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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

FEB 25 2021

Herri R. Carter, Executive Officer/Clerk  
Rv: Rita Nazaryan, Deputy

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15 Attorneys for Plaintiff

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **IN AND FOR THE COUNTY OF LOS ANGELES**

18 **QUAID DANIELS**, on behalf of himself and  
19 on behalf of all persons similarly situated,

20 Plaintiff,

21 v.

22 **AVMC, LLC dba TOYOTA OF**  
23 **LANCASTER**, a California limited liability  
24 company; and **DOES 1-50, Inclusive**,

25 Defendants.

Case No: **21STCV07884**

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq.*;
- 2) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 3) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203; and
- 8) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

**DEMAND FOR A JURY TRIAL**

VIA FAX

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
**ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles  
**FEB 25 2021**  
Terri R. Carter, Executive Officer/Clerk  
Rita Nazaryan, Deputy

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

AVMC, LLC dba TOYOTA OF LANCASTER, a California limited liability company; and DOES 1-50, Inclusive,

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

QUAID DANIELS, on behalf of himself and on behalf of all persons similarly situated,

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

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

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

The name and address of the court is:  
(El nombre y dirección de la corte es): Los Angeles Superior Court  
111 North Hill Street  
Los Angeles, CA 90012

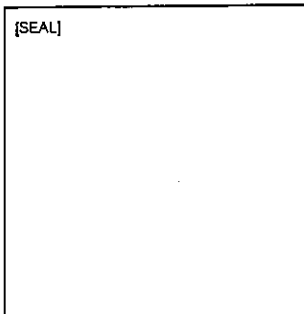
CASE NUMBER: (Número del Caso):  
**21STCV0788**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ZAKAY LAW GROUP, APLC, 3990 Old Town Avenue, Suite C204, San Diego, CA 92110 Tel: (619) 255-9047

DATE: Clerk, by Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



**NOTICE TO THE PERSON SERVED: You are served**

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date)

VIA FAX

1 Plaintiff QUAID DANIELS, an individual, (“PLAINTIFF”), on behalf of himself and all  
2 other similarly situated current and former employees, allege on information and belief, except for  
3 his own acts and knowledge which are based on personal knowledge, the following:

4 **THE PARTIES**

5 1. Defendant AVMC, LLC dba TOYOTA OF LANCASTER (“DEFENDANT”) is  
6 a California limited liability company and at all relevant times mentioned herein conducted and  
7 continues to conduct substantial and regular business throughout California.

8 2. DEFENDANT owns and operates a car dealership in Lancaster, California

9 3. PLAINTIFF was employed by DEFENDANT in California from February of  
10 2020 to October of 2020 and was at all times during his employment with DEFENDANT  
11 entitled to be paid minimum wages and entitled to the legally required off-duty meal and rest  
12 periods. PLAINTIFF was also required to be paid for his rest periods as DEFENDANT paid  
13 PLAINTIFF only commissions wages for certain pay periods. DEFENDANT did not separately  
14 compensate PLAINTIFF for his rest periods.

15 4. PLAINTIFF bring this Class Action on behalf of himself and a California class,  
16 defined as all individuals who are or previously were employed by DEFENDANT in California  
17 and paid on a commission-based and/or piece-rate compensation scheme (the “CALIFORNIA  
18 CLASS”) at any time during the period beginning on the date four (4) years prior to the filing of  
19 this Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS  
20 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS  
21 Members is under five million dollars (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice  
25 which failed to lawfully compensate these employees for all their missed meal breaks and  
26 unpaid rest periods. DEFENDANT’s uniform policy and practice alleged herein is an unlawful,  
27 unfair and deceptive business practice whereby DEFENDANT retained and continues to retain  
28 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and



1 PLAINTIFF and other CALIFORNIA CLASS Members were far too over-booked and  
2 overworked to take a timely off-duty thirty (30) minute meal period. As a result of their  
3 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often  
4 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,  
5 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with  
6 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by  
7 DEFENDANT's business records. As a result, PLAINTIFF and other members of the  
8 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in  
9 accordance with DEFENDANT's strict corporate policy and practice.

10 9. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA  
11 CLASS Members with a second off-duty meal period on workdays in which these employees  
12 were required by DEFENDANT to work ten (10) hours of work from time to time. As a result,  
13 DEFENDANT'S failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with  
14 legally required meal breaks is evidenced by DEFENDANT's business records which contain  
15 no record of these breaks.

16 10. In addition, because of DEFENDANT's commission pay plan described herein,  
17 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their  
18 rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not  
19 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other  
20 CALIFORNIA CLASS Members. As a result, DEFENDANT's failure to provide PLAINTIFF  
21 and the CALIFORNIA CLASS Members with all the legally required paid rest periods is  
22 evidenced by DEFENDANT's business records.

23 11. On numerous occasions, PLAINTIFF and other CALIFORNIA CLASS  
24 Members were required to work while not clocked in. DEFENDANT maintained a company-  
25 wide policy of refusing to pay CALIFORNIA CLASS Members, like PLAINTIFF, for all hours  
26 worked. Specifically, DEFENDANT maintained a company-wide pattern and practice of  
27 altering employees' timecards to eliminate numerous hours worked. As a result, DEFENDANT  
28

1 failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members wages for all hours  
2 worked.

