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Chad Finke, Executive Officer / Clerk of the Court

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

KELLY TRAN, on behalf of the State of
California in her representative capacity as a
private attorney general,

Plaintiff,

v.

PREMIER AUTOMOTIVE IMPORTS OF CA,
LLC, dba PREMIER NISSAN OF FREMONT,
a California limited liability company;
PREMIER AUTOMOTIVE OF BUENA
PARK, LLC, dba PREMIER CHEVROLET OF
BUENA PARK, a California limited liability
company; PREMIER AUTOMOTIVE OF MV,
LLC, dba PREMIER AUTOMOTIVE OF
MORENO VALLEY, a California limited
liability company; PREMIER AUTOMOTIVE
OF SEASIDE, LLC, dba PREMIER
HYUNDAI OF SEASIDE and PREMIER
CHEVROLET OF SEASIDE, a California
limited liability company; PREMIER
AUTOMOTIVE C OF CARLSBAD, LLC, dba
PREMIER CHEVROLET OF CARLSBAD, a
California limited liability company; PREMIER

Case No: 24CV083388

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

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

1 AUTOMOTIVE BCG OF CARLSBAD, LLC,
2 dba PREMIER CADILLAC BUICK GMC OF
3 CARLSBAD, a California limited liability
4 company; PREMIER AUTOMOTIVE K OF
5 CARLSBAD, LLC, dba PREMIER KIA OF
6 CARLSBAD, a California limited liability
7 company; PREMIER AUTOMOTIVE CJDR
8 OF BUENA PARK, LLC, dba PREMIER
9 CHRYSLER DODGE JEEP RAM OF BUENA
10 PARK, a California limited liability company;
11 PREMIER AUTOMOTIVE HCDJ OF
12 CALIFORNIA, LLC, a California limited
13 liability company; PREMIER AUTOMOTIVE
14 OF NEWARK, a California limited liability
15 company; PREMIER AUTOMOTIVE OF
16 PLACENTIA, LLC, a California limited
17 liability company; PREMIER AUTOMOTIVE
18 OF STEVENS CREEK, LLC, a California
19 limited liability company; PREMIER NISSAN
20 OF SAN JOSE, LLC, a California limited
21 liability company; PREMIER AUTOMOTIVE
22 OF CA, LLC, dba TOYOTA OF POWAY, a
23 California limited liability company;
24 PREMIER SUBARU OF FREMONT, LLC, a
25 California limited liability company; PREMIER
26 AUTOMOTIVE OF WEST COVINA, LLC, a
27 California limited liability company; and DOES
28 1-50, Inclusive,

Defendants.

1 PLAINTIFF KELLY TRAN (“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 her own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against PREMIER AUTOMOTIVE IMPORTS OF
8 CA, LLC (“Defendant Premier Automotive”); PREMIER AUTOMOTIVE OF BUENA PARK,
9 LLC, dba PREMIER CHEVROLET OF BUENA PARK (“Defendant Buena Park”); Defendant
10 PREMIER AUTOMOTIVE OF MV, LLC, dba PREMIER AUTOMOTIVE OF MORENO
11 VALLEY (“Defendant Moreno Valley”); Defendant PREMIER AUTOMOTIVE OF SEASIDE,
12 LLC, dba PREMIER HYUNDAI OF SEASIDE, and PREMIER CHEVROLET OF SEASIDE
13 (“Defendant Seaside”); PREMIER AUTOMOTIVE C OF CARLSBAD, LLC, dba PREMIER
14 CHEVROLET OF CARLSBAD (“Defendant Carlsbad Chevy”); PREMIER AUTOMOTIVE
15 BCG OF CARLSBAD, LLC, dba PREMIER CADILLAC BUICK GMC OF CARLSBAD
16 (“Defendant BCG”); PREMIER AUTOMOTIVE K OF CARLSBAD, LLC, dba PREMIER KIA
17 OF CARLSBAD (“Defendant Premier Kia of Carlsbad”); PREMIER AUTOMOTIVE CJDR OF
18 BUENA PARK, LLC, dba PREMIER CHRYSLER DODGE JEEP RAM OF BUENA PARK
19 (“Defendant Premier CJDR”); PREMIER AUTOMOTIVE HCDJ OF CALIFORNIA, LLC
20 (“Defendant Premier HCDJ”); PREMIER AUTOMOTIVE OF NEWARK, LLC (“Defendant
21 Newark”); PREMIER AUTOMOTIVE OF PLACENTIA, LLC (“Defendant Placentia”);
22 PREMIER AUTOMOTIVE OF STEVENS CREEK, LLC (“Defendant Stevens Creek”);
23 PREMIER NISSAN OF SAN JOSE, LLC (“Defendant San Jose”); PREMIER AUTOMOTIVE
24 OF CA, LLC, dba TOYOTA OF POWAY (“Defendant Poway”); PREMIER SUBARU OF
25 FREMONT, LLC (“Defendant Fremont”); and PREMIER AUTOMOTIVE OF WEST COVINA,
26 LLC (“Defendant West Covina”) (“DEFENDANT” and/or “DEFENDANTS”) seeking only to
27 recover PAGA civil penalties on behalf of all current and former aggrieved employees that
28 worked for DEFENDANTS. PLAINTIFF does **not seek to recover anything other than**

1 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory violations
2 are mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
3 damages for those violations, but simply the civil penalties permitted by California Labor Code §
4 2699.

