

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

SUNROAD AUTO, LLC, a California Limited Liability Company;
(See attached)

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

02/28/2022 at 05:46:53 PM

Clerk of the Superior Court
By Erika Engel, Deputy Clerk

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

TYLER WAYNE SNEED, an individual, on behalf of himself and on
behalf of all persons similarly situated,

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Courthouse
330 W Broadway
San Diego, CA 92101

CASE NUMBER: 37-2022-00007661-CU-OE-CTL
(Número del Caso):

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

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

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291
JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

11

DATE: 03/01/2022

(Fecha)

Clerk, by E. Engel, Deputy
(Secretario) (Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

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

[SEAL]



SHORT TITLE:

Sneed v. Sunroad Auto, LLC, et al.

CASE NUMBER:

INSTRUCTIONS FOR USE

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

SUNROAD AUTO HOLDING CORPORATION, a California Corporation; SUNROAD HOLDING CORPORATION, a California Corporation; SUNROAD DEALERSHIPS CORPORATION, a California Corporation; SUNROAD CV AUTO, LLC, a Delaware Limited Liability Company; SUNROAD EC AUTO, LLC, a Delaware Limited Liability Company; SUNROAD HG AUTO, LLC, a California Limited Liability Company; SUNROAD KF AUTO, LLC, a California Limited Liability Company; and DOES 1-50, Inclusive,

Page ____ of ____

Page 1 of 1

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/28/2022 at 05:46:53 PM
Clerk of the Superior Court
By Erika Engel, Deputy Clerk

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiff TYLER WAYNE SNEED

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

TYLER WAYNE SNEED, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

SUNROAD AUTO, LLC, a California Limited
Liability Company; SUNROAD AUTO
HOLDING CORPORATION, a California
Corporation; SUNROAD HOLDING
CORPORATION, a California Corporation;
SUNROAD DEALERSHIPS
CORPORATION, a California Corporation;
SUNROAD CV AUTO, LLC, a Delaware
Limited Liability Company; SUNROAD EC
AUTO, LLC, a Delaware Limited Liability
Company; SUNROAD HG AUTO, LLC, a
California Limited Liability Company;
SUNROAD KF AUTO, LLC, a California
Limited Liability Company; and DOES 1-50,
Inclusive,

Defendants.

Case No. 37-2022-00007861-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff TYLER WAYNE SNEED (“PLAINTIFF”) an individual, in his representative capacity
2 on behalf of himself, the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against Defendants SUNROAD AUTO LLC (“Defendant Sunroad
4 Auto”), SUNROAD AUTO HOLDING CORPORATION (“Defendant Sunroad Auto Holding”),
5 SUNROAD HOLDING CORPORATION (“Defendant Sunroad Holding Corporation”), SUNROAD
6 DEALERSHIPS CORPORATION (“Defendant Sunroad Dealerships”), SUNROAD CV AUTO, LLC
7 (“Defendant Sunroad CV”), SUNROAD EC AUTO, LLC (“Defendant Sunroad EC”), SUNROAD
8 HG AUTO, LLC (“Defendant Sunroad HG”), and SUNROAD KF AUTO, LLC (“Defendant Sunroad
9 KF”), alleges on information and belief, except for his own acts and knowledge which are based on
10 personal knowledge, the following:

11 **INTRODUCTION**

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

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

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

- 20 a. Failure to provide compliant meal and rest periods;
 - 21 b. Failure to allow employees to take duty-free meal and rest periods;
 - 22 c. Failure to separately compensate for all non-productive time;
 - 23 d. Failure to pay all minimum, regular and overtime wages;
 - 24 e. Failure to correctly calculate the regular rate of pay;
 - 25 f. Failure to maintain true and accurate records;
 - 26 g. Failure to reimburse for required business expenses;
 - 27 h. Failure to provide accurate itemized wage statements; and
- 28

1 i. Failure to timely pay wages due during, and upon termination of employment.

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

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

7 **THE PARTIES**

8 6. Defendant SUNROAD AUTO LLC (“Defendant Sunroad Auto”) is a California Limited
9 Liability Company that at all relevant times mentioned herein conducted and continues to conduct
10 substantial and regular business in the state of California.

11 7. Defendant SUNROAD AUTO HOLDING CORPORATION (“Defendant Sunroad Auto
12 Holding”) is a California Corporation that at all relevant times mentioned herein conducted and
13 continues to conduct substantial and regular business in the state of California.

14 8. Defendant SUNROAD HOLDING CORPORATION (“Defendant Sunroad Holding
15 Corporation”) is a California Corporation that at all relevant times mentioned herein conducted and
16 continues to conduct substantial and regular business in the state of California.