3           12. Under California law, every employer shall pay to each employee, on the  
4 established payday for the period involved, not less than the applicable minimum wage for all  
5 hours worked in the payroll period, whether the remuneration is measured by time, piece,  
6 commission, or otherwise. Hours worked is defined in the applicable Wage Order as “the time  
7 during which an employee is subject to the control of an employer, and includes all the time the  
8 employee is suffered or permitted to work, whether or not required to do so. Here, PLAINTIFF  
9 and CALIFORNIA CLASS Members were entitled to separate hourly compensation for time  
10 spent performing all non-sales related tasks directed by DEFENDANT during their work shifts,  
11 including, but not limited to, weekly sales meetings, and are entitled to one hour of pay for their  
12 rest periods.

13           13. From time to time, when DEFENDANT did not accurately record PLAINTIFF’  
14 and other CALIFORNIA CLASS Members’ missed meal and rest breaks and/or also failed to  
15 pay the proper minimum wages, the wage statements issued to PLAINTIFF and other  
16 CALIFORNIA CLASS Members by DEFENDANT violated California law, and in particular,  
17 Labor Code Section 226(a). Aside, from the violations listed above in this paragraph,  
18 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the  
19 requirements under California Labor Code 226 *et seq.*

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

1 the employer, even though unlawful, unless the employee, at the time of obeying the directions,  
2 believed them to be unlawful."

3 15. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS  
4 Members as a business expense, were required by DEFENDANT to use their own personal  
5 cellular phones as a result of and in furtherance of their job duties as employees for  
6 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost  
7 associated with the use of their personal cellular phones for DEFENDANT's benefit.  
8 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by  
9 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the  
10 course of their employment with DEFENDANT the PLAINTIFF and other members of the  
11 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not  
12 limited to, costs related to the use of their personal cellular phones all on behalf of and for the  
13 benefit of DEFENDANT.

14 16. In violation of the applicable sections of the California Labor Code and the  
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
16 matter of company policy, practice and procedure, intentionally, knowingly and systematically  
17 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for  
18 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to  
19 purposefully avoid the payment for all time worked as required by California law which allows  
20 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied  
21 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
22 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
23 accordingly.

24 17. By reason of this uniform conduct applicable to PLAINTIFF and all  
25 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in  
26 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
27 (the "UCL"), by engaging in a company-wide policy and procedure which failed to accurately  
28 calculate and record all missed meal breaks and failed to pay PLAINTIFF and CALIFORNIA

1 CLASS Members for rest periods as required by California law. The proper recording of these  
2 employees' missed meal and rest breaks is the DEFENDANT's burden. As a result of  
3 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT  
4 failed to properly calculate and/or pay all required compensation for work performed by the  
5 members of the CALIFORNIA CLASS and violated the California Labor Code and regulations  
6 promulgated thereunder as herein alleged.

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

#### 25 JURISDICTION AND VENUE

26 19. This Court has jurisdiction over this Action pursuant to California Code of Civil  
27 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This  
28



1 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees  
2 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

3 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
4 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and  
5 DEFENDANT (i) currently maintain and at all relevant times maintained offices and facilities  
6 in this County and/or conduct substantial business in this County, and (ii) committed the  
7 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS  
8 and CALIFORNIA LABOR SUB-CLASS.

9 **THE CALIFORNIA CLASS**

10 21. PLAINTIFF bring the First Cause of Action for Unfair, Unlawful and Deceptive  
11 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
12 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
13 individuals who are or previously were employed by DEFENDANT in California and paid on a  
14 draw vs. commission compensation scheme (the "CALIFORNIA CLASS") at any time during  
15 the period beginning on the date four (4) years prior to the filing of this Complaint and ending  
16 on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in  
17 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million  
18 dollars (\$5,000,000.00).

19 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
20 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
21 accordingly.

22 23. DEFENDANT, as a matter of company policy, practice and procedure, and in  
23 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
24 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
25 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly record  
26 missed meal and rest breaks and all time worked by PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required  
28 employees to perform this work and permitted or suffered to permit this work.

1           24.     DEFENDANT has the legal burden to establish that each and every  
2 CALIFORNIA CLASS Member was paid the correct wages for all time worked. The  
3 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to  
4 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy  
5 or practice to ensure that each and every CALIFORNIA CLASS Member is paid for all missed  
6 meal and rest breaks, so as to satisfy their burden. This common business practice applicable to  
7 each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as  
8 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*  
9 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

10           25.     At no time during the CALIFORNIA CLASS PERIOD was the compensation for  
11 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the  
12 employee for all missed meal breaks, as required by California Labor Code.

13           26.     The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA  
14 CLASS Members is impracticable.

15           27.     DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
16 California law by:

- 17           a.     Committing an act of unfair competition in violation of the California Unfair  
18                 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to  
19                 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with  
20                 all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the  
21                 legally required paid rest breaks,
- 22           b.     Committing an act of unfair competition in violation of the California Unfair  
23                 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,  
24                 unfairly and deceptively having in place company policies, practices and  
25                 procedures that uniformly denied PLAINTIFF and the members of the  
26                 CALIFORNIA CLASS the correct minimum wages and otherwise violated  
27                 applicable law; and,

1 c. Committing an act of unfair competition in violation of the California Unfair  
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.  
3 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA  
4 CLASS members with necessary expenses incurred in the discharge of their job  
5 duties

6 28. The Class Action meets the statutory prerequisites for the maintenance of a Class  
7 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

8 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the  
9 joinder of all such persons is impracticable and the disposition of their claims as  
10 a class will benefit the parties and the Court;

11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
12 raised in this Complaint are common to the CALIFORNIA CLASS will apply  
13 uniformly to every member of the CALIFORNIA CLASS;