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

7 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANTS'
8 violations under PAGA and solely for the relief as permitted by PAGA that is, penalties and any
9 other relief the Court deems proper pursuant to PAGA. Nothing in this complaint should be
10 constructed as attempting to obtain any relief that would not be available in a PAGA- only action.

11 4. PLAINTIFF is not suing in her individual capacity; she is proceeding herein solely
12 under the PAGA, on behalf of the State of California for all aggrieved employees. Nothing in this
13 complaint should be construed as PLAINTIFF suing her individual capacity.

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

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

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

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

THE PARTIES

8. Defendant PREMIER AUTOMOTIVE IMPORTS OF CA, LLC (“Defendant Premier Automotive”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. Defendant PREMIER AUTOMOTIVE OF BUENA PARK, LLC, dba PREMIER CHEVROLET OF BUENA PARK (“Defendant Buena Park”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

10. Defendant PREMIER AUTOMOTIVE OF MV, LLC, dba PREMIER AUTOMOTIVE OF MORENO VALLEY (“Defendant Moreno Valley”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

11. Defendant PREMIER AUTOMOTIVE OF SEASIDE, LLC, dba PREMIER HYUNDAI OF SEASIDE, and PREMIER CHEVROLET OF SEASIDE (“Defendant Seaside”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

12. Defendant PREMIER AUTOMOTIVE C OF CARLSBAD, LLC, dba PREMIER CHEVROLET OF CARLSBAD (“Defendant Carlsbad Chevy”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

13. Defendant PREMIER AUTOMOTIVE BCG OF CARLSBAD, LLC, dba PREMIER CADILLAC BUICK GMC OF CARLSBAD (“Defendant BCG”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

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1 14. Defendant PREMIER AUTOMOTIVE K OF CARLSBAD, LLC, dba PREMIER
2 KIA OF CARLSBAD (“Defendant Premier Kia of Carlsbad”) is a California limited liability
3 company that at all relevant times mentioned herein conducted and continues to conduct
4 substantial and regular business throughout California.

5 15. Defendant PREMIER AUTOMOTIVE CJDR OF BUENA PARK, LLC, dba
6 PREMIER CHRYSLER DODGE JEEP RAM OF BUENA PARK (“Defendant Premier CJDR”)
7 is a California limited liability company that at all relevant times mentioned herein conducted and
8 continues to conduct substantial and regular business throughout California.

9 16. Defendant PREMIER AUTOMOTIVE HCDJ OF CALIFORNIA, LLC
10 (“Defendant Premier HCDJ”) is a California limited liability company corporation that at all
11 relevant times mentioned herein conducted and continues to conduct substantial and regular
12 business throughout California.

13 17. Defendant PREMIER AUTOMOTIVE OF NEWARK, LLC (“Defendant
14 Newark”) is a California limited liability company that at all relevant times mentioned herein
15 conducted and continues to conduct substantial and regular business throughout California.

16 18. Defendant PREMIER AUTOMOTIVE OF PLACENTIA, LLC (“Defendant
17 Placentia”) is a California limited liability company that at all relevant times mentioned herein
18 conducted and continues to conduct substantial and regular business throughout California.

19 19. Defendant PREMIER AUTOMOTIVE OF STEVENS CREEK, LLC (“Defendant
20 Stevens Creek”) is a California limited liability company that at all relevant times mentioned
21 herein conducted and continues to conduct substantial and regular business throughout
22 California.

23 20. Defendant PREMIER NISSAN OF SAN JOSE, LLC (“Defendant San Jose”) is a
24 California limited liability company that at all relevant times mentioned herein conducted and
25 continues to conduct substantial and regular business throughout California.

26 21. Defendant PREMIER AUTOMOTIVE OF CA, LLC, dba TOYOTA OF POWAY
27 (“Defendant Poway”) is a California limited liability company that at all relevant times mentioned
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1 herein conducted and continues to conduct substantial and regular business throughout
2 California.

3 22. Defendant PREMIER SUBARU OF FREMONT, LLC (“Defendant Fremont”) is
4 a California limited liability company that at all relevant times mentioned herein conducted and
5 continues to conduct substantial and regular business throughout California.

6 23. Defendant PREMIER AUTOMOTIVE OF WEST COVINA, LLC (“Defendant
7 West Covina”) is a California limited liability company that at all relevant times mentioned herein
8 conducted and continues to conduct substantial and regular business throughout California.

9 24. Defendants Premier Automotive, Buena Park, Moreno Valley, Seaside, Carlsbad
10 Chevy, BCG, Premier of Carlsbad, CJDR, HCDJ, Newark, Placentia, Stevens Creek, San Jose,
11 Poway, Fremont, and West Covina were the joint employers of PLAINTIFF as evidenced by the
12 documents issued to PLAINTIFF and by the company PLAINTIFF performed work for
13 respectively and are therefore jointly responsible as employers for the conduct alleged herein as
14 “DEFENDANTS” and/or “DEFENDANT.”

