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Clerk of the Superior Court
By M. Guyot ,Deputy Clerk

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Monnett De La Torre (State Bar #272884)
Andrea A. Amaya Silva (State Bar #348080)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com
aamaya@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DAVID BRATT, on behalf of the State of
California in his representative capacity as a
private attorney general,

Plaintiff,

v.

MOSSY AUTOMOTIVE GROUP II, LLC, a
California limited liability company; MOSSY
AUTOMOTIVE GROUP EL CAJON INC., a
California Corporation; MOSSY
AUTOMOTIVE GROUP INSURANCE, LLC,
a California limited liability company; MOSSY
AUTOMOTIVE GROUP LEMON GROVE
INC., a California corporation; MOSSY
AUTOMOTIVE GROUP, INC., a California
corporation; MOSSY AUTO IMPORTS, a
California corporation; MOSSY
CHEVROLET, INC., a California corporation;
MOSSY COMPANY, INC., a California
corporation; MOSSY EUROPEAN IMPORTS,
INC., a California corporation; MOSSY

Case No: 24CU002277C

FIRST AMENDED COMPLAINT FOR:

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

FORD, INC., a California corporation;
MOSSY HOLDING COMPANY, INC., a
Delaware corporation; MOSSY NISSAN
CHULA VISTA, a California corporation;
MOSSY NISSAN EL CAJON, a California
corporation; MOSSY NISSAN ESCONDIDO,
a California corporation; MOSSY NISSAN
KEARNY MESA, a California corporation;
MOSSY NISSAN NATIONAL CITY, a
California corporation; MOSSY NISSAN
OCEANSIDE, a California corporation;
MOSSY NISSAN POWAY, a California
corporation; MOSSY NISSAN, INC., a
California corporation; MOSSY VEHICLE
LEASING, INC., a California corporation;
MAG WEST MOSSY CDJR III LP, a
California limited partnership; MAG WEST
MOSSY FORD II, LP, a California limited
partnership; MAG WEST MOSSY HONDA II,
LP, a California limited partnership; MAG
WEST MOSSY NISSAN II, LP, a California
limited partnership; MAG WEST MOSSY
NISSAN III LP, a California limited
partnership; MAG WEST MOSSY TOYOTA
II, LP, a California limited partnership; MAG
WEST MOSSY VOLKSWAGEN II, LP, a
California limited partnership; MAG WEST
MOSSY VOLKSWAGEN III LP, a California
limited partnership; and DOES 1-50, Inclusive,

Defendants.

1 PLAINTIFF DAVID BRATT ("PLAINTIFF") on behalf of the people of the State of
2 California, and as an "aggrieved employee" acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, alleges on information
4 and belief, except for his own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant Mossy II, Defendant Mossy El
8 Cajon, Defendant Mossy Insurance, Defendant Mossy Lemon Grove, Defendant Mossy
9 Automotive, Defendant Mossy Imports, Defendant Mossy Chevy, Defendant Mossy Company,
10 Defendant Mossy European, Defendant Mossy Ford, Defendant Mossy Holding, Defendant
11 Mossy Chula Vista, Defendant Mossy Nissan El Cajon, Defendant Mossy Escondido, Defendant
12 Mossy Kearny Mesa, Defendant Mossy National City, Defendant Oceanside, Defendant Mossy
13 Poway, Defendant Mossy Nissan, Defendant Mossy Leasing, Defendant MAG CDJR, Defendant
14 MAG Ford, Defendant MAG Honda, Defendant MAG Nissan II, Defendant MAG Nissan III,
15 Defendant MAG Toyota, Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III
16 (collectively "DEFENDANT" and/or "DEFENDANTS") seeking only to recover PAGA civil
17 penalties on behalf of all current and former non-exempt, commission-based and/or piece-rate
18 based employees that worked for DEFENDANTS in California during the relevant PAGA period,
19 as defined herein. PLAINTIFF does **not seek to recover anything other than penalties as**
20 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
21 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
22 damages for those violations, but simply the civil penalties permitted by California Labor Code §
23 2699.

24 2. California has enacted the PAGA which permits PLAINTIFF to bring an action on
25 behalf of others for PAGA penalties *only*, which is the precise and sole nature of this action.

26 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANTS'
27 violations under PAGA and solely for the relief as permitted by PAGA that is, penalties and any
28

1 other relief the Court deems proper pursuant to PAGA. Nothing in this complaint should be
2 constructed as attempting to obtain any relief that would not be available in a PAGA-only action.

3 4. PLAINTIFF is not suing in his individual capacity; he is proceeding herein solely
4 under the PAGA, on behalf of the State of California for all aggrieved employees, including
5 himself and other aggrieved employees. Nothing in this complaint should be construed as
6 PLAINTIFF suing in his individual capacity.

7 5. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
8 decreased their employment-related costs by systematically violating California wage and hour
9 laws.

10 6. DEFENDANTS' systematic pattern of wage and hour and IWC Wage Order
11 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

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

22 7. PLAINTIFF reserves the right to name additional representatives throughout the
23 State of California.

24 **THE PARTIES**

25 8. Defendant MOSSY AUTOMOTIVE GROUP II, LLC ("Defendant Mossy II") is
26 a California limited liability company that at all relevant times mentioned herein conducted and
27 continues to conduct substantial and regular business throughout California.
28

1 9. Defendant MOSSY AUTOMOTIVE GROUP EL CAJON INC. (“Defendant
2 Mossy El Cajon”) is a California corporation that at all relevant times mentioned herein conducted
3 and continues to conduct substantial and regular business throughout California.

4 10. Defendant MOSSY AUTOMOTIVE GROUP INSURANCE, LLC (“Defendant
5 Mossy Insurance”) is a California limited liability company that at all relevant times mentioned
6 herein conducted and continues to conduct substantial and regular business throughout California.

7 11. MOSSY AUTOMOTIVE GROUP LEMON GROVE INC. (“Defendant Mossy
8 Lemon Grove”) is a California corporation that at all relevant times mentioned herein conducted
9 and continues to conduct substantial and regular business throughout California.

10 12. Defendant MOSSY AUTOMOTIVE GROUP, INC. (“Defendant Mossy
11 Automotive”) is a California corporation that at all relevant times mentioned herein conducted
12 and continues to conduct substantial and regular business throughout California.

13 13. Defendant MOSSY AUTO IMPORTS (“Defendant Mossy Imports”) is a
14 California corporation that at all relevant times mentioned herein conducted and continues to
15 conduct substantial and regular business throughout California.

16 14. Defendant MOSSY CHEVROLET, INC. (“Defendant Mossy Chevy”) is a
17 California corporation that at all relevant times mentioned herein conducted and continues to
18 conduct substantial and regular business throughout California.

19 15. Defendant MOSSY COMPANY, INC. (“Defendant Mossy Company”) is a
20 California corporation that at all relevant times mentioned herein conducted and continues to
21 conduct substantial and regular business throughout California.

22 16. Defendant MOSSY EUROPEAN IMPORTS, INC. (“Defendant Mossy
23 European”) is a California corporation that at all relevant times mentioned herein conducted and
24 continues to conduct substantial and regular business throughout California.

25 17. Defendant MOSSY FORD, INC. (“Defendant Mossy Ford”) is a California
26 corporation that at all relevant times mentioned herein conducted and continues to conduct
27 substantial and regular business throughout California.

1 18. Defendant MOSSY HOLDING COMPANY, INC. (“Defendant Mossy Holding”)
2 is a Delaware corporation that at all relevant times mentioned herein conducted and continues to
3 conduct substantial and regular business throughout California

4 19. Defendant MOSSY NISSAN CHULA VISTA (“Defendant Mossy Chula Vista”)
5 is a California corporation that at all relevant times mentioned herein conducted and continues to
6 conduct substantial and regular business throughout California.