14 c. The claims of the representative PLAINTIFF are typical of the claims of each  
15 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members  
16 of the CALIFORNIA CLASS, was paid on a draw vs. commission compensation  
17 scheme who was subjected to the DEFENDANT's deceptive practice and policy  
18 which failed to provide the legally required meal and rest periods to the  
19 CALIFORNIA CLASS and thereby systematically underpaid compensation to  
20 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic  
21 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the  
22 members of the CALIFORNIA CLASS were and are similarly or identically  
23 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
24 misconduct engaged in by DEFENDANT; and,

25 d. The representative PLAINTIFF will fairly and adequately represent and protect  
26 the interest of the CALIFORNIA CLASS, and have retained counsel who are  
27 competent and experienced in Class Action litigation. There are no material  
28 conflicts between the claims of the representative PLAINTIFF and the members

1 of the CALIFORNIA CLASS that would make class certification inappropriate.  
2 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all  
3 CALIFORNIA CLASS Members.

4 29. In addition to meeting the statutory prerequisites to a Class Action, this action is  
5 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

6 a. Without class certification and determination of declaratory, injunctive, statutory  
7 and other legal questions within the class format, prosecution of separate actions  
8 by individual members of the CALIFORNIA CLASS will create the risk of:

9 i. Inconsistent or varying adjudications with respect to individual members  
10 of the CALIFORNIA CLASS which would establish incompatible  
11 standards of conduct for the parties opposing the CALIFORNIA CLASS;  
12 and/or;

13 ii. Adjudication with respect to individual members of the CALIFORNIA  
14 CLASS which would as a practical matter be dispositive of interests of  
15 the other members not party to the adjudication or substantially impair or  
16 impede their ability to protect their interests.

17 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on  
18 grounds generally applicable to the CALIFORNIA CLASS, making appropriate  
19 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that  
20 DEFENDANT uniformly failed to pay all wages due to members of the  
21 CALIFORNIA CLASS as required by law;

22 i. With respect to the First Cause of Action, the final relief on behalf of the  
23 CALIFORNIA CLASS sought does not relate exclusively to restitution  
24 because through this claim PLAINTIFF seek declaratory relief holding  
25 that the DEFENDANT’S policy and practices constitute unfair  
26 competition, along with declaratory relief, injunctive relief, and incidental  
27 equitable relief as may be necessary to prevent and remedy the conduct  
28 declared to constitute unfair competition;

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c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or;

2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a

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subsequent employer, the Class Action is the only means to assert their claims through a representative; and

- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

30. The Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’s employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’s actions have inflicted upon the CALIFORNIA CLASS;

- 1 f. There is a community of interest in ensuring that the combined assets of  
2 DEFENDANT are sufficient to adequately compensate the members of the  
3 CALIFORNIA CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
5 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with  
6 respect to the CALIFORNIA CLASS as a whole;
- 7 h. The members of the CALIFORNIA CLASS are readily ascertainable from the  
8 business records of DEFENDANT; and
- 9 i. Class treatment provides manageable judicial treatment calculated to bring an  
10 efficient and rapid conclusion to all litigation of all wage and hour related claims  
11 arising out of the conduct of DEFENDANT as to the members of the  
12 CALIFORNIA CLASS.

13 31. DEFENDANT maintains records from which the Court can ascertain and  
14 identify by job title each of DEFENDANT’S employees who as have been systematically,  
15 intentionally and uniformly subjected to DEFENDANT’S company policy, practices and  
16 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include  
17 any additional job titles of similarly situated employees when they have been identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 32. PLAINTIFF further bring the Second, Third, Fourth Fifth, Sixth, and Seventh,  
20 causes of Action on behalf of a California sub-class, defined as all members of the  
21 CALIFORNIA CLASS who are or previously were employed by Defendant Larry Green  
22 Chrysler Jeep Dodge, Inc. and/or Larry Green Ford Inc. and/or Larry Green Auto Center Blythe  
23 Inc. in California and paid on a draw vs. commission compensation scheme in California (the  
24 “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to  
25 the filing of the complaint and ending on the date as determined by the Court (the  
26 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.  
27 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS  
28 Members is under five million dollars (\$5,000,000.00).

1           33. DEFENDANT, as a matter of company policy, practice and procedure, and in  
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
4 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate  
5 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA  
6 LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work, required  
7 employees to perform this work and permitted or suffered to permit this work. DEFENDANT  
8 has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which  
9 these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To  
10 the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS  
11 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted  
12 accordingly.

13           34. DEFENDANT maintains records from which the Court can ascertain and  
14 identify by name and job title, each of DEFENDANT’s employees who have been  
15 systematically, intentionally and uniformly subjected to DEFENDANT’s company policy,  
16 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint  
17 to include any additional job titles of similarly situated employees when they have been  
18 identified.

19           35. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
20 CALIFORNIA LABOR SUB-CLASS Members is impracticable

21           36. Common questions of law and fact exist as to members of the CALIFORNIA  
22 LABOR SUB-CLASS, including, but not limited, to the following:

- 23           a. Whether DEFENDANT unlawfully failed to correctly calculate and pay  
24           compensation due to members of the CALIFORNIA LABOR SUB-CLASS for  
25           missed meal and rest breaks in violation of the California Labor Code and  
26           California regulations and the applicable California Wage Order;



- 1           b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
- 2           the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 3           statements;
- 4           c. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 5           conduct;
- 6           d. The proper measure of damages and penalties owed to the members of the
- 7           CALIFORNIA LABOR SUB-CLASS; and,
- 8           e. Whether DEFENDANT's conduct was willful.