15 25. DEFENDANT was the employer of PLAINTIFF as evidenced by the documents
16 issued to PLAINTIFF and by the company PLAINTIFF performed work for.

17 26. DEFENDANTS operate car dealerships throughout the state of California,
18 including in the county of Alameda.

19 27. PLAINTIFF was employed by DEFENDANTS in California from May 2024 to
20 June 2024, paid in part an hourly wage, and entitled to the legally required meal and rest periods
21 and payment of minimum and overtime wages due for all time worked.

22 28. PLAINTIFF, and such persons that may be added from time to time who satisfy
23 the requirements and exhaust the administrative procedures under the Private Attorney General
24 Act, bring this Representative Action on behalf of the State of California with respect all
25 individuals who are or previously were employed by Defendant Premier Automotive and/or
26 Defendant Buena Park and/or Defendant Moreno Valley and/or Defendant Seaside and/or
27 Defendant Carlsbad Chevy and/or Defendant BCG and/or Defendant Premier Kia of Carlsbad
28 and/or Defendant Premier CJDR and/or HCDJ and/or Defendant Newark and/or Defendant

1 Placentia and/or Defendant Stevens Creek and/or Defendant San Jose and/or Defendant Poway
2 and/or Defendant Fremont and/or Defendant West Covina in California and classified as non-
3 exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of July 15, 2023, and
4 the present (“PAGA Period”).

5 29. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor
6 Code § 2699(c) because she was employed by DEFENDANTS and personally suffered each of
7 the alleged Labor Code violations committed by DEFENDANTS.

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

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

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

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

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1 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
2 DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

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

18 38. From time to time during the PAGA PERIOD, as a result of their rigorous work
19 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
20 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty
21 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
22 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANTS for
23 more than five (5) hours during some shifts without receiving a meal break. Further,
24 DEFENDANTS fails to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
25 off-duty meal period for some workdays in which these employees are required by
26 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
27 PLAINTIFF and other AGGRIEVED EMPLOYEES does not qualify for the limited and narrowly
28 construed "on-duty" meal period exception. When they were provided with meal periods,

1 PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to remain
2 on duty and on call. DEFENDANTS' failure to provide PLAINTIFF and the AGGRIEVED
3 EMPLOYEES Members with legally required meal breaks is evidenced by DEFENDANTS'
4 business records. PLAINTIFF and AGGRIEVED EMPLOYEES therefore forfeit meal breaks
5 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
6 and practice.

7 **B. Rest Period Violations**

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

26 **C. Unreimbursed Business Expenses**

27 40. DEFENDANTS as a matter of corporate policy, practice, and procedure,
28 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF

1 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
2 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
3 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are
4 required to indemnify employees for all expenses incurred in the course and scope of their
5 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
6 employee for all necessary expenditures or losses incurred by the employee in direct consequence
7 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
8 even though unlawful, unless the employee, at the time of obeying the directions, believed them
9 to be unlawful."

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

20 **D. Wage Statement Violations**

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

1 43. From time to time during the PAGA PERIOD, when PLAINTIFF and other
2 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
3 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
4 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
5 statements which failed to show, among other things, all deductions, the total hours worked and
6 all applicable hourly rates in effect during the pay period, and the corresponding amount of time
7 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
8 periods.

9 44. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
10 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply
11 with Cal. Lab. Code § 226(a)(1)-(9).

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

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

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

20 47. During the PAGA PERIOD, from time-to-time DEFENDANTS required
21 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work, including
22 but not limited to, performing security sweeps of DEFENDANTS' property. This resulted in
23 PLAINTIFF and AGGRIEVED EMPLOYEES having to work while off-the-clock.

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

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

28 ///

1 50. DEFENDANTS were 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 51. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees,
6 subject to the requirements of the California Labor Code.

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

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

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

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

22 55. From time to time during the PAGA PERIOD, DEFENDANTS failed and
23 continue to fail to accurately calculate and pay PLAINTIFF and the 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 Members at the correct rate for all overtime and double time worked, meal and
2 rest period premiums, and redeemed sick pay in accordance with applicable law is evidenced by
3 DEFENDANTS' business records.

4 56. 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 57. 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 58. From-time-to-time, when calculating the regular rate of pay, in those pay periods
15 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid
16 meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary
17 bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as
18 part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all
19 non-overtime hours worked. Management and supervisors described the incentive/bonus program
20 to potential and new employees as part of the compensation package. As a matter of law, the
21 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
22 included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment
23 of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay
24 to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically,
25 California Labor Code Section 246 mandates that paid sick time for non-employees shall be
26 calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt
27 employee uses paid sick time, whether or not the employee actually works overtime in that
28 workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive

1 compensation as part of the “regular rate of pay” for purposes of sick pay compensation was in
2 violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code
3 Sections 201, 202, 203 and/or 204.

