Class Counsel in a wage and hour class action settlement.)
- *Latin v. OneMain General Service Corporation*, Stanislaus County Superior Court Case No. CV-20-002498 (October 22, 2021) Hon. Stacy Speiller approved a PAGA action settlement for \$700,000 wage statement violations. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.
- *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).
- *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)
- *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)
- *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)
- *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)
- *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL Law Firm, APC, acted as lead counsel.)
- *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)

- *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)
- *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)
- *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)
- *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
- *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);
- *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
- *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);