7 20. Defendant MOSSY NISSAN EL CAJON (“Defendant Mossy Nissan El Cajon”)
8 is a California corporation that at all relevant times mentioned herein conducted and continues to
9 conduct substantial and regular business throughout California.

10 21. Defendant MOSSY NISSAN ESCONDIDO (“Defendant Mossy Escondido”) is a
11 California corporation that at all relevant times mentioned herein conducted and continues to
12 conduct substantial and regular business throughout California.

13 22. Defendant MOSSY NISSAN KEARNY MESA (“Defendant Mossy Kearny
14 Mesa”) is a California corporation that at all relevant times mentioned herein conducted and
15 continues to conduct substantial and regular business throughout California.

16 23. Defendant MOSSY NISSAN NATIONAL CITY (“Defendant Mossy National
17 City”) is a California corporation that at all relevant times mentioned herein conducted and
18 continues to conduct substantial and regular business throughout California.

19 24. Defendant MOSSY NISSAN OCEANSIDE (“Defendant Mossy Oceanside”) is a
20 California corporation that at all relevant times mentioned herein conducted and continues to
21 conduct substantial and regular business throughout California.

22 25. Defendant MOSSY NISSAN POWAY (“Defendant Mossy Poway”) is a
23 California corporation that at all relevant times mentioned herein conducted and continues to
24 conduct substantial and regular business throughout California.

25 26. Defendant MOSSY NISSAN, INC. (“Defendant Mossy Nissan”) is a California
26 corporation that at all relevant times mentioned herein conducted and continues to conduct
27 substantial and regular business throughout California.
28

1 27. Defendant MOSSY VEHICLE LEASING, INC. (“Defendant Mossy Leasing”) is
2 a California corporation that at all relevant times mentioned herein conducted and continues to
3 conduct substantial and regular business throughout California.

4 28. Defendant MAG WEST MOSSY CDJR III LP (“Defendant MAG CDJR”) is a
5 California limited partnership that at all relevant times mentioned herein conducted and continues
6 to conduct substantial and regular business throughout California.

7 29. Defendant MAG WEST MOSSY FORD II, LP (“Defendant MAG Ford”) is a
8 California limited partnership that at all relevant times mentioned herein conducted and continues
9 to conduct substantial and regular business throughout California.

10 30. Defendant MAG WEST MOSSY HONDA II, LP (“Defendant MAG Honda”) is
11 a California limited partnership that at all relevant times mentioned herein conducted and
12 continues to conduct substantial and regular business throughout California.

13 31. Defendant MAG WEST MOSSY NISSAN II, LP (“Defendant MAG Nissan II”) is
14 a California limited partnership that at all relevant times mentioned herein conducted and
15 continues to conduct substantial and regular business throughout California.

16 32. Defendant MAG WEST MOSSY NISSAN III LP (“Defendant MAG Nissan III”) is
17 a California limited partnership that at all relevant times mentioned herein conducted and
18 continues to conduct substantial and regular business throughout California.

19 33. Defendant MAG WEST MOSSY TOYOTA II, LP (“Defendant MAG Toyota”) is
20 a California limited partnership that at all relevant times mentioned herein conducted and
21 continues to conduct substantial and regular business throughout California.

22 34. Defendant MAG WEST MOSSY VOLKSWAGEN II, LP (“Defendant MAG
23 Volkswagen II”) is a California limited partnership that at all relevant times mentioned herein
24 conducted and continues to conduct substantial and regular business throughout California.

25 35. Defendant MAG WEST MOSSY VOLKSWAGEN III LP (“Defendant MAG
26 Volkswagen III”) is a California limited partnership that at all relevant times mentioned herein
27 conducted and continues to conduct substantial and regular business throughout California.
28

1 36. DEFENDANT operates car dealerships in California, including in the county of
2 San Diego, where PLAINTIFF worked.

3 37. PLAINTIFF alleges there has existed a unity of interest and ownership between
4 Defendants such that any individuality and separateness between the entities has ceased and all
5 Defendants are referred to herein as “DEFENDANT” and/or “DEFENDANTS.”

6 38. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
7 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
8 and ownership between Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy
9 Insurance, Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy
10 Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy European,
11 Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy Chula Vista, Defendant
12 Mossy Nissan El Cajon, Defendant Mossy Escondido, Defendant Mossy Kearny Mesa, Defendant
13 Mossy National City, Defendant Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan,
14 Defendant Mossy Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG
15 Honda, Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota,
16 Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III are therefore alter egos of
17 each other. Adherence to the fiction of the separate existence of DEFENDANT would permit an
18 abuse of the corporate privilege, and would promote injustice by protecting DEFENDANT from
19 liability for the wrongful acts committed by them.

20 39. PLAINTIFF further alleges that DEFENDANTS are the alter egos of each other
21 for the following reasons:

- 22 a. On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>)
23 Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy Insurance,
24 Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy
25 Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy
26 European, Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy
27 Chula Vista, Defendant Mossy Nissan El Cajon, Defendant Mossy Escondido,
28 Defendant Mossy Kearny Mesa, Defendant Mossy National City, Defendant

Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan, Defendant Mossy Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG Honda, Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota, Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III have the same officers and/or entity address and/or mailing address and/or Agent for Service of Process;

b. On information and belief Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy Insurance, Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy European, Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy Chula Vista, Defendant Mossy Nissan El Cajon, Defendant Mossy Escondido, Defendant Mossy Kearny Mesa, Defendant Mossy National City, Defendant Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan, Defendant Mossy Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG Honda, Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota, Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III utilize the same standardized employment forms and issue the same employment policies and same pay stubs;

c. On information and belief Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy Insurance, Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy European, Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy Chula Vista, Defendant Mossy Nissan El Cajon, Defendant Mossy Escondido, Defendant Mossy Kearny Mesa, Defendant Mossy National City, Defendant Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan, Defendant Mossy Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG Honda, Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota, Defendant MAG Volkswagen II, and

1 Defendant MAG Volkswagen III have an executive team which supervise and
2 manage the operations of all of DEFENDANTS' dealerships, supervised and
3 managed the finances of all of DEFENDANTS' dealerships, supervised and
4 managed the marketing of all of DEFENDANTS' dealerships, supervised and
5 managed the human resources of all of DEFENDANTS' dealerships, and
6 supervised and managed the food and beverage offerings at all of DEFENDANTS'
7 dealerships.

8 40. PLAINTIFF alleges that DEFENDANTS' various separate corporate entities are
9 used by an individual or individuals, or by another corporation, to accomplish inequitable
10 purposes, including to limit liability for the unlawful acts of DEFENDANT.

11 41. PLAINTIFF alleges that there is such a unity of interest and ownership between
12 DEFENDANTS' various corporate entities that own DEFENDANTS' dealerships and the
13 individual or individuals, or organization controlling those corporate entities that their separate
14 personalities no longer exist.

15 42. PLAINTIFF further alleges that the failure to disregard the various corporate
16 entities would promote injustice.

17 43. Defendant Mossy II, and/or Defendant Mossy El Cajon, and/or Defendant Mossy
18 Insurance, and/or Defendant Mossy Lemon Grove, and/or Defendant Mossy Automotive, and/or
19 Defendant Mossy Imports, and/or Defendant Mossy Chevy, and/or Defendant Mossy Company,
20 and/or Defendant Mossy European, and/or Defendant Mossy Ford, and/or Defendant Mossy
21 Holding, and/or Defendant Mossy Chula Vista, and/or Defendant Mossy Nissan El Cajon, and/or
22 Defendant Mossy Escondido, and/or Defendant Mossy Kearny Mesa, Defendant Mossy National
23 City, and/or Defendant Oceanside, and/or Defendant Mossy Poway, and/or Defendant Mossy
24 Nissan, and/or Defendant Mossy Leasing, and/or Defendant MAG CDJR, and/or Defendant MAG
25 Ford, and/or Defendant MAG Honda, and/or Defendant MAG Nissan II, and/or Defendant MAG
26 Nissan III, and/or Defendant MAG Toyota, and/or Defendant MAG Volkswagen II, and/or
27 Defendant MAG Volkswagen III were the joint employers of PLAINTIFF as evidenced by the
28 contracts signed and by the company PLAINTIFF performed work for respectively, and therefore

1 jointly responsible as employers for the conduct alleged herein and collectively referred to herein
2 as “DEFENDANTS” or “DEFENDANT.”