9           37. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
10 under California law by:

- 11           a. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 12           members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 13           statement in writing showing the corresponding correct amount of wages earned
- 14           by the employee, the total amount of hours worked, and the correct legal entity
- 15           that was their employer;
- 16           b. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
- 17           employee is discharged or quits from employment, the employer must pay the
- 18           employee all wages due without abatement, by failing to tender full payment
- 19           and/or restitution of wages owed or in the manner required by California law to
- 20           the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
- 21           their employment,
- 22           c. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
- 23           accurately pay the PLAINTIFF and the members of the CALIFORNIA LABOR
- 24           SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable
- 25           pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 26           d. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
- 27           CALIFORNIA CLASS members with necessary expenses incurred in the
- 28           discharge of their job duties;

1 e. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF  
2 and the other members of the CALIFORNIA CLASS with all legally required  
3 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required  
4 paid rest breaks.

5 38. This Class Action meets the statutory prerequisites for the maintenance of a  
6 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

7 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
8 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members  
9 is impracticable and the disposition of their claims as a class will benefit the  
10 parties and the Court;

11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
12 raised in this Complaint are common to the CALIFORNIA LABOR SUB-  
13 CLASS and will apply uniformly to every member of the CALIFORNIA  
14 LABOR SUB-CLASS;

15 c. The claims of the representative PLAINTIFF are typical of the claims of each  
16 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the  
17 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt  
18 employee paid on an hourly basis who was subjected to the DEFENDANT'S  
19 practice and policy which failed to pay the correct amount of wages due to the  
20 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as  
21 a result of DEFENDANT'S employment practices. PLAINTIFF and the  
22 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or  
23 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern  
24 of misconduct engaged in by DEFENDANT; and

25 d. The representative PLAINTIFF will fairly and adequately represent and protect  
26 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained  
27 counsel who are competent and experienced in Class Action litigation. There are  
28 no material conflicts between the claims of the representative PLAINTIFF and

1 the members of the CALIFORNIA LABOR SUB-CLASS that would make class  
2 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
3 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS  
4 Members.

5 39. In addition to meeting the statutory prerequisites to a Class Action, this action is  
6 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

7 a. Without class certification and determination of declaratory, injunctive, statutory  
8 and other legal questions within the class format, prosecution of separate actions  
9 by individual members of the CALIFORNIA LABOR SUB-CLASS will create  
10 the risk of:

11 i. Inconsistent or varying adjudications with respect to individual members  
12 of the CALIFORNIA LABOR SUB-CLASS which would establish  
13 incompatible standards of conduct for the parties opposing the  
14 CALIFORNIA LABOR SUB-CLASS; or

15 ii. Adjudication with respect to individual members of the CALIFORNIA  
16 LABOR SUB-CLASS which would as a practical matter be dispositive of  
17 interests of the other members not party to the adjudication or  
18 substantially impair or impede their ability to protect their interests.

19 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
20 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
21 SUB-CLASS, making appropriate class-wide relief with respect to the  
22 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT  
23 uniformly fail to pay all wages due. Including the correct wages for all time  
24 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required  
25 by law;

26 c. Common questions of law and fact predominate as to the members of the  
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and  
28 violations of California Law as listed above, and predominate over any question

1 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a  
2 Class Action is superior to other available methods for the fair and efficient  
3 adjudication of the controversy, including consideration of:

4 i. The interests of the members of the CALIFORNIA LABOR SUB-  
5 CLASS in individually controlling the prosecution or defense of separate  
6 actions in that the substantial expense of individual actions will be  
7 avoided to recover the relatively small amount of economic losses  
8 sustained by the individual CALIFORNIA LABOR SUB-CLASS  
9 Members when compared to the substantial expense and burden of  
10 individual prosecution of this litigation;

11 ii. Class certification will obviate the need for unduly duplicative litigation  
12 that would create the risk of:

13 1. Inconsistent or varying adjudications with respect to individual  
14 members of the CALIFORNIA LABOR SUB-CLASS, which  
15 would establish incompatible standards of conduct for the  
16 DEFENDANT; and/or,

17 2. Adjudications with respect to individual members of the  
18 CALIFORNIA LABOR SUB-CLASS would as a practical matter  
19 be dispositive of the interests of the other members not parties to  
20 the adjudication or substantially impair or impede their ability to  
21 protect their interests;

22 iii. In the context of wage litigation because a substantial number of  
23 individual CALIFORNIA LABOR SUB-CLASS Members will avoid  
24 asserting their legal rights out of fear of retaliation by DEFENDANT,  
25 which may adversely affect an individual's job with DEFENDANT or  
26 with a subsequent employer, the Class Action is the only means to assert  
27 their claims through a representative; and,  
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iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

40. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’S actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

- 1 f. There is a community of interest in ensuring that the combined assets of  
2 DEFENDANT are sufficient to adequately compensate the members of the  
3 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
5 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
6 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 7 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily  
8 ascertainable from the business records of DEFENDANT. The CALIFORNIA  
9 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were  
10 employed by DEFENDANT in California during the CALIFORNIA LABOR  
11 SUB-CLASS PERIOD; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring an  
13 efficient and rapid conclusion to all litigation of all wage and hour related claims  
14 arising out of the conduct of DEFENDANT as to the members of the  
15 CALIFORNIA LABOR SUB-CLASS.

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

23 42. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
24 Code § 17021.