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

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

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

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

H. Sick Pay Violations

62. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time, DEFENDANTS failed to have a policy or practice in place that provided PLAINTIFF and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

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

I. Violations for Untimely Payment of Wages

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

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1 65. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
2 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
3 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
4 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
5 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
6 wages at the time of quitting.” PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time
7 to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at
8 the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202. Further, DEFENDANTS’
9 violations are willful and intentional, were not isolated due to an unintentional payroll error due
10 to clerical or inadvertent mistake.

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

14 **J. Unlawful Deductions**

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

19 **K. Unlawful Rounding Practices**

20 68. During the PAGA Period, DEFENDANTS did not have in place an immutable
21 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED
22 EMPLOYEES for the actual time these employees worked each day, including overtime hours.
23 Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted
24 in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated for all of their time
25 worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally
26 round the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFF and
27 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked,
28 including the applicable overtime compensation for overtime worked. As a result, PLAINTIFF

1 and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time
2 worked by working without their time being accurately recorded and without compensation at the
3 applicable overtime rates.

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

10 **L. Timekeeping Manipulation**

11 70. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
12 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
13 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each
14 day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result,
15 DEFENDANTS were able to and did in fact, unlawfully, and unilaterally alter the time recorded
16 in DEFENDANTS' timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in
17 order to avoid paying these employees for all hours worked, applicable overtime compensation,
18 applicable sick pay, missed meal breaks and missed rest break.

19 71. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time-to-time,
20 forfeited time worked by working without their time being accurately recorded and without
21 compensation at the applicable pay rates.

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

1 73. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due
2 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
3 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
4 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
5 applicable law is evidenced by DEFENDANTS' business records.

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

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1 **FIRST CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§2698 et seq.)**

4 **(Alleged by PLAINTIFF against all DEFENDANTS)**

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

7 76. 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
14 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor
15 Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to
16 arbitration.

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

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

23 79. PLAINTIFF complied with the procedures for bringing suit specified in Labor
24 Code Section 2699.3. By certified letter, return receipt requested, dated July 15, 2024,
25 PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA")
26 and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been
27 violated, including the facts and theories to support the alleged violations. See Exhibit #1.

28 ///

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

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

11 a. For violation of Labor Code Sections 201, 202, 203, and 204, up to (\$200)
12 per AGGRIEVED EMPLOYEE per pay period [penalty per Labor Code
13 Section 2699(f)];

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

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

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

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

1 Labor Code Section 1174.5].

2 f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199,
3 a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED
4 EMPLOYEE per pay period for the initial violation and two hundred dollars
5 fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent
6 violation [penalty per Labor Code Section].

7 82. For all provisions of the Labor Code for which civil penalty is not specifically
8 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of up to two hundred dollars
9 (\$200) for each AGGRIEVED EMPLOYEE per pay period. PLAINTIFF and the AGGRIEVED
10 EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with
11 their claims for civil penalties pursuant to Labor Code Section 2699(k)(1).

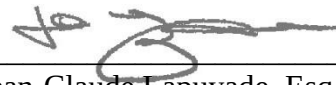
12 **PRAYER FOR RELIEF**

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

- 14 1. For reasonable attorney's fees and costs of suit to the extent permitted by law,
15 including pursuant to Labor Code § 2699, *et seq.*;
- 16 2. For civil penalties to the extent permitted by law pursuant to the Labor Code under
17 the Private Attorneys General Act; and
- 18 3. For such other relief as the Court deems just and proper.
- 19

20 DATED: September 19, 2024

21 **JCL LAW FIRM, APC**

22 By: 

23 Jean-Claude Lapuyade, Esq.
24 Attorney for PLAINTIFF
25
26
27
28

EXHIBIT 1

July 15, 2024

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

PREMIER AUTOMOTIVE IMPORTS OF CA, LLC
PREMIER AUTOMOTIVE OF BUENA PARK, LLC
PREMIER AUTOMOTIVE OF MV, LLC
PREMIER AUTOMOTIVE OF SEASIDE, LLC
PREMIER AUTOMOTIVE C OF CARLSBAD, LLC
PREMIER AUTOMOTIVE BCG OF CARLSBAD, LLC
PREMIER AUTOMOTIVE K OF CARLSBAD, LLC
PREMIER AUTOMOTIVE CJDR OF BUENA PARK, LLC
PREMIER AUTOMOTIVE HCDJ OF CALIFORNIA, LLC
PREMIER AUTOMOTIVE OF NEWARK, LLC
PREMIER AUTOMOTIVE OF PLACENTIA, LLC
PREMIER AUTOMOTIVE OF STEVENS CREEK, LLC
PREMIER NISSAN OF SAN JOSE, LLC
PREMIER AUTOMOTIVE OF CA, LLC
PREMIER SUBARU OF FREMONT, LLC
PREMIER AUTOMOTIVE OF WEST COVINA, LLC

c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 1756 9911 99

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

Dear Sir/Madam:

