

SUMMONS

(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
ELECTRONICALLY FILED

8/18/2022

Kern County Superior Court
By Alejandra Velazquez, Deputy

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

MOTOR CITY SALES & SERVICE, a California corporation; MCLB, INC., a California corporation;
and DOES 1-50, Inclusive,

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

TEVIN BRANDT, an individual, on behalf of himself and on behalf of all persons similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Kern Superior Court

Metropolitan Division Justice Building - 1215 Truxtun Ave, Bakersfield, CA 93301

CASE NUMBER:
(Número del Caso):

BCV-22-102078

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

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

Shani O. Zakay, Esq.; Zakay Law Group, APLC; 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 8/18/2022
(Fecha)

TAMARAH HARBER-PICKENS

Clerk, by

(Secretario)

, Deputy

(Adjunto)

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

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

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☐ by personal delivery on (date):

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

TEVIN BRANDT, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

MOTOR CITY SALES & SERVICE, a
California corporation; MCLB, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. **BCV-22-102078**

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698 *ET SEQ.*

1 Plaintiff TEVIN BRANDT (“PLAINTIFF”) an individual, in his representative capacity on
2 behalf of himself, the State of California, and fellow current and former AGGRIEVED EMPLOYEES,
3 defined *supra*, against Defendants MOTOR CITY SALES & SERVICE (“Defendant Motor City”),
4 and MCLB, INC. (“Defendant MCLB”) (collectively “DEFENDANTS”), alleges on information and
5 belief, except for his own acts and knowledge which are based on personal knowledge, the following:

6 **INTRODUCTION**

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

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

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

- 15 a. Failure to provide compliant meal and rest periods;
- 16 b. Failure to allow employees to take duty-free meal and rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages;
- 18 d. Failure to correctly calculate the regular rate of pay;
- 19 e. Failure to failed to pay for all hours worked;
- 20 f. Failure to maintain true and accurate records;
- 21 g. Failure to reimburse for required business expenses;
- 22 h. Failure to provide accurate itemized wage statements; and
- 23 i. Failure to timely pay wages due during, and upon termination of employment.

24 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of himself
25 and all other aggrieved employees of DEFENDANTS in California seeking all civil penalties and
26 unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

27
28 ///

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

THE PARTIES

6. Defendant MOTOR CITY SALES & SERVICE (“Defendant Motor City”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

7. Defendant MCLB, INC. (“Defendant MCLB”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

8. DEFENDANTS own, operate, and/or manage car dealerships in California, including in the county of Kern where PLAINTIFF worked.

9. PLAINTIFF was employed by DEFENDANTS in California from April of 2021 to November of 2021 and at all times was classified by DEFENDANTS as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

10. PLAINTIFFF brings this action in his representative capacity on behalf of the State of California and on behalf of all individuals who are or previously were by Defendant Motor City and/or Defendant MCLB and classified as non-exempt, exempt, piece-rate-based and/or commission-based employees in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANTS between June 7, 2021 and the present (“PAGA PERIOD”).

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

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

13. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts alleged in this Complaint.

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

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

JOINT EMPLOYER

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

25. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County, and DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in

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

3 **THE CONDUCT**

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

21 **A. Meal Period Violations**

22 27. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
23 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
24 time during which an employee is subject to the control of an employer, including all the time the
25 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
26 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them
27 for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's
28 demanding work requirements and DEFENDANTS' understaffing, DEFENDANTS required

1 PLAINTIFF to work during what was supposed to be PLAINTIFF's off-duty meal break. Indeed, there
2 were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF
3 and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime wages by regularly
4 working without their time being accurately recorded and without compensation at the applicable
5 minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay
6 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
7 DEFENDANTS' business records.

8 28. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
9 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED
10 EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal breaks and were
11 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
12 were required from time to time to perform work as ordered by DEFENDANT for more than five (5)
13 hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time
14 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
15 for some workdays in which DEFENDANT required these employees to work ten (10) hours of work
16 from time to time. The nature of the work performed by PLAINTIFF and other AGGRIEVED
17 EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal period exception.
18 When they were provided with meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES
19 were, from time to time, required to remain on duty and on call. PLAINTIFF and other AGGRIEVED
20 EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance with
21 DEFENDANTS' strict corporate policy and practice.

22 **B. Rest Period Violations**

23 29. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
24 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
25 provided ten (10) minute rest periods as a result of their rigorous work requirements and
26 DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their
27 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
28 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of

1 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
2 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were
3 provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to
4 time, required to remain on duty and/or on call. PLAINTIFF and other AGGRIEVED EMPLOYEES
5 were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules
6 and DEFENDANTS' inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were
7 from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

8 **C. Unreimbursed Business Expenses**

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

19 32. In the course of their employment, DEFENDANTS required PLAINTIFF and other
20 AGGRIEVED EMPLOYEES to purchase work uniforms, and return said work uniforms to
21 DEFENDANTS at the end of their employment, as a result of and in furtherance of their job duties as
22 employees for DEFENDANTS. DEFENDANTS' policy and practice was to only reimburse
23 PLAINTIFF and other AGGRIEVED EMPLOYEES for the purchase of work uniforms if they were
24 returned in good condition. Further, DEFENDANTS' policy and practice was to deduct the cost of any
25 unreturned uniforms, and uniforms not in good condition, from PLAINTIFF'S and other AGGRIEVED
26 EMPLOYEES' final paycheck. As a result, from time to time, DEFENDANTS deducted the cost of
27 any unreturned uniforms, or returned uniforms not in good condition, from the AGGRIEVED
28 EMPLOYEES' final paychecks. But for the purchase of said work uniforms, PLAINTIFF and the

1 AGGRIEVED EMPLOYEES could not complete their essential job duties. However, DEFENDANTS
2 from time to time unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES
3 for purchase of DEFENDANT’S work uniforms. As a result, in the course of their employment with
4 DEFENDANTS, the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
5 business expenses, but were not limited to, costs related to the purchase of work uniforms, all on behalf
6 of and for the benefit of DEFENDANT.