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

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

8 44. By the conduct alleged herein, DEFENDANT has engaged and continues to  
9 engage in a business practice which violates California law, including but not limited to, the  
10 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
11 including Sections 204, 206.5, 210, 226.7, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, for  
12 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &  
13 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute  
14 unfair competition, including restitution of wages wrongfully withheld.

15 45. By the conduct alleged herein, DEFENDANT'S practices were unlawful and  
16 unfair in that these practices violated public policy, were immoral, unethical, oppressive  
17 unscrupulous or substantially injurious to employees, and were without valid justification or  
18 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
19 17203 of the California Business & Professions Code, including restitution of wages wrongfully  
20 withheld.

21 46. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
22 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally  
23 mandated meal and rest periods and the required amount of compensation for missed meal and  
24 rest periods and minimum wages due to a systematic business practice that cannot be justified,  
25 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in  
26 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive  
27 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages  
28 wrongfully withheld.

1           47. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,  
2 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the  
3 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
4 DEFENDANT.

5           48. By the conduct alleged herein, DEFENDANT’S practices were also unfair and  
6 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide  
7 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS  
8 members as required by Cal. Lab. Code §§ 226.7 and 512.

9           49. Therefore, PLAINTIFF demand on behalf of themselves and on behalf of each  
10 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty  
11 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
12 for each workday in which a second off-duty meal period was not timely provided for each ten  
13 (10) hours of work.

14           50. PLAINTIFF further demand on behalf of themselves and on behalf of each  
15 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period  
16 was not timely provided as required by law.

17           51. By and through the unlawful and unfair business practices described herein,  
18 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the  
19 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and  
20 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
21 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
22 to unfairly compete against competitors who comply with the law.

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

28





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

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

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

### 18 **THIRD CAUSE OF ACTION**

#### 19 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

21 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**  
22 **Defendants)**

23 60. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
24 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
25 paragraphs of this Complaint.

26 61. In addition, because of DEFENDANT's compensation pay plan described herein,  
27 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS  
28 Members for their rest periods as required by the applicable Wage Order and Labor Code.

1 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to  
2 PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members. As a result,  
3 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
4 Members with all the legally required paid rest periods is evidenced by DEFENDANT's  
5 business records. Additionally, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS  
6 Members were also required to work in excess of four (4) hours without being provided ten (10)  
7 minute rest periods. Further, these employees were denied their first rest periods of at least ten  
8 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest  
9 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,  
10 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten  
11 (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members  
12 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work  
13 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were  
14 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

15 62. DEFENDANT further violated California Labor Code §§ 226.7 and the  
16 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR  
17 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable  
18 Wage Order, one additional hour of compensation at each employee's regular rate of pay for  
19 each workday that rest period was not provided.

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM WAGES**

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

26 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**  
27 **Defendants)**

28

1           64. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
2 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
3 paragraphs of this Complaint.

4           65. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
5 bring a claim for DEFENDANT's willful and intentional violations of the California Labor  
6 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
7 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS  
8 Members.

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

11           67. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
12 commission is the minimum wage to be paid to employees, and the payment of a lesser wage  
13 than the minimum so fixed is unlawful.

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

16           69. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and  
17 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
18 amount of time they worked, including time spent engaging in non sales related work tasks  
19 while off the clock. As set forth herein, DEFENDANT's uniform policy and practice was to  
20 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other  
21 members of the CALIFORNIA LABOR SUB-CLASS.

22           70. DEFENDANT's uniform pattern of unlawful wage and hour practices  
23 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a  
24 whole, as a result of implementing a uniform policy and practice that denied accurate  
25 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
26 CLASS in regards to minimum wage pay.

27           71. In committing these violations of the California Labor Code, DEFENDANT  
28 inaccurately calculated the correct time worked and consequently underpaid the actual time

1 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.  
2 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other  
3 benefits in violation of the California Labor Code, the Industrial Welfare Commission  
4 requirements and other applicable laws and regulations.

5 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
7 receive the correct minimum wage compensation for their time worked for DEFENDANT.

8 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the  
9 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked  
10 than they were entitled to, constituting a failure to pay all earned wages.

11 74. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned  
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
13 CLASS for the true time they worked, PLAINTIFF and the other members of the  
14 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
15 injury in amounts which are presently unknown to them and which will be ascertained  
16 according to proof at trial.

17 75. DEFENDANT knew or should have known that PLAINTIFF and the other  
18 members of the CALIFORNIA LABOR SUB-CLASS are under-compensated for their time  
19 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross  
20 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy,  
21 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to  
22 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the  
23 correct minimum wages for their time worked.

24 76. In performing the acts and practices herein alleged in violation of California  
25 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-  
26 CLASS for all time worked and provide them with the requisite compensation, DEFENDANT  
27 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and  
28 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter

1 disregard for their legal rights, or the consequences to them, and with the despicable intent of  
2 depriving them of their property and legal rights, and otherwise causing them injury in order to  
3 increase company profits at the expense of these employees.

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

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

17 **(Cal. Lab. Code § 226)**

18 **(Alleged by PLAINTIFF ELIAS BARBA-REYES, PEDRO MURGUIA, and EDGARDO**  
19 **MARTINEZ and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)**

20 78. PLAINTIFF ELIAS BARBA-REYES, PEDRO MURGUIA, and EDGARDO  
21 MARTINEZ, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and  
22 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
23 Complaint.