Our offices represent Plaintiff KELLY TRAN ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendants PREMIER AUTOMOTIVE IMPORTS OF CA, LLC ("Defendant Premier Automotive"), PREMIER AUTOMOTIVE OF BUENA PARK, LLC, dba PREMIER CHEVROLET OF BUENA PARK ("Defendant Buena Park"), PREMIER AUTOMOTIVE OF MV, LLC, dba PREMIER AUTOMOTIVE OF MORENO VALLEY ("Defendant Moreno Valley"), PREMIER AUTOMOTIVE OF SEASIDE, LLC, dba PREMIER HYUNDAI OF SEASIDE, and PREMIER CHEVROLET OF SEASIDE ("Defendant Seaside"), PREMIER AUTOMOTIVE C OF CARLSBAD, LLC, dba PREMIER CHEVROLET OF CARLSBAD ("Defendant Carlsbad Chevy"), PREMIER AUTOMOTIVE BCG OF CARLSBAD, LLC, dba PREMIER CADILLAC BUICK GMC OF CARLSBAD ("Defendant BCG"),

PREMIER AUTOMOTIVE K OF CARLSBAD, LLC, dba PREMIER KIA OF CARLSBAD (“Defendant Premier Kia of Carlsbad”), PREMIER AUTOMOTIVE CJDR OF BUENA PARK, LLC, dba PREMIER CHRYSLER DODGE JEEP RAM OF BUENA PARK (“Defendant Premier CJDR”), PREMIER AUTOMOTIVE HCDJ OF CALIFORNIA, LLC (“Defendant Premier HCDJ”), PREMIER AUTOMOTIVE OF NEWARK, LLC (“Defendant Newark”), PREMIER AUTOMOTIVE OF PLACENTIA, LLC (“Defendant Placentia”), PREMIER AUTOMOTIVE OF STEVENS CREEK, LLC (“Defendant Stevens Creek”), PREMIER NISSAN OF SAN JOSE, LLC (“Defendant San Jose”), PREMIER AUTOMOTIVE OF CA, LLC, dba TOYOTA OF POWAY (“Defendant Poway”), PREMIER SUBARU OF FREMONT, LLC (“Defendant Fremont”), and PREMIER AUTOMOTIVE OF WEST COVINA, LLC (“Defendant West Covina”) (hereinafter collectively “Defendants”). Plaintiff was employed by Defendants from May of 2024 to June of 2024 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks, among other things. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, failed to pay employees at the correct regular rate of pay, when applicable, failed to reimburse employees for necessary business expenditures and for all of their meal and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages and failed to provide Plaintiff and other aggrieved employees with compliant meal and rest breaks.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.5.

Plaintiff seeks to represent a group of aggrieved employees defined as all persons defined as all persons who are or previously were employed by Defendants Premier Automotive, Buena Park, Moreno Valley, Seaside, Carlsbad Chevy, BCG, Premier of Carlsbad, CJDR, HCDJ, Newark, Placentia, Stevens Creek, San Jose, Poway, Fremont, and/or West Covina in California and classified as non-exempt, exempt, piece-rate based, and/or commission based employees during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

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

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

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'Jean-Claude Lapuyade', is written over a large, diagonal, light gray watermark that says 'EXHIBIT'.

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

KELLY TRAN, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

PREMIER AUTOMOTIVE IMPORTS OF CA,
LLC, dba PREMIER NISSAN OF
FREEMONT, a California limited liability
company; PREMIER AUTOMOTIVE OF
BUENA PARK, LLC, dba PREMIER
CHEVROLET OF BUENA PARK, a California
limited liability company; PREMIER
AUTOMOTIVE OF MV, LLC, dba PREMIER
AUTOMOTIVE OF MORENO VALLEY, a
California limited liability company; PREMIER
AUTOMOTIVE OF SEASIDE, LLC, dba
PREMIER HYUNDAI OF SEASIDE and
PREMIER CHEVROLET OF SEASIDE, a
California limited liability company;
PREMIER AUTOMOTIVE C OF
CARLSBAD, LLC, dba PREMIER

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;

CHEVROLET OF CARLSBAD, a California limited liability company; PREMIER AUTOMOTIVE BCG OF CARLSBAD, LLC, dba PREMIER CADILLAC BUICK GMC OF CARLSBAD, a California limited liability company; PREMIER AUTOMOTIVE K OF CARLSBAD, LLC, dba PREMIER KIA OF CARLSBAD, a California limited liability company; PREMIER AUTOMOTIVE CJDR OF BUENA PARK, LLC, dba PREMIER CHRYSLER DODGE JEEP RAM OF BUENA PARK, a California limited liability company; PREMIER AUTOMOTIVE HCDJ OF CALIFORNIA, LLC, a California limited liability company; PREMIER AUTOMOTIVE OF NEWARK, a California limited liability company; PREMIER AUTOMOTIVE OF PLACENTIA, LLC, a California limited liability company; PREMIER AUTOMOTIVE OF STEVENS CREEK, LLC, a California limited liability company; PREMIER NISSAN OF SAN JOSE, LLC, a California limited liability company; PREMIER AUTOMOTIVE OF CA, LLC, dba TOYOTA OF POWAY, a California limited liability company; PREMIER SUBARU OF FREMONT, LLC, a California limited liability company; PREMIER AUTOMOTIVE OF WEST COVINA, LLC, a California limited liability company; 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 KELLY TRAN (“PLAINTIFF”), an individual, on behalf of herself and all other similarly situated current and former employees, alleges on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant PREMIER AUTOMOTIVE IMPORTS OF CA, LLC (“Defendant Premier Automotive”) 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 PREMIER AUTOMOTIVE OF BUENA PARK, LLC, dba PREMIER CHEVROLET OF BUENA PARK (“Defendant Buena Park”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant PREMIER AUTOMOTIVE OF MV, LLC, dba PREMIER AUTOMOTIVE OF MORENO VALLEY (“Defendant Moreno Valley”) 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. Defendant PREMIER AUTOMOTIVE OF SEASIDE, LLC, dba PREMIER HYUNDAI OF SEASIDE, and PREMIER CHEVROLET OF SEASIDE (“Defendant Seaside”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