7 **D. Wage Statement Violations**

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

16 35. From time to time during the PAGA PERIOD, when PLAINTIFF and other
17 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and
18 rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
19 PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage statements
20 which failed to show, among other things, the total hours worked and all applicable hourly rates in
21 effect during the pay period and the corresponding amount of time worked at each hourly rate, correct
22 rates of pay for penalty payments or missed meal and rest periods. More specifically, from time to time,
23 DEFENDANT failed to include the applicable hourly rate in effect during the pay period and the
24 corresponding amount of time worked the hourly rate for categories of compensation, including but not
25 limited to, “Covid Hours.”

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

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

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

6 38. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continue to fail
7 to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.

8 39. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and
9 other AGGRIEVED EMPLOYEES to perform pre-shift and post-shift work all while off-the-clock,
10 including but not limited to, attending required job trainings off-the-clock. This resulted in PLAINTIFF
11 and other AGGRIEVED EMPLOYEES to have to work while off-the-clock.

12 40. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
13 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

14 41. DEFENDANTS controlled the work schedules, duties, protocols, applications,
15 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

16 42. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
17 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or
18 pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for
19 all the work they performed.

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

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

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

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

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

7 **Pay**

8 47. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
9 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
10 overtime and double time hours worked, meal and rest period premiums, and sick pay. As a result,
11 PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working
12 overtime without compensation at the correct overtime and double time rates, meal and rest period
13 premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to not pay the
14 AGGRIEVED EMPLOYEES the correct rate for all overtime and double time worked, meal and rest
15 period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS'
16 business records.

17 48. State law provides that employees must be paid overtime at one-and-one-half times their
18 “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
19 hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

20 49. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
21 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
22 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.
23 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus
24 compensation when the employees met the various performance goals set by DEFENDANTS.

25 50. However, from time-to-time, when calculating the regular rate of pay, in those pay periods
26 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid meal
27 and rest period premium payments, and/or sick pay, and earned this non-discretionary bonus or
28 incentive, DEFENDANTS failed to accurately include the non-discretionary bonus compensation

1 and/or incentive and/or shift differential paid as part of the employees' "regular rate of pay" and/or
2 calculated all hours worked rather than just all non-overtime hours worked. Management and
3 supervisors described the incentive/bonus program to potential and new employees as part of the
4 compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and
5 other AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to do so
6 has resulting in a systematic underpayment of overtime and double time compensation, meal and rest
7 period premiums, and redeemed sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES by
8 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time for non-
9 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
10 the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in
11 that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive
12 compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation
13 of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Lab. Code Sections 201,
14 202, 203, and/or 204.

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

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

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

14 **H. Violation for Untimely Payment of Wages**

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

20 54. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty
21 meal and rest breaks and was not fully relieved of duty for his rest and meal periods. PLAINTIFF was
22 required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift
23 without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with
24 a first, second, and third rest period of at least ten (10) minutes for some shifts worked of at least,
25 respectively, two (2) to four (4) hours from time to time, six (6) and eight (8) hours from time to time,
26 and ten (10) hours or more from time to time when DEFENDANTS provided PLAINTIFF with a rest
27 break, they required PLAINTIFF to remain on-duty and on-call, for the rest break. DEFENDANTS'
28 policy caused PLAINTIFF to remain on-call and on-duty during what was supposed to be his off-duty

1 meal periods. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation
2 and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover,
3 DEFENDANTS also provided PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code
4 § 226. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double
5 time compensation still owed to him, or any penalty wages owed to him under Cal. Lab. Code § 203.
6 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

7 **FIRST CAUSE OF ACTION**

8 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

9 **[Cal. Lab. Code §§ 2698, et seq.]**

10 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

11 55. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
12 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

22 57. PLAINTIFF brings this Representative Action on behalf of the State of California with
23 respect to himself and all non-exempt, exempt, commission-based, and piece-rate employees who
24 worked for Defendant Motor City and/or Defendant MCLB in California during the PAGA PERIOD.

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

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

4 60. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
5 Section 2699.3. By certified letter, return receipt requested, dated June 7, 2022, PLAINTIFF gave
6 written notice to the Labor and Workforce Development Agency (“LWDA”) and to DEFENDANTS of
7 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
8 to support the alleged violations.

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

14 62. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the
15 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute
16 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of
17 limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for
18 statutes of limitation and repose for civil causes of action that exceed 180 days.

19 63. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
20 EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of Labor Code Section 201,
21 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d),
22 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804 in the following amounts:

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

28 b. For violations of Labor Code Section 226(a), a civil penalty in the

1 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
2 EMOPLOYEE for any initial violation and one thousand dollars for each
3 subsequent violation [penalty per Labor Code Section 226.3];

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

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

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

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

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

27 64. For all provisions of the Labor Code for which civil penalty is not specifically provided,
28 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each

1 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for
2 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the
3 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
4 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

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

12
13 **PRAYER FOR RELIEF**

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

15 (a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including
16 pursuant to Labor Code § 2699, *et seq.*;

17 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
18 Private Attorneys General Act; and

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

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21 Dated: August 11, 2022

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

23 By: 
24 Shani O. Zakay
25 Attorneys for PLAINTIFF
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