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

- 26 a. Gross wages earned,  
27 b. (2) total hours worked by the employee, except for any employee whose  
28 compensation is solely based on a salary and who is exempt from payment of

- 1 overtime under subdivision (a) of Section 515 or any applicable order of
- 2 the Industrial Welfare Commission,
- 3 c. the number of piecerate units earned and any applicable piece rate if the
- 4 employee is paid on a piece-rate basis,
- 5 d. all deductions, provided that all deductions made on written orders of the
- 6 employee may be aggregated and shown as one item,
- 7 e. net wages earned,
- 8 f. the inclusive dates of the period for which the employee is paid,
- 9 g. the name of the employee and his or her social security number, except that by
- 10 January 1, 2008, only the last four digits of his or her social security number of
- 11 an employee identification number other than social security number may be
- 12 shown on the itemized statement,
- 13 h. the name and address of the legal entity that is the employer, and
- 14 i. all applicable hourly rates in effect during the pay period and the corresponding
- 15 number of hours worked at each hourly rate by the employee.

16 80. When DEFENDANT did not accurately record PLAINTIFF'S and other  
17 CALIFORNIA CLASS Members' missed meal breaks and unpaid rest breaks and/or minimum  
18 wages owed, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to  
19 provide an accurate wage statement in writing that properly and accurately itemizes all missed  
20 meal periods incurred by PLAINTIFF and the other members of the CALIFORNIA LABOR  
21 SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees.  
22 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to  
23 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor  
24 Code 226 *et seq.*

25 81. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code  
26 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA  
27 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended  
28 calculating the correct wages for all missed meal and rest breaks and the amount of employment

1 taxes which were not properly paid to state and federal tax authorities. These damages are  
2 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA  
3 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the  
4 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each  
5 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according  
6 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for  
7 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

8 **SIXTH CAUSE OF ACTION**

9 **FOR FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES**

10 **(Cal. Lab. Code §§ 2802)**

11 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**  
12 **Defendants)**

13 82. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
14 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
15 paragraphs of this Complaint.

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

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

22 84. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
23 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
24 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
25 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-  
26 CLASS members for expenses which included, but were not limited to, costs related to using  
27 their personal cellular phones all on behalf of and for the benefit of DEFENDANT.  
28 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by



1 DEFENDANT to use their personal cell phones to respond to work related issues.  
2 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and  
3 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their  
4 personal cellular phones for DEFENDANT within the course and scope of their employment for  
5 DEFENDANT. These expenses were necessary to complete their principal job duties.  
6 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation.  
7 Although these expenses were necessary expenses incurred by PLAINTIFF and the  
8 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and  
9 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these  
10 expenses as an employer is required to do under the laws and regulations of California.

11 85. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred  
12 by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job  
13 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at  
14 the statutory rate and costs under Cal. Lab. Code § 2802.

15 **SEVENTH CAUSE OF ACTION**

16 **FOR FAILURE TO TIMELY PAY WAGES WHEN DUE**

17 **(Cal. Lab. Code §§ 201, 202, 203)**

18 **(Alleged By PLAINTIFF BRIAN REYES, JESUS ROCHA, JONATHAN ZARATE-**  
19 **ARANA, and STEVEN SALAZAR and the CALIFORNIA LABOR SUB-CLASS against all**  
20 **Defendants)**

21 86. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
22 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
23 paragraphs of this Complaint.

24 87. Cal. Lab. Code § 200 provides, in relevant part, that:

25 As used in this article:(a) "Wages" includes all amounts for labor performed by  
26 employees of every description, whether the amount is fixed or ascertained by the  
27 standard of time, task, piece, Commission basis, or other method of calculation.(b)  
28 "Labor" includes labor, work, or service whether rendered or performed under

1 contract, subcontract, partnership, station plan, or other agreement if the labor to be  
2 paid for is performed personally by the person demanding payment.

3 88. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer discharges  
4 an employee, the wages earned and unpaid at the time of discharge are due and payable  
5 immediately.”

6 89. Cal. Lab. Code § 202 provides, in relevant part, that:

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

16 90. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR  
17 SUB-CLASS Members’ employment contract.

18 91. Cal. Lab. Code § 203 provides, in relevant part, that:

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

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

27 93. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the  
28 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and

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

6 **EIGHTH CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§ 2698 et seq.)**

9 **(Alleged by PLAINTIFF BRIAN REYES against all Defendants)**

10 94. PLAINTIFF reallege and incorporates by this reference, as though fully set forth  
11 herein, the prior paragraphs of this Complaint.

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

22 96. 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 to  
25 themselves and all individuals who are or previously were employed by DEFENDANT and  
26 classified as non-exempt employees in California during the time period of December 18, 2019  
27 until the present (the "AGGRIEVED EMPLOYEES").  
28



- 1 c. An order requiring DEFENDANT to pay all overtime wages and all sums  
2 unlawfully withheld from compensation due to PLAINTIFF and the other  
3 members of the CALIFORNIA CLASS; and  
4 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund  
5 for restitution of the sums incidental to DEFENDANT's violations due to  
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

7 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 8 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes  
9 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action  
10 pursuant to Cal. Code of Civ. Proc. § 382;  
11 b. Compensatory damages, according to proof at trial, including compensatory  
12 damages for minimum wage compensation due to PLAINTIFF and the other  
13 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable  
14 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the  
15 statutory rate;  
16 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
17 the applicable IWC Wage Order;  
18 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
19 which a violation occurs and one hundred dollars (\$100) per each member of the  
20 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay  
21 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
22 an award of costs for violation of Cal. Lab. Code § 226; and  
23 e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA  
24 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and  
25 costs of suit;  
26 f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and  
27 1197; and  
28 g. The wages of all terminated employees in the CALIFORNIA LABOR

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SUB-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.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