5. Defendant PREMIER AUTOMOTIVE C OF CARLSBAD, LLC, dba PREMIER CHEVROLET OF CARLSBAD (“Defendant Carlsbad Chevy”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

6. Defendant PREMIER AUTOMOTIVE BCG OF CARLSBAD, LLC, dba PREMIER CADILLAC BUICK GMC OF CARLSBAD (“Defendant BCG”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

7. Defendant PREMIER AUTOMOTIVE K OF CARLSBAD, LLC, dba PREMIER KIA OF CARLSBAD (“Defendant Premier Kia of Carlsbad”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

8. Defendant PREMIER AUTOMOTIVE CJDR OF BUENA PARK, LLC, dba PREMIER CHRYSLER DODGE JEEP RAM OF BUENA PARK (“Defendant Premier CJDR”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

1 9. Defendant PREMIER AUTOMOTIVE HCDJ OF CALIFORNIA, LLC
2 (“Defendant Premier HCDJ”) is a California limited liability company corporation that at all
3 relevant times mentioned herein conducted and continues to conduct substantial and regular
4 business throughout California.

5 10. Defendant PREMIER AUTOMOTIVE OF NEWARK, LLC (“Defendant
6 Newark”) is a California limited liability company that at all relevant times mentioned herein
7 conducted and continues to conduct substantial and regular business throughout California.

8 11. Defendant PREMIER AUTOMOTIVE OF PLACENTIA, LLC (“Defendant
9 Placentia”) is a California limited liability company that at all relevant times mentioned herein
10 conducted and continues to conduct substantial and regular business throughout California.

11 12. Defendant PREMIER AUTOMOTIVE OF STEVENS CREEK, LLC (“Defendant
12 Stevens Creek”) is a California limited liability company that at all relevant times mentioned
13 herein conducted and continues to conduct substantial and regular business throughout California.

14 13. Defendant PREMIER NISSAN OF SAN JOSE, LLC (“Defendant San Jose”) is a
15 California limited liability company that at all relevant times mentioned herein conducted and
16 continues to conduct substantial and regular business throughout California.

17 14. Defendant PREMIER AUTOMOTIVE OF CA, LLC, dba TOYOTA OF POWAY
18 (“Defendant Poway”) is a California limited liability company that at all relevant times mentioned
19 herein conducted and continues to conduct substantial and regular business throughout California.

20 15. Defendant PREMIER SUBARU OF FREMONT, LLC (“Defendant Fremont”) is
21 a California limited liability company that at all relevant times mentioned herein conducted and
22 continues to conduct substantial and regular business throughout California.

23 16. Defendant PREMIER AUTOMOTIVE OF WEST COVINA, LLC (“Defendant
24 West Covina”) is a California limited liability company that at all relevant times mentioned herein
25 conducted and continues to conduct substantial and regular business throughout California.

26 17. Defendant Premier Automotive, Buena Park, Moreno Valley, Seaside, Carlsbad
27 Chevy, BCG, Premier of Carlsbad, CJDR, HCDJ, Newark, Placentia, Stevens Creek, San Jose,
28 Poway, Fremont, and West Covina were the joint employers of PLAINTIFF as evidenced by the

documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

18. DEFENDANTS operates car dealerships in California, including in the county of Alameda, where PLAINTIFF worked.

19. PLAINTIFF was employed by DEFENDANTS in California from May 2024 to June 2024 as a non-exempt employee, paid on an hourly basis, non-discretionary bonuses, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

20. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined as all persons who are or previously were employed by Defendants Premier Automotive, Buena Park, Moreno Valley, Seaside, Carlsbad Chevy, BCG, Premier of Carlsbad, CJDR, HCDJ, Newark, Placentia, Stevens Creek, San Jose, Poway, Fremont, and West Covina in California and classified as non-exempt, exempt, piece-rate based, and/or commission-based employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

21. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice which failed to lawfully compensate these employees. DEFENDANTS’ uniform policy and practice alleged herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained and continue to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by

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

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

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

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

26 25. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
27 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
28 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any

1 employee a wage less than the minimum fixed by California state law, and as such, are subject to
2 civil penalties for each underpaid employee.

3 26. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
4 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
5 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

6 27. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
7 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
8 other members of the CALIFORNIA CLASS who has been economically injured by
9 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable
10 relief.