3 44. DEFENDANTS were the employers of PLAINTIFF as evidenced by the
4 documents issued to PLAINTIFF and by the company PLAINTIFF performed work for.

5 45. PLAINTIFF was employed by DEFENDANTS in California from January of 2023
6 to September 2024 as a non-exempt employee, paid on an hourly basis, non-discretionary
7 bonuses, and entitled to the legally required meal and rest periods and payment of minimum and
8 overtime wages due for all time worked.

9 46. PLAINTIFF, and such persons that may be added from time to time who satisfy
10 the requirements and exhaust the administrative procedures under the Private Attorney General
11 Act, bring this Representative Action on behalf of the State of California with respect to himself
12 and all individuals who are or previously were employed by Defendant Mossy II, and/or
13 Defendant Mossy El Cajon, and/or Defendant Mossy Insurance, and/or Defendant Mossy Lemon
14 Grove, and/or Defendant Mossy Automotive, and/or Defendant Mossy Imports, and/or Defendant
15 Mossy Chevy, and/or Defendant Mossy Company, and/or Defendant Mossy European, and/or
16 Defendant Mossy Ford, and/or Defendant Mossy Holding, and/or Defendant Mossy Chula Vista,
17 and/or Defendant Mossy Nissan El Cajon, and/or Defendant Mossy Escondido, and/or Defendant
18 Mossy Kearny Mesa, Defendant Mossy National City, and/or Defendant Oceanside, and/or
19 Defendant Mossy Poway, and/or Defendant Mossy Nissan, and/or Defendant Mossy Leasing,
20 and/or Defendant MAG CDJR, and/or Defendant MAG Ford, and/or Defendant MAG Honda,
21 and/or Defendant MAG Nissan II, and/or Defendant MAG Nissan III, and/or Defendant MAG
22 Toyota, and/or Defendant MAG Volkswagen II, and/or Defendant MAG Volkswagen III in
23 California and classified as non-exempt, exempt, commission-based and/or piece-rate based
24 employees, (“AGGRIEVED EMPLOYEES”) during the time period of July 19, 2023, and the
25 present (“PAGA Period”).

26 47. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor
27 Code § 2699(c) because he was employed by DEFENDANT and personally suffered each of the
28 alleged Labor Code violations committed by DEFENDANT.

48. PLAINTIFF and all other AGGRIEVED 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.

49. 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.

50. 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.

51. 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.

JURISDICTION AND VENUE

52. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10. This Court has jurisdiction over AGGRIEVED EMPLOYEES' claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

53. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times

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

4 **THE CONDUCT**

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

23 **A. Meal Period Violations**

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

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

10 56. From time to time during the PAGA PERIOD, as a result of their rigorous work
11 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
12 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty
13 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
14 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANTS for
15 more than five (5) hours during some shifts without receiving a meal break. Further,
16 DEFENDANTS failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
17 off-duty meal period for some workdays in which these employees are required by
18 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
19 PLAINTIFF and other AGGRIEVED EMPLOYEES does not qualify for the limited and
20 narrowly construed "on-duty" meal period exception. When they were provided with meal
21 periods, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required
22 to remain on duty and on call. Further, DEFENDANTS from time to time required PLAINTIFF
23 and other AGGRIEVED EMPLOYEES to maintain cordless communication devices in order to
24 receive and respond to work-related communications during what was supposed to be their off-
25 duty meal breaks. DEFENDANTS' failure to provide PLAINTIFF and the AGGRIEVED
26 EMPLOYEES with legally required meal breaks is evidenced by DEFENDANTS' business
27 records. PLAINTIFF and AGGRIEVED EMPLOYEES therefore forfeit meal breaks without
28

1 additional compensation and in accordance with DEFENDANTS' strict corporate policy and
2 practice.

3 **B. Rest Period Violations**

4 57. From time to time during the PAGA PERIOD, PLAINTIFF and other
5 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being
6 provided ten (10) minute rest periods as a result of their rigorous work requirements and
7 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
8 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
9 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
10 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
11 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
12 time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED
13 EMPLOYEES were, from time to time, required to remain on duty and/or on call. Further,
14 DEFENDANTS from time to time required PLAINTIFF and other AGGRIEVED EMPLOYEES
15 to maintain cordless communication devices in order to receive and respond to work-related
16 communications during what was supposed to be their off-duty rest breaks. PLAINTIFF and other
17 AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As a
18 result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF
19 and other AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods
20 by DEFENDANT and DEFENDANT's managers.

21 **C. Unreimbursed Business Expenses**

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

1 employee for all necessary expenditures or losses incurred by the employee in direct consequence
2 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
3 even though unlawful, unless the employee, at the time of obeying the directions, believed them
4 to be unlawful."

5 59. In the course of their employment, DEFENDANTS required PLAINTIFF and
6 other AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell
7 phones, vehicles, computers, and internet connection as a result of and in furtherance of their job
8 duties. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to use
9 their own cell phones, vehicles, computers, and internet connection in order to perform work
10 related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
11 AGGRIEVED EMPLOYEES for the personal expenses incurred for the use of their personal cell
12 phones, vehicles, computers, and internet connection. As a result, in the course of their
13 employment with DEFENDANTS, the PLAINTIFF and other AGGRIEVED EMPLOYEES
14 incurred unreimbursed business expenses that included, but were not limited to, costs related to
15 the use of their personal cell phones, vehicles, computers, and internet connection all on behalf of
16 and for the benefit of DEFENDANT.

17 **D. Wage Statement Violations**

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

26 61. From time to time during the PAGA PERIOD, when PLAINTIFF and other
27 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
28 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed

1 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
2 statements which failed to show, among other things, all deductions, the total hours worked and
3 all applicable hourly rates in effect during the pay period, and the corresponding amount of time
4 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
5 periods.

6 62. Further, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the
7 AGGRIEVED EMPLOYEES with wage statements that provide all applicable hourly rates in
8 effect during the pay period and the corresponding number of hours worked at each hourly rate
9 by the employee, in violation of Cal. Lab. Code § 226(a)(9).

10 63. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
11 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
12 Lab. Code § 226.

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

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

18 65. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and
19 continue to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours
20 worked.

21 66. During the PAGA PERIOD, from time-to-time DEFENDANTS required
22 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This
23 resulted in PLAINTIFF and AGGRIEVED EMPLOYEES to have to work while off-the-clock.

24 67. DEFENDANTS directed and directly benefited from the undercompensated off-
25 the-clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

26 68. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
27 assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES.
28

1 69. DEFENDANT was able to track the amount of time PLAINTIFF and
2 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document,
3 track, or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all
4 the work they performed.

5 70. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt, exempt,
6 commission-based and/or piece-rate based employees subject to the requirements of the
7 California Labor Code.

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

13 72. DEFENDANTS knew or should have known that PLAINTIFF and AGGRIEVED
14 EMPLOYEES' off-the-clock work was compensable under the law.

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

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

22 74. From time to time during the PAGA PERIOD, DEFENDANTS failed and
23 continues to fail to accurately calculate and pay PLAINTIFF and other AGGRIEVED
24 EMPLOYEES for their overtime and double time hours worked, meal and rest period premiums,
25 and redeemed sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES
26 forfeited wages due to them for working overtime without compensation at the correct overtime
27 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
28 DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and the AGGRIEVED

1 EMPLOYEES at the correct rate for all overtime and double time worked, meal and rest period
2 premiums, and redeemed sick pay in accordance with applicable law is evidenced by
3 DEFENDANTS' business records.