4. 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

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

DATED: February 22, 2021

**ZAKAY LAW GROUP, APLC**

By:  \_\_\_\_\_

Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: February 22, 2021

**ZAKAY LAW GROUP, APLC**

By:  \_\_\_\_\_

Shani O. Zakay  
Attorney for PLAINTIFF

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**EXHIBIT 1**



3990 Old Town Avenue, Suite C204  
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Toll Free: 1-888-498-6999  
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Jean-Claude Lapuyade, Esq.  
jlapuyade@jcl-lawfirm.com

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December 18, 2020

Labor & Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
PAGA@dir.ca.gov  
***Via Online Submission***

**AVMC, LLC dba Toyota of Lancaster**  
c/o Mark Feldman  
4490 Stevens Creek Blvd  
San Jose, CA 95129  
***Via U.S. Certified Mail with Return Receipt***

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/Madam:

Our offices represent Plaintiff Quaid Daniels (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against AVMC, LLC dba Toyota of Lancaster, a California Corporation. (“Defendant”). Plaintiff was employed by Defendant in California from February 2020 to October 2020 as a salesperson entitled to the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep accurate time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5 violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and



theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other exempt and non-exempt aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,  
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a long horizontal flourish extending to the right.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

1 **ZAKAY LAW GROUP, APLC**  
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5 **JCL LAW FIRM, APC**  
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[jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)

9 Attorneys for Plaintiff

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12  
13 **QUAID DANIELS**, on behalf of himself and  
14 on behalf of all persons similarly situated,

15 Plaintiff,

16 v.

17 **AVMC, LLC dba TOYOTA OF**  
18 **LANCASTER**, a California limited liability  
company; and **DOES 1-50**, Inclusive,

19 Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq.*;
- 2) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 3) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203; and
- 8) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

**DEMAND FOR A JURY TRIAL**

1 Plaintiff QUAID DANIELS, an individual, (“PLAINTIFF”), on behalf of himself and all  
2 other similarly situated current and former employees, allege on information and belief, except for  
3 his own acts and knowledge which are based on personal knowledge, the following:

4 **THE PARTIES**

5 1. Defendant AVMC, LLC dba TOYOTA OF LANCASTER (“DEFENDANT”) is  
6 a California limited liability company and at all relevant times mentioned herein conducted and  
7 continues to conduct substantial and regular business throughout California.

8 2. DEFENDANT owns and operates a car dealership in Lancaster, California

9 3. PLAINTIFF was employed by DEFENDANT in California from February of  
10 2020 to October of 2020 and was at all times during his employment with DEFENDANT  
11 entitled to be paid minimum wages and entitled to the legally required off-duty meal periods.  
12 PLAINTIFF was also required to be paid for his rest periods as DEFENDANT paid  
13 PLAINTIFF only commissions wages for certain pay periods. DEFENDANT did not separately  
14 compensate PLAINTIFF for his rest periods.

15 4. PLAINTIFF bring this Class Action on behalf of himself and a California class,  
16 defined as all individuals who are or previously were employed by DEFENDANT in California  
17 and paid on a draw vs. commission compensation scheme (the “CALIFORNIA CLASS”) at any  
18 time during the period beginning on the date four (4) years prior to the filing of this Complaint  
19 and ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”).  
20 The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under  
21 five million dollars (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice  
25 which failed to lawfully compensate these employees for all their missed meal breaks and  
26 unpaid rest periods. DEFENDANT’s uniform policy and practice alleged herein is an unlawful,  
27 unfair and deceptive business practice whereby DEFENDANT retained and continues to retain  
28 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and



1 PLAINTIFF and other CALIFORNIA CLASS Members were far too over-booked and  
2 overworked to take a timely off-duty thirty (30) minute meal period. As a result of their  
3 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often  
4 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,  
5 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with  
6 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by  
7 DEFENDANT's business records. As a result, PLAINTIFF and other members of the  
8 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in  
9 accordance with DEFENDANT's strict corporate policy and practice.

10 9. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA  
11 CLASS Members with a second off-duty meal period on workdays in which these employees  
12 were required by DEFENDANT to work ten (10) hours of work from time to time. As a result,  
13 DEFENDANT'S failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with  
14 legally required meal breaks is evidenced by DEFENDANT's business records which contain  
15 no record of these breaks.

16 10. In addition, because of DEFENDANT's commission pay plan described herein,  
17 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their  
18 rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not  
19 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other  
20 CALIFORNIA CLASS Members. As a result, DEFENDANT's failure to provide PLAINTIFF  
21 and the CALIFORNIA CLASS Members with all the legally required paid rest periods is  
22 evidenced by DEFENDANT's business records.

23 11. On numerous occasions, PLAINTIFF and other CALIFORNIA CLASS  
24 Members were required to work while not clocked in. DEFENDANT maintained a company-  
25 wide policy of refusing to pay CALIFORNIA CLASS Members, like PLAINTIFF, for all hours  
26 worked. Specifically, DEFENDANT maintained a company-wide pattern and practice of  
27 altering employees' timecards to eliminate numerous hours worked. As a result, DEFENDANT  
28

1 failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members wages for all hours  
2 worked.

3 12. Under California law, every employer shall pay to each employee, on the  
4 established payday for the period involved, not less than the applicable minimum wage for all  
5 hours worked in the payroll period, whether the remuneration is measured by time, piece,  
6 commission, or otherwise. Hours worked is defined in the applicable Wage Order as “the time  
7 during which an employee is subject to the control of an employer, and includes all the time the  
8 employee is suffered or permitted to work, whether or not required to do so. Here, PLAINTIFF  
9 and CALIFORNIA CLASS Members were entitled to separate hourly compensation for time  
10 spent performing all non-sales related tasks directed by DEFENDANT during their work shifts,  
11 including, but not limited to, weekly sales meetings, and are entitled to one hour of pay for their  
12 rest periods.