11 **JURISDICTION AND VENUE**

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

16 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ
18 the CALIFORNIA CLASS across California, including in this County, and committed the
19 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

20 **THE CONDUCT**

21 30. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
24 failed to provide legally compliant meal and rest periods, failed to accurately compensate
25 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
26 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
27 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
28 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,

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

13 **A. Meal Period Violations**

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

28 ///

32. From time to time during the CLASS PERIOD, as a result of their rigorous work schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees are required by DEFENDANTS to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call. Further, DEFENDANTS from time to time required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless communication devices in order to receive and respond to work-related communications during what was supposed to be their off-duty meal breaks. DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANTS' business records. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

B. Rest Period Violations

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

1 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
2 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
3 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
4 CLASS Members were, from time to time, required to on duty and/or on call. Further,
5 DEFENDANTS from time to time required PLAINTIFF and other CALIFORNIA CLASS
6 Members to maintain cordless communication devices in order to receive and respond to work-
7 related communications during what was supposed to be their off-duty rest breaks. PLAINTIFF
8 and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*
9 thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
10 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
11 proper rest periods by DEFENDANT and DEFENDANTS' managers.

12 **C. Unreimbursed Business Expenses**

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

24 35. In the course of their employment, DEFENDANTS required PLAINTIFF and
25 other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal
26 cell phones and computers as a result of and in furtherance of their job duties. Specifically,
27 PLAINTIFF and other CALIFORNIA CLASS Members were required to use their personal cell
28 phones and computers in order to perform work related tasks. However, DEFENDANTS

1 unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the
2 use of their personal cell phones and computers. As a result, in the course of their employment
3 with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
4 unreimbursed business expenses that included, but were not limited to, costs related to the use of
5 their personal cell phones and computers, all on behalf of and for the benefit of DEFENDANT.

6 **D. Wage Statement Violations**

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

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

23 38. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
24 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
25 Cal. Lab. Code § 226(a)(1)-(9).

26 39. As a result, DEFENDANTS issued PLAINTIFF and other members of the
27 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
28

1 DEFENDANTS' violations are knowing and intentional, were not isolated due to an unintentional
2 payroll error due to clerical or inadvertent mistake.

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

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

7 41. During the CLASS PERIOD, from time-to-time DEFENDANTS required
8 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
9 work, including but not limited to, performing security sweeps of DEFENDANTS' property. This
10 resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while
11 off-the-clock.

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

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

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

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

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

1 47. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law. As a
3 result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due to
4 them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent
5 working while off-the-clock, including but not limited to, performing security sweeps of
6 DEFENDANTS' property. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF
7 and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with
8 applicable law is evidenced by DEFENDANTS' business records.

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

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

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

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

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

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

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

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

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

6 53. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS
7 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid
8 on a draw versus commission basis as exempt from overtime compensation. During the CLASS
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 252-
12 254.) As a result, PLAINTIFF and the CALIFORNIA CLASS members who were paid on a draw
13 versus commission basis forfeited overtime wages by DEFENDANTS' failure to accurately
14 classify them as non-exempt from overtime compensation.

15 **H. Unlawful Deductions**

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

20 **I. Timekeeping Manipulation**

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

1 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
2 missed rest breaks.

3 56. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
4 time-to-time, forfeited time worked by working without their time being accurately recorded and
5 without compensation at the applicable pay rates.

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

13 58. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
14 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
15 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and
16 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
17 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
18 records.

19 **J. Unlawful Rounding Practices**

20 59. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
21 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
22 CALIFORNIA CLASS Members for the actual time these employees worked each day,
23 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
24 policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
25 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
26 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
27 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
28 these employees for all their time worked, including the applicable overtime compensation for

overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

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

K. Violations for Untimely Payment of Wages

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

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

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

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1 **L. Sick Pay Violations**

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

9 65. California Labor Code Section 246(i) requires an employer to furnish its
10 employees with written wage statements setting forth the amount of paid sick leave available.
11 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
12 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
13 forth the amount of paid sick leave available.

14 66. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
15 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
16 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
17 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
18 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
19 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
20 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
21 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during
22 what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and
23 rest breaks without additional compensation and in accordance with DEFENDANTS’ strict
24 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
25 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
26 to reimburse PLAINTIFF for required business expenses related to the personal expenses
27 incurred for the use of her personal cell phone and for the purchase of work uniforms, on behalf
28 of and in furtherance of her employment with DEFENDANTS. To date, DEFENDANTS have
 not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to

her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

CLASS ACTION ALLEGATIONS

67. PLAINTIFF brings this Class Action on behalf of herself, and a California class defined as all persons who are or previously were employed by Defendants Premier Automotive, Buena Park, Moreno Valley, Seaside, Carlsbad Chevy, BCG, Premier of Carlsbad, CJDR, HCDJ, Newark, Placentia, Stevens Creek, San Jose, Poway, Fremont, and West Covina in California and classified as non-exempt, exempt, piece-rate based, and/or commission-based employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).

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

69. The members of the class are so numerous that joinder of all class members is impractical.

70. Common questions of law and fact regarding DEFENDANTS’ conduct, including but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failure to reimburse for business expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

- a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANTS failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANTS issued legally compliant wage statements;
- h. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- i. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- j. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

1 73. PLAINTIFF will fairly and adequately represent and protect the interests of the
2 CALIFORNIA CLASS Members.