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

8 76. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES'
9 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF
10 and other AGGRIEVED EMPLOYEES' incentive wages based on their performance for
11 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
12 basis with bonus compensation when the employees met the various performance goals set by
13 DEFENDANTS.

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

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

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

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

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

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

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

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

15 **H. Unlawful Deductions**

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

20 **I. Timekeeping Manipulation**

21 83. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
22 immutable timekeeping system to accurately record and pay PLAINTIFF and other
23 AGGRIEVED EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES
24 worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a
25 result, DEFENDANTS were able to and did in fact, unlawfully, and unilaterally alter the time
26 recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other AGGRIEVED
27 EMPLOYEES in order to avoid paying these employees for all hours worked, applicable
28 overtime compensation, applicable sick pay, missed meal breaks and missed rest breaks.

1 84. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES, from time-to-
2 time, forfeited time worked by working without their time being accurately recorded and without
3 compensation at the applicable pay rates.

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

11 86. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due
12 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
13 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
14 PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance
15 with applicable law is evidenced by DEFENDANTS' business records.

16 **J. Unlawful Rounding Practices**

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

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

7 **K. Violations for Untimely Payment of Wages**

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

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

21 91. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
22 paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose
23 employment ended during the PAGA PERIOD.

24 **L. Sick Pay Violations**

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

1 time to time, DEFENDANTS failed to have a policy or practice in place that provided
2 PLAINTIFF and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

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

8 94. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
9 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
10 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
11 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
12 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
13 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
14 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
15 DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during what was
16 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
17 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
18 and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to
19 comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF
20 for required business expenses related to the personal expenses incurred for the use of her personal
21 cell phone, vehicle, computer and home internet on behalf of and in furtherance of his
22 employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the
23 minimum, overtime and double time compensation still owed to him or any penalty wages owed
24 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does
25 not exceed the sum or value of \$75,000.

26
27 ///

1 **FIRST CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§2698 et seq.)**

4 **(Alleged by PLAINTIFF on behalf of Aggrieved Employees against all DEFENDANTS)**

5 95. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

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

16 97. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
17 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
18 meaning of Labor Code Section 2699(c).

19 98. Labor Code Sections 2699(a) and (k) authorize an AGGRIEVED EMPLOYEE,
20 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil
21 action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

22 99. PLAINTIFF complied with the procedures for bringing suit specified in Labor
23 Code Section 2699.3. By certified letter, return receipt requested, dated July 19, 2024,
24 PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA")
25 and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated,
26 including the facts and theories to support the alleged violations. See Exhibit #1.

27 100. As of the date of this complaint, more than sixty-five (65) days after serving the
28 LWDA with notice of DEFENDANTS' violations, the LWDA has not provided any notice by

1 certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by
2 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
3 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

4 101. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
5 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of
6 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
7 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199,
8 2802, and 2804 in the following amounts:

- 9 a. For violation of Labor Code Sections 201, 202, 203, and 204, up to (\$200) per
10 AGGRIEVED EMPLOYEE per pay period [penalty per Labor Code Section
11 2699(f)];
- 12 b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two
13 hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial
14 violation and one thousand dollars for each subsequent violation [penalty per
15 Labor Code Section 226.3];
- 16 c. For violations of Labor Code Sections 204, a civil penalty in the amount of one
17 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial
18 violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each
19 subsequent violation [penalty per Labor Code Section 210];
- 20 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the
21 amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for
22 the initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED
23 EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];
- 24 e. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five
25 hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor
26 Code Section 1174.5].
- 27 f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil
28 penalty in the amount of one hundred dollars (\$100) per AGGRIEVED

EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

102. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of up to two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period. 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(k)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF on behalf of the Aggrieved Employees prays for judgment against DEFENDANTS as follows:

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

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

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

DATED: September 24, 2024

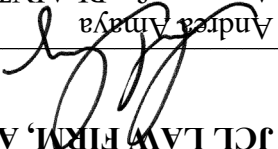
JCL LAW FIRM, APC
By: 
Andrea Amaya
Attorney for PLAINTIFF

EXHIBIT 1



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

July 19, 2024

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

MOSSY AUTOMOTIVE GROUP II, INC.
MOSSY AUTOMOTIVE GROUP INSURANCE, LLC
MOSSY AUTOMOTIVE GROUP LEMON GROVE INC.
MOSSY AUTO IMPORTS
MOSSY EUROPEAN IMPORTS, INC.
MOSSY FORD, INC.
MOSSY NISSAN ESCONDIDO
MOSSY NISSAN KEARNY MESA
MOSSY NISSAN NATIONAL CITY
MOSSY NISSAN POWAY

c/o John Epps
4555 Mission Bay Drive
San Diego, CA 92109

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 1756 9912 29

MOSSY AUTOMOTIVE GROUP EL CAJON INC.
MOSSY AUTOMOTIVE GROUP, INC.
MOSSY CHEVROLET, INC.
MOSSY COMPANY, INC.
MOSSY HOLDING COMPANY, INC.
MOSSY NISSAN CHULA VISTA
MOSSY NISSAN EL CAJON
MOSSY NISSAN OCEANSIDE
MOSSY NISSAN, INC.
MOSSY VEHICLE LEASING, INC.
MAG WEST MOSSY CDJR III LP
MAG WEST MOSSY FORD II, LP
MAG WEST MOSSY HONDA II, LP
MAG WEST MOSSY NISSAN II, LP
MAG WEST MOSSY NISSAN III LP
MAG WEST MOSSY TOYOTA II, LP
MAG WEST MOSSY VOLKSWAGEN II, LP
MAG WEST MOSSY VOLKSWAGEN III LP

c/o Philip and/or Peter Mossy
4625 Brinell Street
San Diego, CA 92111

Via Certified U.S. Mail with Return Receipt No.

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

Dear Sir/Madam:

Our offices represent Plaintiff DAVID BRATT (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant MOSSY AUTOMOTIVE GROUP II, INC.; MOSSY AUTOMOTIVE GROUP EL CAJON INC.; MOSSY AUTOMOTIVE GROUP INSURANCE, LLC; MOSSY AUTOMOTIVE GROUP LEMON GROVE INC.; MOSSY AUTOMOTIVE GROUP, INC.; MOSSY AUTO IMPORTS; MOSSY CHEVROLET, INC.; MOSSY COMPANY, INC.; MOSSY EUROPEAN IMPORTS, INC.; MOSSY FORD, INC.; MOSSY HOLDING COMPANY, INC.; MOSSY NISSAN CHULA VISTA; MOSSY NISSAN EL CAJON; MOSSY NISSAN ESCONDIDO; MOSSY NISSAN KEARNY MESA; MOSSY NISSAN NATIONAL CITY; MOSS NISSAN OCEANSIDE; MOSSY NISSAN POWAY; MOSSY NISSAN, INC.; MOSSY VEHICLE LEASING, INC.; MAG WEST MOSSY CDJR III LP; MAG WEST MOSSY FORD II, LP; MAG WEST MOSSY FORD II, LP; MAG WEST MOSSY HONDA II, LP; MAG WEST MOSSY NISSAN II, LP; MAG WEST MOSSY NISSAN III LP; MAG WEST MOSSY TOYOTA II, LP; MAG WEST MOSSY VOLKSWAGEN II, LP; and/or MAG WEST MOSSY VOLKSWAGEN III LP (“Defendant and/or Defendants”). Plaintiff has been employed by Defendants since December of 2023, as a non-exempt employee, paid non-discretionary 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.