17 9. Defendant SUNROAD DEALERSHIPS CORPORATION (“Defendant Sunroad
18 Dealerships”) is a California Corporation that at all relevant times mentioned herein conducted and
19 continues to conduct substantial and regular business in the state of California.

20 10. Defendant SUNROAD CV AUTO, LLC (“Defendant Sunroad CV”) is a Delaware
21 Limited Liability company that at all relevant times mentioned herein conducted and continues to
22 conduct substantial and regular business in the state of California.

23 11. Defendant SUNROAD EC AUTO, LLC (“Defendant Sunroad EC”) is a Delaware
24 Limited Liability company that at all relevant times mentioned herein conducted and continues to
25 conduct substantial and regular business in the state of California.

26 12. Defendant SUNROAD HG AUTO, LLC (“Defendant Sunroad HG”) is a California
27 Limited Liability Company that at all relevant times mentioned herein conducted and continues to
28 conduct substantial and regular business in the state of California.

1 13. Defendant SUNROAD KF AUTO, LLC (“Defendant Sunroad KF”) is a California
2 Limited Liability Company that at all relevant times mentioned herein conducted and continues to
3 conduct substantial and regular business in the state of California.

4 14. Defendant Sunroad Auto, Defendant Sunroad Auto Holding, Defendant Sunroad Holding
5 Corporation, Defendant Sunroad Dealerships, Defendant Sunroad CV, Defendant Sunroad EC,
6 Defendant Sunroad HG and Defendant Sunroad KF were the joint employers of PLAINTIFF as
7 evidenced by the contracts signed and by the company the PLAINTIFF performed work for
8 respectively, and are therefore jointly responsible as employers for the conduct alleged herein.
9 PLAINTIFF further alleges there has existed a unity of interest and ownership between Defendant
10 Sunroad Auto, Defendant Sunroad Auto Holding, Defendant Sunroad Holding Corporation, Defendant
11 Sunroad Dealerships, Defendant Sunroad CV, Defendant Sunroad EC, Defendant Sunroad HG and
12 Defendant Sunroad KF such that any individuality and separateness between the entities has ceased
13 and all Defendants are collectively referred to herein as “DEFENDANT” and/or “DEFENDANTS.”
14 DEFENDANTS owns and operate car dealerships in California, including in the county of San Diego.”

15 15. PLAINTIFF has been employed by DEFENDANTS in California since January of 2016,
16 paid in part an hourly wage, commission-based compensation, non-discretionary bonuses, and entitled
17 to minimum wages, overtime pay and legally compliant meal and rest periods.

18 16. PLAINTIFF brings this action in his representative capacity on behalf of the State of
19 California and on behalf of all individuals who are or previously were employed by DEFENDANT in
20 California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et seq.*
21 (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANTS between December
22 22, 2020 and the present (“PAGA PERIOD”).

23 17. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §
24 2699(c) because he was employed by DEFENDANT and suffered one or more of the alleged Labor Code
25 violations committed by DEFENDANT.

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

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

7 20. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively
8 “DEFENDANTS”), are the partners, agents, owners, or managers of DEFENDANTS at all relevant
9 times. PLAINTIFF alleges there has existed a unity of interest and ownership between DEFENDANTS
10 such that any individuality and separateness between the entities has ceased. Defendant Sunroad Auto,
11 Defendant Sunroad Auto Holding, Defendant Sunroad Holding Corporation, Defendant Sunroad
12 Dealerships, Defendant Sunroad CV, Defendant Sunroad EC, Defendant Sunroad HG and Defendant
13 Sunroad KF, and DOES 1-50 are therefore alter egos of each other. Adherence to the fiction of the
14 separate existence of DEFENDANTS would permit an abuse of the corporate privilege, and would
15 promote injustice by protecting DEFENDANTS from liability for the wrongful acts committed by
16 them.

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

24 22. PLAINTIFF alleges that Defendant Sunroad Auto, Defendant Sunroad Auto Holding,
25 Defendant Sunroad Holding Corporation, Defendant Sunroad Dealerships, Defendant Sunroad CV,
26 Defendant Sunroad EC, Defendant Sunroad HG and Defendant Sunroad KF are the alter egos of each
27 other for the following reasons:
28

- 1 a. On the California Secretary of State's website (<https://businesssearch.sos.ca.gov/>)
2 Defendant Sunroad Auto, Defendant Sunroad Auto Holding, Defendant Sunroad
3 Holding Corporation, Defendant Sunroad Dealerships, Defendant Sunroad CV,
4 Defendant Sunroad EC, Defendant Sunroad HG and Defendant Sunroad KF have the
5 same entity address and/or mailing address and/or Agent for Service of Process; and,
6 b. On information and belief, Defendant Sunroad Auto, Defendant Sunroad Auto
7 Holding, Defendant Sunroad Holding Corporation, Defendant Sunroad Dealerships,
8 Defendant Sunroad CV, Defendant Sunroad EC, Defendant Sunroad HG and
9 Defendant Sunroad KF utilize the same standardized employment forms and issue the
10 same employment policies.