3 74. PLAINTIFF retained able class counsel with extensive experience in class action
4 litigation.

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

7 76. There is a strong community of interest among PLAINTIFF and the members of
8 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
9 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
10 sustained.

11 77. The questions of law and fact common to the CALIFORNIA CLASS Members
12 predominate over any questions affecting only individual members, including legal and factual
13 issues relating to liability and damages.

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

- 22 a. Inconsistent or varying adjudications with respect to individual members of the
23 CALIFORNIA CLASS which would establish incompatible standards of conduct
24 for the parties opposing the CALIFORNIA CLASS; and/or,
25 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
26 which would as a practical matter be dispositive of the interests of the other
27 members not party to the adjudication or substantially impair or impeded their
28 ability to protect their interests.

1 79. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
3 the conduct of DEFENDANTS.

4 **FIRST CAUSE OF ACTION**

5 **Unlawful Business Practices**

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

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

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

11 81. DEFENDANTS are “persons” as that term is defined under Cal. Bus. And Prof.
12 Code § 17021.

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

17 Any person who engages, has engaged, or proposes to engage in unfair competition may
18 be enjoined in any court of competent jurisdiction. The court may make such orders or
19 judgments, including the appointment of a receiver, as may be necessary to prevent the
20 use or employment by any person of any practice which constitutes unfair competition, as
21 defined in this chapter, or as may be necessary to restore to any person in interest any
22 money or property, real or personal, which may have been acquired by means of such
23 unfair competition. (Cal. Bus. & Prof. Code § 17203).

24 83. By the conduct alleged herein, DEFENDANTS have engaged and continue to
25 engage in a business practice which violates California law, including but not limited to, the
26 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
27 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
28 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

16 86. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
17 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
18 other members of the CALIFORNIA CLASS to be underpaid during their employment with
19 DEFENDANTS.

20 87. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
21 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
22 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
23 required by Cal. Lab. Code §§ 226.7 and 512.

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

1 89. PLAINTIFF further demands on behalf of herself and on behalf of each
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
3 not timely provided as required by law.

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

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

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

20 93. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
21 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
22 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
23 engaging in any unlawful and unfair business practices in the future.

24 PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
25 and/or adequate remedy at law that will end the unlawful and unfair business practices of
26 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
27 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
28 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal

1 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
2 unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **Failure To Pay Minimum Wages**

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

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

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

10 95. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
11 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
12 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
13 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

21 99. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
22 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
23 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
24 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
25 the CALIFORNIA CLASS.

26 100. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
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1 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
2 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

3 101. In committing these violations of the California Labor Code, DEFENDANTS
4 inaccurately calculated the correct time worked and consequently underpaid the actual time
5 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted
6 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
7 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
8 laws and regulations.

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

12 103. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
14 failure to pay all earned wages.

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

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

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

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

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

18 **THIRD CAUSE OF ACTION**

19 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

12 113. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
13 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
14 they worked, including overtime work.

15 114. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
17 implementing a uniform policy and practice that failed to accurately record overtime worked by
18 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
19 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
20 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
21 (12) hours in a workday, and/or forty (40) hours in any workweek.

22 115. In committing these violations of the California Labor Code, DEFENDANTS
23 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
24 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
25 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
26 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
27 regulations.

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

4 117. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
5 from the overtime requirements of the law. None of these exemptions are applicable to
6 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
7 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
8 agreement that would preclude the causes of action contained herein this Complaint. Rather,
9 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on
10 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
11 California.

12 118. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
14 a failure to pay all earned wages.

15 119. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
16 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
17 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
18 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
19 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANTS
20 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
21 witnessed by employees.

22 120. 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 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
25 CLASS have suffered and will continue to suffer an economic injury in amounts which are
26 presently unknown to them, and which will be ascertained according to proof at trial.

27 121. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

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

6 122. 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 continue to act
9 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with a conscious of 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.

14 123. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
15 request recovery of overtime 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 overtime compensation is
18 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
19 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore
20 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
21 penalties are sought herein. DEFENDANTS' conduct as alleged herein was willful, intentional,
22 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
23 entitled to seek and recover statutory costs.

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127. 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.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

128. 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.

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

130. DEFENDANTS further violated California Labor Code §§ 226.7 and the 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.

131. 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)

132. 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.

133. 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.

134. 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.

135. 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(a)(1)-(9).

136. 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)**

5 137. 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.

8 138. 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.

16 139. 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."

19 140. 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 she 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.

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

31 142. 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.

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143. 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.

144. 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)

145. 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.

146. 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.

147. 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 and computers, 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 and computers to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse

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

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

13 **PRAYER FOR RELIEF**

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

16 1. On behalf of the CALIFORNIA CLASS:

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

27 2. On behalf of the CALIFORNIA CLASS:

- 28 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth

Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and

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1 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
2 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or
3 § 1194.

4 DATED: July 15, 2024

JCL LAW FIRM, APC

5 By: 

6 Jean-Claude Lapuyade, Esq.
7 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

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

DATED: July 15, 2024

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

EXHIBIT