Plaintiff seeks to represent a group of aggrieved employees defined as all current and former non-exempt, exempt, commission-based and/or piece-rate based employees who worked for Defendant Mossy II, and/or Defendant Mossy El Cajon, and/or Defendant Mossy Insurance, and/or, Defendant Mossy Lemon Grove, and/or Defendant Mossy Automotive, and/or Defendant Mossy Imports, and/or Defendant Mossy Chevy, and/or Defendant Mossy Company, and/or Defendant Mossy European, and/or Defendant Mossy Ford, and/or

Defendant Mossy Holding, and/or Defendant Mossy Chula Vista, and/or Defendant Mossy Nissan El Cajon, and/or Defendant Mossy Escondido, and/or Defendant Mossy Kearny Mesa, and/or Defendant Mossy National City, and/or Defendant Mossy Oceanside, and/or Defendant Mossy Poway, and/or Defendant Mossy Nissan, and/or Defendant Mossy Leasing, and/or Defendant MAG CDJR, and/or Defendant MAG Ford, and/or Defendant MAG Honda, and/or Defendant MAG Nissan II, and/or Defendant MAG Nissan III, and/or Defendant MAG Toyota, and/or Defendant MAG Volkswagen II, and/or Defendant MAG Volkswagen III in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by 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 Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Monnett De La Torre (State Bar #272884)
Andrea A. Amaya Silva (State Bar #348080)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com
aamaya@jcl-lawfirm.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DAVID BRATT, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

MOSSY AUTOMOTIVE GROUP II, LLC, a
California limited liability company; MOSSY
AUTOMOTIVE GROUP EL CAJON INC., a
California Corporation; MOSSY
AUTOMOTIVE GROUP INSURANCE, LLC,
a California limited liability company; MOSSY
AUTOMOTIVE GROUP LEMON GROVE
INC., a California corporation; MOSSY
AUTOMOTIVE GROUP, INC., a California
corporation; MOSSY AUTO IMPORTS, a
California corporation; MOSSY
CHEVROLET, INC., a California corporation;
MOSSY COMPANY, INC., a California
corporation; MOSSY EUROPEAN IMPORTS,
INC., a California corporation; MOSSY

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;

FORD, INC., a California corporation; MOSSY HOLDING COMPANY, INC., a Delaware corporation; MOSSY NISSAN CHULA VISTA, a California corporation; MOSSY NISSAN EL CAJON, a California corporation; MOSSY NISSAN ESCONDIDO, a California corporation; MOSSY NISSAN KEARNY MESA, a California corporation; MOSSY NISSAN NATIONAL CITY, a California corporation; MOSS NISSAN OCEANSIDE, a California corporation; MOSSY NISSAN POWAY, a California corporation; MOSSY NISSAN, INC., a California corporation; MOSSY VEHICLE LEASING, INC., a California corporation; MAG WEST MOSSY CDJR III LP, a California limited partnership; MAG WEST MOSSY FORD II, LP, a California limited partnership; MAG WEST MOSSY FORD II, LP, a California limited partnership; MAG WEST MOSSY HONDA II, LP, a California limited partnership; MAG WEST MOSSY NISSAN II, LP, a California limited partnership; MAG WEST MOSSY NISSAN III LP, a California limited partnership; MAG WEST MOSSY TOYOTA II, LP, a California limited partnership; MAG WEST MOSSY VOLKSWAGEN II, LP, a California limited partnership; MAG WEST MOSSY VOLKSWAGEN III LP, a California limited partnership; and DOES 1-50, Inclusive,

Defendants.

- 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 CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

PLAINTIFF DAVID BRATT ("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:

PRELIMINARY ALLEGATIONS

1. Defendant MOSSY AUTOMOTIVE GROUP II, LLC ("Defendant Mossy II") is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant MOSSY AUTOMOTIVE GROUP EL CAJON INC. (“Defendant Mossy El Cajon”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant MOSSY AUTOMOTIVE GROUP INSURANCE, LLC (“Defendant Mossy Insurance”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

4. MOSSY AUTOMOTIVE GROUP LEMON GROVE INC. (“Defendant Mossy Lemon Grove”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

5. Defendant MOSSY AUTOMOTIVE GROUP, INC. (“Defendant Mossy Automotive”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

6. Defendant MOSSY AUTO IMPORTS (“Defendant Mossy Imports”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

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

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

9. Defendant MOSSY EUROPEAN IMPORTS, INC. (“Defendant Mossy European”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

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

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1 11. Defendant MOSSY HOLDING COMPANY, INC. (“Defendant Mossy Holding”)
2 is a Delaware corporation that at all relevant times mentioned herein conducted and continues to
3 conduct substantial and regular business throughout California

4 12. Defendant MOSSY NISSAN CHULA VISTA (“Defendant Mossy Chula Vista”)
5 is a California corporation that at all relevant times mentioned herein conducted and continues to
6 conduct substantial and regular business throughout California.

7 13. Defendant MOSSY NISSAN EL CAJON (“Defendant Mossy Nissan El Cajon) is
8 a California corporation that at all relevant times mentioned herein conducted and continues to
9 conduct substantial and regular business throughout California.

10 14. Defendant MOSSY NISSAN ESCONDIDO (“Defendant Mossy Escondido”) is a
11 California corporation that at all relevant times mentioned herein conducted and continues to
12 conduct substantial and regular business throughout California.

13 15. Defendant MOSSY NISSAN KEARNY MESA (“Defendant Mossy Kearny
14 Mesa) is a California corporation that at all relevant times mentioned herein conducted and
15 continues to conduct substantial and regular business throughout California.

16 16. Defendant MOSSY NISSAN NATIONAL CITY (“Defendant Mossy National
17 City”) is a California corporation that at all relevant times mentioned herein conducted and
18 continues to conduct substantial and regular business throughout California.

19 17. Defendant MOSSY NISSAN OCEANSIDE (“Defendant Mossy Oceanside”) is a
20 California corporation that at all relevant times mentioned herein conducted and continues to
21 conduct substantial and regular business throughout California.

22 18. Defendant MOSSY NISSAN POWAY (“Defendant Mossy Poway”) is a
23 California corporation that at all relevant times mentioned herein conducted and continues to
24 conduct substantial and regular business throughout California.

25 19. Defendant MOSSY NISSAN, INC. (“Defendant Mossy Nissan”) is a California
26 corporation that at all relevant times mentioned herein conducted and continues to conduct
27 substantial and regular business throughout California.

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1 20. Defendant MOSSY VEHICLE LEASING, INC. (“Defendant Mossy Leasing”) is
2 a California corporation that at all relevant times mentioned herein conducted and continues to
3 conduct substantial and regular business throughout California.

4 21. Defendant MAG WEST MOSSY CDJR III LP (“Defendant MAG CDJR”) is a
5 California limited partnership that at all relevant times mentioned herein conducted and continues
6 to conduct substantial and regular business throughout California.

7 22. Defendant MAG WEST MOSSY FORD II, LP (“Defendant MAG Ford”) is a
8 California limited partnership that at all relevant times mentioned herein conducted and continues
9 to conduct substantial and regular business throughout California.

10 23. Defendant MAG WEST MOSSY HONDA II, LP (“Defendant MAG Honda”) is a
11 California limited partnership that at all relevant times mentioned herein conducted and continues
12 to conduct substantial and regular business throughout California.

13 24. Defendant MAG WEST MOSSY NISSAN II, LP (“Defendant MAG Nissan II”)
14 is a California limited partnership that at all relevant times mentioned herein conducted and
15 continues to conduct substantial and regular business throughout California.

16 25. Defendant MAG WEST MOSSY NISSAN III LP (“Defendant MAG Nissan III”)
17 is a California limited partnership that at all relevant times mentioned herein conducted and
18 continues to conduct substantial and regular business throughout California.

19 26. Defendant MAG WEST MOSSY TOYOTA II, LP (“Defendant MAG Toyota”) is
20 a California limited partnership that at all relevant times mentioned herein conducted and
21 continues to conduct substantial and regular business throughout California.

22 27. Defendant MAG WEST MOSSY VOLKSWAGEN II, LP (“Defendant MAG
23 Volkswagen II”) is a California limited partnership that at all relevant times mentioned herein
24 conducted and continues to conduct substantial and regular business throughout California.