11 23. PLAINTIFF alleges that DEFENDANTS' various separate entities are used by an
12 individual or individuals, or by another entity, to accomplish inequitable purposes, including to limit
13 liability for the unlawful acts of DEFENDANTS.

14 24. PLAINTIFF alleges that there is such a unity of interest and ownership between
15 DEFENDANTS' various corporate entities that own DEFENDANTS' car dealerships and the
16 individual or individuals, or organization controlling these corporate entities that their separate
17 personalities no longer exist.

18 25. PLAINTIFF further alleges that the failure to disregard the various corporate entities
19 would promote injustice.

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

25 **JOINT EMPLOYER**

26 27. The Private Attorney General Act ("PAGA"), permits an aggrieved employee to enforce
27 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)
28

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

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

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

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

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

23 33. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF’s
24 wages, working hours, and/or working conditions.

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

28 ///

JURISDICTION AND VENUE

35. 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.*.

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

THE CONDUCT

37. 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 PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES at the correct regular rate of pay, failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked, failed to separately pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all non-productive time, failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for required business expenses, and failed to issue to PLAINTIFF and the AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

///

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

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

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

23 40. Further, pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
25 time during which an employee is subject to the control of an employer, including all the time the
26 employee suffered or permitted to work. DEFENDANT required PLAINTIFF and AGGRIEVED
27 EMPLOYEES to work without paying them for all the time they were under the DEFENDANT's
28 control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was

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

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

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

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

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

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

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

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

20 45. From time-to-time during the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
21 EMPLOYEES were paid in part on a commission and/or piece-rate basis. In those instances where
22 PLAINTIFF and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate
23 basis, PLAINTIFF and the AGGRIEVED EMPLOYEES were entitled to be separately compensated for
24 all non-productive time at an hourly rate that is no less than the applicable minimum wage.
25 Notwithstanding, in those instances where PLAINTIFF and the AGGRIEVED EMPLOYEES were paid
26 in part on a commission and/or piece-rate basis, DEFENDANT failed to separately compensate
27 PLAINTIFF and the AGGRIEVED EMPLOYEES for all non-productive time, including but not limited
28 to, paid rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result,

1 PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited minimum wages and overtime wages by
2 DEFENDANT’S failure to separately compensate their non-productive time at an hourly rate that is no
3 less than the applicable minimum wage.

4 **D. Unreimbursed Business Expenses**

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

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

27
28 ///

1 **E. Wage Statement Violations**

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

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

21 36. In addition to the violations described above, DEFENDANTS, from time to time, failed
22 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with
23 Cal. Lab. Code § 226.

24 37. As a result, DEFENDANTS issued PLAINTIFF and the AGGRIEVED EMPLOYEES
25 with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS'
26 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due
27 to clerical or inadvertent mistake.
28

1 38. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty
2 meal and rest breaks and was not fully relieved of duty for his rest and meal periods. PLAINTIFF was
3 required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift
4 without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with
5 a second off-duty meal period each workday in which he was required by DEFENDANT to work ten
6 (10) hours of work. When DEFENDANTS provided PLAINTIFF with a rest and/or meal break, they
7 required PLAINTIFF to remain on the premises, on-duty and on-call, for the rest and/or break.
8 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
9 accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also
10 provided PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. To date,
11 DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time
12 compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203. The
13 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

14 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

10 44. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
11 Section 2699.3. By certified letter, return receipt requested, dated December 22, 2021, PLAINTIFF
12 gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to DEENDANTS
13 of the specific provisions of the Labor Code alleged to have been violated, including the facts and
14 theories to support the alleged violations.

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

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

25 47. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
26 EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of Labor Code Section 201,
27 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194,
28 1197, 1197.1, 1197.14 1198, 1199, 2802, and 2804 in the following amounts:

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

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

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

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

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

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

28 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and

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

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

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

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

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

8
9 Dated: February 28, 2022

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

11 By: 
12 Jean-Claude Lapuyade
13 Attorneys for PLAINTIFF