25 28. Defendant MAG WEST MOSSY VOLKSWAGEN III LP (“Defendant MAG
26 Volkswagen III”) is a California limited partnership that at all relevant times mentioned herein
27 conducted and continues to conduct substantial and regular business throughout California.

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1 29. DEFENDANT operates car dealerships such as Mossy Volkswagen Escondido
2 and Mossy Mitsubishi Escondido in California, including in the county of San Diego, where
3 PLAINTIFF worked.

4 30. PLAINTIFF alleges there has existed a unity of interest and ownership between
5 Defendants such that any individuality and separateness between the entities has ceased and all
6 Defendants are referred to herein as “DEFENDANT” and/or “DEFENDANTS.”

7 31. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
8 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
9 and ownership between Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy
10 Insurance, Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy
11 Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy European,
12 Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy Chula Vista, Defendant
13 Mossy Nissan El Cajon, Defendant Mossy Escondido, Defendant Mossy Kearny Mesa, Defendant
14 Mossy National City, Defendant Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan,
15 Defendant Mossy Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG
16 Honda, Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota,
17 Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III are therefore alter egos of
18 each other. Adherence to the fiction of the separate existence of DEFENDANT would permit an
19 abuse of the corporate privilege, and would promote injustice by protecting DEFENDANT from
20 liability for the wrongful acts committed by them.

21 32. PLAINTIFF further alleges that DEFENDANT are the alter egos of each other for
22 the following reasons:

- 23 a. On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>)
24 Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy Insurance,
25 Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy
26 Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy
27 European, Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy
28 Chula Vista, Defendant Mossy Nissan El Cajon, Defendant Mossy Escondido,
Defendant Mossy Kearny Mesa, Defendant Mossy National City, Defendant

Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan, Defendant Mossy Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG Honda, Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota, Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III have the same officers and/or entity address and/or mailing address and/or Agent for Service of Process;

b. On information and belief Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy Insurance, Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy European, Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy Chula Vista, Defendant Mossy Nissan El Cajon, Defendant Mossy Escondido, Defendant Mossy Kearny Mesa, Defendant Mossy National City, Defendant Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan, Defendant Mossy Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG Honda, Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota, Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III utilize the same standardized employment forms and issue the same employment policies and same pay stubs;

c. On information and belief Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy Insurance, Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy European, Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy Chula Vista, Defendant Mossy Nissan El Cajon, Defendant Mossy Escondido, Defendant Mossy Kearny Mesa, Defendant Mossy National City, Defendant Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan, Defendant Mossy Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG Honda, Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota, Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III have an executive team which supervise and manage the operations of all of DEFENDANTS' dealerships, supervised and

1 managed the finances of all of DEFENDANTS' dealerships, supervised and
2 managed the marketing of all of DEFENDANTS' dealerships, supervised and
3 managed the human resources of all of DEFENDANTS' dealerships, and
4 supervised and managed the food and beverage offerings at all of DEFENDANTS'
5 dealerships.

6 33. PLAINTIFF alleges that DEFENDANTS' various separate corporate entities are
7 used by an individual or individuals, or by another corporation, to accomplish inequitable
8 purposes, including to limit liability for the unlawful acts of DEFENDANT.

9 34. PLAINTIFF alleges that there is such a unity of interest and ownership between
10 DEFENDANT's various corporate entities that own DEFENDANT's restaurants and the
11 individual or individuals, or organization controlling those corporate entities that their separate
12 personalities no longer exist.

13 35. PLAINTIFF further alleges that the failure to disregard the various corporate
14 entities would promote injustice.

15 36. Defendant Mossy II, and/or Defendant Mossy El Cajon, and/or Defendant Mossy
16 Insurance, and/or Defendant Mossy Lemon Grove, and/or Defendant Mossy Automotive, and/or
17 Defendant Mossy Imports, and/or Defendant Mossy Chevy, and/or Defendant Mossy Company,
18 and/or Defendant Mossy European, and/or Defendant Mossy Ford, and/or Defendant Mossy
19 Holding, and/or Defendant Mossy Chula Vista, and/or Defendant Mossy Nissan El Cajon, and/or
20 Defendant Mossy Escondido, and/or Defendant Mossy Kearny Mesa, Defendant Mossy National
21 City, and/or Defendant Oceanside, and/or Defendant Mossy Poway, and/or Defendant Mossy
22 Nissan, and/or Defendant Mossy Leasing, and/or Defendant MAG CDJR, and/or Defendant MAG
23 Ford, and/or Defendant MAG Honda, and/or Defendant MAG Nissan II, and/or Defendant MAG
24 Nissan III, and/or Defendant MAG Toyota, and/or Defendant MAG Volkswagen II, and/or
25 Defendant MAG Volkswagen III were the joint employers of PLAINTIFF as evidenced by the
26 contracts signed and by the company PLAINTIFF performed work for respectively, and therefore
27 jointly responsible as employers for the conduct alleged herein and collectively referred to herein
28 as "DEFENDANTS" or "DEFENDANT."

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1 37. PLAINTIFF has been employed by DEFENDANTS in California since January of
2 2023 as a non-exempt employee, paid on an hourly basis, non-discretionary bonuses, and entitled
3 to the legally required meal and rest periods and payment of minimum and overtime wages due
4 for all time worked.

5 38. PLAINTIFF brings this Class Action on behalf of himself and a California class,
6 defined as all persons who are or previously were employed by DEFENDANT in California and
7 classified as non-exempt, exempt, piece-rate based, and/or commission-based employees (the
8 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing
9 of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).
10 The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is
11 under five million dollars (\$5,000,000.00).

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

23 40. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
25 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
26 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
27 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
28 ascertained. PLAINTIFFS is informed and believes, and based upon that information and belief

1 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
2 inclusive, are responsible in some manner for one or more of the events and happenings that
3 proximately caused the injuries and damages hereinafter alleged.

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

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

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

23 44. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
24 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
25 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

26 45. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
27 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
28 other members of the CALIFORNIA CLASS who has been economically injured by

1 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable
2 relief.

3 **JURISDICTION AND VENUE**

4 46. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
6 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
7 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

8 47. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ
10 the CALIFORNIA CLASS across California, including in this County, and committed the
11 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

12 **THE CONDUCT**

13 48. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
15 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
16 failed to provide legally compliant meal and rest periods, failed to accurately compensate
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
18 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
19 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
20 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
21 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest
22 premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS
23 Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other
24 CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and
25 the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,
26 among other things, all applicable hourly rates in effect during the pay periods and the
27 corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and
28 practices are intended to purposefully avoid the accurate and full payment for all time worked as

1 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
2 advantage over competitors who comply with the law. To the extent equitable tolling operates to
3 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
4 be adjusted accordingly.

5 **A. Meal Period Violations**

6 49. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
7 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
8 meaning the time during which an employee is subject to the control of an employer, including
9 all the time the employee is suffered or permitted to work. From time to time during the CLASS
10 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
11 without paying them for all the time they were under DEFENDANTS' control. Specifically,
12 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
13 be PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
14 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
15 Members forfeited minimum wage and overtime compensation by regularly working without their
16 time being accurately recorded and without compensation at the applicable minimum wage and
17 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
18 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
19 records.

20 50. From time to time during the CLASS PERIOD, as a result of their rigorous work
21 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
22 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
23 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
24 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for
25 more than five (5) hours during some shifts without receiving a meal break. Further,
26 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
27 second off-duty meal period for some workdays in which these employees are required by
28 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by

1 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and
2 narrowly construed “on-duty” meal period exception. When they were provided with meal
3 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
4 required to remain on duty and on call. Further, DEFENDANTS from time to time required
5 PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless communication
6 devices in order to receive and respond to work-related communications during what was
7 supposed to be their off-duty meal breaks. DEFENDANTS’ failure to provide PLAINTIFF and
8 the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
9 DEFENDANTS’ business records. As a result of their rigorous work schedules and
10 DEFENDANTS’ inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
11 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
12 DEFENDANTS’ strict corporate policy and practice.

13 **B. Rest Period Violations**

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

1 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
2 proper rest periods by DEFENDANT and DEFENDANTS' managers.

3 **C. Unreimbursed Business Expenses**

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

15 53. In the course of their employment, DEFENDANTS required PLAINTIFF and
16 other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal
17 cell phones, vehicles, computers, and internet connection as a result of and in furtherance of their
18 job duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required
19 to use their personal cell phones, vehicles, computers, and internet connection in order to perform
20 work related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
21 other CALIFORNIA CLASS Members for the use of their personal cell phones, vehicles,
22 computers, and internet connection. As a result, in the course of their employment with
23 DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
24 unreimbursed business expenses that included, but were not limited to, costs related to the use of
25 their personal cell phones, vehicles, computers, and internet connection, all on behalf of and for
26 the benefit of DEFENDANT.

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1 **D. Wage Statement Violations**

2 54. California Labor Code Section 226 required an employer to furnish its employees
3 and accurate itemized wage 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
6 name of the employee and only the last four digits of the employee's social security number or an
7 employee identification number other than a social security number, (8) the name and address of
8 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
9 period and the corresponding number of hours worked at each hourly rate by the employee.

10 55. From time to time during the CLASS PERIOD, when PLAINTIFF and other
11 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
12 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
13 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
14 accurate wage statements which failed to show, among other things, all deductions, the total hours
15 worked and all applicable hourly rates in effect during the pay period and the corresponding
16 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
17 meal and rest periods.

18 56. Further, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the
19 CALIFORNIA CLASS with wage statements that provide all applicable hourly rates in effect
20 during the pay period and the corresponding number of hours worked at each hourly rate by the
21 employee, in violation of Cal. Lab. Code § 226(a)(9).

22 57. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
23 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
24 Cal. Lab. Code § 226.

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

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

59. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS for all hours worked.

60. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work, including but not limited to time spent locking all vehicles on DEFENDANTS' premises. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

61. DEFENDANTS directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **H. Unlawful Deductions**

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

1 **I. Timekeeping Manipulation**

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

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

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

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

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1 **J. Unlawful Rounding Practices**

2 80. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
3 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
4 CALIFORNIA CLASS Members for the actual time these employees worked each day,
5 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
6 policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
7 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
8 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
9 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
10 these employees for all their time worked, including the applicable overtime compensation for
11 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
12 time to time, forfeited compensation for their time worked by working without their time being
13 accurately recorded and without compensation at the applicable overtime rates.

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

20 **K. Violations for Untimely Payment of Wages**

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

26 83. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
27 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant
28 to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall

1 become due and payable not later than 72 hours thereafter, unless the employee has given 72
2 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
3 or her wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members
4 were, from time to time, not timely provided the wages earned and unpaid at the time of their
5 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

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

9 **L. Sick Pay Violations**

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

17 86. California Labor Code Section 246(i) requires an employer to furnish its
18 employees with written wage statements setting forth the amount of paid sick leave available.
19 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
20 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
21 forth the amount of paid sick leave available

22 87. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
23 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
24 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
25 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
26 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
27 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
28 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the

1 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during
2 what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and
3 rest breaks without additional compensation and in accordance with DEFENDANTS' strict
4 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
5 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
6 to reimburse PLAINTIFF for required business expenses related to the personal expenses
7 incurred for the use of their personal cell phone, vehicle, computer and home internet, on behalf
8 of and in furtherance of his employment with DEFENDANTS. To date, DEFENDANTS have
9 not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to
10 him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy
11 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

12 **CLASS ACTION ALLEGATIONS**

13 88. PLAINTIFF brings this Class Action on behalf of himself, and a California class
14 defined as all persons who are or previously were employed by DEFENDANT in California and
15 classified as non-exempt, exempt, piece-rate based, and/or commission-based employees (the
16 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the
17 filing of this Complaint and ending on the date as determined by the Court (the "CLASS
18 PERIOD").

19 89. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
20 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
21 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
22 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
23 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
24 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

25 90. The members of the class are so numerous that joinder of all class members is
26 impractical.

27 91. Common questions of law and fact regarding DEFENDANTS' conduct, including
28 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately

1 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
2 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
3 compliant meal and rest periods, failure to reimburse for business expenses, failure to provide
4 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
5 wage and overtime, exist as to all members of the class and predominate over any questions
6 affecting solely any individual members of the class. Among the questions of law and fact
7 common to the class are:

- 8 a. Whether DEFENDANT maintained legally compliant meal period policies and
9 practices;
- 10 b. Whether DEFENDANT maintained legally compliant rest period policies and
11 practices;
- 12 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
13 Members accurate premium payments for missed meal and rest periods;
- 14 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
15 Members accurate overtime wages;
- 16 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
17 Members at least minimum wage for all hours worked;
- 18 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
19 CLASS Members for required business expenses;
- 20 g. Whether DEFENDANT issued legally compliant wage statements;
- 21 h. Whether DEFENDANT committed an act of unfair competition by systematically
22 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
23 CLASS for all time worked;
- 24 i. Whether DEFENDANT committed an act of unfair competition by systematically
25 failing to record all meal and rest breaks missed by PLAINTIFF and other
26 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
27 of this work, required employees to perform this work and permits or suffers to
28 permit this work;

1 j. Whether DEFENDANT committed an act of unfair competition in violation of the
2 UCL, by failing to provide the PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

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

6 93. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
7 PLAINTIFF has the same interests as the other members of the class.

8 94. PLAINTIFF will fairly and adequately represent and protect the interests of the
9 CALIFORNIA CLASS Members.

10 95. PLAINTIFF retained able class counsel with extensive experience in class action
11 litigation.

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

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

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

21 99. A class action is superior to other available methods for the fair and efficient
22 adjudication of this controversy because joinder of all class members is impractical. Moreover,
23 since the damages suffered by individual members of the class may be relatively small, the
24 expense and burden of individual litigation makes it practically impossible for the members of
25 the class individually to redress the wrongs done to them. Without class certification and
26 determination of declaratory, injunctive, statutory, and other legal questions within the class
27 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
28 create the risk of:

- 1 a. Inconsistent or varying adjudications with respect to individual members of the
2 CALIFORNIA CLASS which would establish incompatible standards of conduct
3 for the parties opposing the CALIFORNIA CLASS; and/or,
4 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
5 which would as a practical matter be dispositive of the interests of the other
6 members not party to the adjudication or substantially impair or impeded their
7 ability to protect their interests.

8 100. Class treatment provides manageable judicial treatment calculated to bring an
9 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
10 the conduct of DEFENDANT.

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

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

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

18 102. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
19 Code § 17021.

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

24 Any person who engages, has engaged, or proposes to engage in unfair competition may
25 be enjoined in any court of competent jurisdiction. The court may make such orders or
26 judgments, including the appointment of a receiver, as may be necessary to prevent the
27 use or employment by any person of any practice which constitutes unfair competition, as
28 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. (Cal. Bus. & Prof. Code § 17203).

1 104. By the conduct alleged herein, DEFENDANTS have engaged and continue to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
5 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
7 constitute unfair competition, including restitution of wages wrongfully withheld.

8 105. By the conduct alleged herein, DEFENDANTS' practices were unlawful and
9 unfair in that these practices violated public policy, were immoral, unethical, oppressive
10 unscrupulous or substantially injurious to employees, and were without valid justification or
11 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
12 of the California Business & Professions Code, including restitution of wages wrongfully
13 withheld.

14 106. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
15 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
16 mandated meal and rest periods and the required amount of compensation for missed meal and
17 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
18 necessary business expenses incurred, due to a systematic business practice that cannot be
19 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
20 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
21 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
22 restitution of wages wrongfully withheld.

23 107. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
24 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
25 other members of the CALIFORNIA CLASS to be underpaid during their employment with
26 DEFENDANTS.

27 108. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
28 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide

1 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
2 required by Cal. Lab. Code §§ 226.7 and 512.

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

8 110. PLAINTIFF further demands on behalf of himself and on behalf of each
9 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
10 not timely provided as required by law.

11 111. By and through the unlawful and unfair business practices described herein,
12 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
13 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
14 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
15 detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS
16 to unfairly compete against competitors who comply with the law.

17 112. All the acts described herein as violations of, among other things, the Industrial
18 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
19 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
20 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
21 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

22 113. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
23 and do, seek such relief as may be necessary to restore to them the money and property which
24 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
25 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
26 business practices, including earned but unpaid wages for all time worked.

27 114. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
2 engaging in any unlawful and unfair business practices in the future.

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

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

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

13 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

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

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

23 118. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a less wage than
25 the minimum so fixed is unlawful.

26 119. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage compensation and interest thereon, together with the costs of suit.
28

1 120. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
2 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
3 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
4 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
5 the CALIFORNIA CLASS.

6 121. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
8 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
9 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

10 122. In committing these violations of the California Labor Code, DEFENDANTS
11 inaccurately calculated the correct time worked and consequently underpaid the actual time
12 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted
13 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
14 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
15 laws and regulations.

16 123. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
17 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
18 minimum wage compensation for their time worked for DEFENDANTS.

19 124. During the CLASS PERIOD, PLAINTIFF and the other members of the
20 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
21 failure to pay all earned wages.

22 125. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
24 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
25 suffered and will continue to suffer an economic injury in amounts which are presently unknown
26 to them, and which will be ascertained according to proof at trial.

27 126. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were under-compensated for their time worked.

1 DEFENDANTS systematically elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
3 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
4 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
5 for their time worked.

6 127. In performing the acts and practices herein alleged in violation of California labor
7 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
8 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
9 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
11 consequences to them, and with the despicable intent of depriving them of their property and legal
12 rights, and otherwise causing them injury in order to increase company profits at the expense of
13 these employees.

14 128. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
15 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
16 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
17 California Labor Code and/or other applicable statutes. To the extent minimum wage
18 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
19 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
20 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
21 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
22 Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
23 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
24 recover statutory costs.

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1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

3 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

5 129. 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.

8 130. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
9 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
10 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
11 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
12 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

22 134. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
23 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
24 they worked, including overtime work.

25 135. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
27 implementing a uniform policy and practice that failed to accurately record overtime worked by
28 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to

1 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
2 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
3 (12) hours in a workday, and/or forty (40) hours in any workweek.

4 136. In committing these violations of the California Labor Code, DEFENDANTS
5 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
6 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
7 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
8 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
9 regulations.

10 137. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
11 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
12 overtime compensation for their time worked for DEFENDANTS.

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

21 139. During the CLASS PERIOD, PLAINTIFF and the other members of the
22 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
23 a failure to pay all earned wages.

24 140. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
25 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
26 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
27 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
28 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANTS

1 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
2 witnessed by employees.

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

8 142. DEFENDANTS knew or should have known that PLAINTIFF and the other
9 members of the CALIFORNIA CLASS were undercompensated for their time worked.
10 DEFENDANTS systematically elected, either through intentional malfeasance or gross
11 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
12 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
13 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
14 their overtime worked.

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

23 144. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
25 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
26 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
27 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
28 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore

1 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
2 penalties are sought herein. DEFENDANTS' conduct as alleged herein was willful, intentional,
3 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
4 entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

12 146. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
13 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
14 required by the applicable Wage Order and Labor Code. The nature of the work performed by
15 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
16 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
17 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
18 fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS'
19 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
20 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business
21 records. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS
22 Members with a second off-duty meal period in some workdays in which these employees were
23 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
24 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
25 and in accordance with DEFENDANTS' strict corporate policy and practice.

26 147. DEFENDANTS further violated California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
28 Members who were not provided a meal period, in accordance with the applicable Wage Order,

1 one additional hour of compensation at each employee's regular rate of pay for each workday that
2 a meal period was not provided.

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

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

10 149. 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.

13 150. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
14 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
15 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
16 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
17 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
18 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
19 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
20 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
22 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
23 compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as
24 required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to
25 provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid
26 rest periods is evidenced by DEFENDANTS' business records.

27 151. DEFENDANTS further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS

Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

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

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

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

154. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an

employee identification number other than social security number may be shown on the itemized statement,

h. the name and address of the legal entity that is the employer, and

i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

155. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

156. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

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

1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code § 203)**

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

5 158. 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.

8 159. Cal. Lab. Code § 200 provides that:

9 As used in this article:

- 10 (d) "Wages" includes all amounts for labor performed by employees of every
11 description, whether the amount is fixed or ascertained by the standard of time,
12 task, piece, Commission basis, or other method of calculation.
13 (e) "Labor" includes labor, work, or service whether rendered or performed under
14 contract, subcontract, partnership, station plan, or other agreement if the to be
15 paid for is performed personally by the person demanding payment.

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

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

20 If an employee not having a written contract for a definite period quits his or her
21 employment, his or her wages shall become due and payable not later than 72 hours
22 thereafter, unless the employee has given 72 hours previous notice of his or her intention
23 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
24 Notwithstanding any other provision of law, an employee who quits without providing a
25 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
26 designates a mailing address. The date of the mailing shall constitute the date of payment
27 for purposes of the requirement to provide payment within 72 hours of the notice of
28 quitting.

29 162. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
30 Members' employment contract.

31 163. Cal. Lab. Code § 203 provides:

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

164. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANTS have not tendered payment of wages to these employees who missed meal and rest breaks, as required by law.

165. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

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

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

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

168. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, the use of their personal cell phones, vehicles, computers, and internet connection all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cell phones, vehicles, computers, and internet connection on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and

1 procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for
2 expenses resulting from the use of their personal cell phones, vehicles, computers, and internet
3 connection 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 this expectation. Although these expenses were
6 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
7 DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
8 members for these expenses as an employer is required to do under the laws and regulations of
9 California.

10 169. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
11 by him and the CALIFORNIA CLASS members in the discharge of their job duties for
12 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
13 statutory rate and costs under Cal. Lab. Code § 2802.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for a judgment against Defendant as follows:

3 1. On behalf of the CALIFORNIA CLASS:

- 4 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
5 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 6 b. An order temporarily, preliminarily and permanently enjoining and restraining
7 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 8 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
9 unlawfully withheld from compensation due to PLAINTIFF and the other members
10 of the CALIFORNIA CLASS; and
- 11 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
12 for restitution of the sums incidental to DEFENDANTS' violations due to
13 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

14 2. On behalf of the CALIFORNIA CLASS:

- 15 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
16 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
17 to Cal. Code of Civ. Proc. § 382;
- 18 b. Compensatory damages, according to proof at trial, including compensatory
19 damages for overtime compensation due to PLAINTIFF and the other members of
20 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
21 thereon at the statutory rate;
- 22 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
23 the applicable IWC Wage Order;
- 24 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
25 which a violation occurs and one hundred dollars (\$100) per each member of the
26 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
27 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
28 violation of Cal. Lab. Code § 226

1 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
2 penalty from the due date thereof at the same rate until paid or until an action
3 therefore is commenced, in accordance with Cal. Lab. Code § 203.

4 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
5 CLASS incurred in the course of their job duties, plus interest, and costs of suit.

6 3. On all claims:

7 a. An award of interest, including prejudgment interest at the legal rate;

8 b. Such other and further relief as the Court deems just and equitable; and

9 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
10 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or
11 § 1194.

12 DATED: July 19, 2024

ZAKAY LAW GROUP, APLC

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14
15 By: 

Shani O. Zakay, Esq.
Attorney for PLAINTIFF

16
17 **DEMAND FOR A JURY TRIAL**

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

19
20 DATED: July 19, 2024

ZAKAY LAW GROUP, APLC

21
22 By: 

Shani O. Zakay, Esq.
Attorney for PLAINTIFF