13 13. From time to time, when DEFENDANT did not accurately record PLAINTIFF’  
14 and other CALIFORNIA CLASS Members’ missed meal and rest breaks and/or also failed to  
15 pay the proper minimum wages, the wage statements issued to PLAINTIFF and other  
16 CALIFORNIA CLASS Members by DEFENDANT violated California law, and in particular,  
17 Labor Code Section 226(a). Aside, from the violations listed above in this paragraph,  
18 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the  
19 requirements under California Labor Code 226 *et seq.*

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

1 the employer, even though unlawful, unless the employee, at the time of obeying the directions,  
2 believed them to be unlawful."

3 15. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS  
4 Members as a business expense, were required by DEFENDANT to use their own personal  
5 cellular phones as a result of and in furtherance of their job duties as employees for  
6 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost  
7 associated with the use of their personal cellular phones for DEFENDANT's benefit.  
8 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by  
9 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the  
10 course of their employment with DEFENDANT the PLAINTIFF and other members of the  
11 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not  
12 limited to, costs related to the use of their personal cellular phones all on behalf of and for the  
13 benefit of DEFENDANT.

14 16. In violation of the applicable sections of the California Labor Code and the  
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
16 matter of company policy, practice and procedure, intentionally, knowingly and systematically  
17 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for  
18 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to  
19 purposefully avoid the payment for all time worked as required by California law which allows  
20 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied  
21 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
22 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
23 accordingly.

24 17. By reason of this uniform conduct applicable to PLAINTIFF and all  
25 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in  
26 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
27 (the "UCL"), by engaging in a company-wide policy and procedure which failed to accurately  
28 calculate and record all missed meal breaks and failed to pay PLAINTIFF and CALIFORNIA

1 CLASS Members for rest periods as required by California law. The proper recording of these  
2 employees' missed meal and rest breaks is the DEFENDANT's burden. As a result of  
3 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT  
4 failed to properly calculate and/or pay all required compensation for work performed by the  
5 members of the CALIFORNIA CLASS and violated the California Labor Code and regulations  
6 promulgated thereunder as herein alleged.

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

#### 25 JURISDICTION AND VENUE

26 19. This Court has jurisdiction over this Action pursuant to California Code of Civil  
27 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This  
28



1 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees  
2 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

3 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
4 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and  
5 DEFENDANT (i) currently maintain and at all relevant times maintained offices and facilities  
6 in this County and/or conduct substantial business in this County, and (ii) committed the  
7 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS  
8 and CALIFORNIA LABOR SUB-CLASS.

9 **THE CALIFORNIA CLASS**

10 21. PLAINTIFF bring the First Cause of Action for Unfair, Unlawful and Deceptive  
11 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
12 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
13 individuals who are or previously were employed by DEFENDANT in California and paid on a  
14 draw vs. commission compensation scheme (the "CALIFORNIA CLASS") at any time during  
15 the period beginning on the date four (4) years prior to the filing of this Complaint and ending  
16 on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in  
17 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million  
18 dollars (\$5,000,000.00).

19 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
20 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
21 accordingly.

22 23. DEFENDANT, as a matter of company policy, practice and procedure, and in  
23 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
24 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
25 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly record  
26 missed meal and rest breaks and all time worked by PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required  
28 employees to perform this work and permitted or suffered to permit this work.

1           24.     DEFENDANT has the legal burden to establish that each and every  
2 CALIFORNIA CLASS Member was paid the correct wages for all time worked. The  
3 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to  
4 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy  
5 or practice to ensure that each and every CALIFORNIA CLASS Member is paid for all missed  
6 meal and rest breaks, so as to satisfy their burden. This common business practice applicable to  
7 each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as  
8 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*  
9 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

10           25.     At no time during the CALIFORNIA CLASS PERIOD was the compensation for  
11 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the  
12 employee for all missed meal breaks, as required by California Labor Code.

13           26.     The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA  
14 CLASS Members is impracticable.

15           27.     DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
16 California law by:

- 17           a.     Committing an act of unfair competition in violation of the California Unfair  
18                 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to  
19                 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with  
20                 all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the  
21                 legally required paid rest breaks,
- 22           b.     Committing an act of unfair competition in violation of the California Unfair  
23                 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,  
24                 unfairly and deceptively having in place company policies, practices and  
25                 procedures that uniformly denied PLAINTIFF and the members of the  
26                 CALIFORNIA CLASS the correct minimum wages and otherwise violated  
27                 applicable law; and,

1 c. Committing an act of unfair competition in violation of the California Unfair  
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.  
3 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA  
4 CLASS members with necessary expenses incurred in the discharge of their job  
5 duties

6 28. The Class Action meets the statutory prerequisites for the maintenance of a Class  
7 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

8 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the  
9 joinder of all such persons is impracticable and the disposition of their claims as  
10 a class will benefit the parties and the Court;

11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
12 raised in this Complaint are common to the CALIFORNIA CLASS will apply  
13 uniformly to every member of the CALIFORNIA CLASS;

14 c. The claims of the representative PLAINTIFF are typical of the claims of each  
15 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members  
16 of the CALIFORNIA CLASS, was paid on a draw vs. commission compensation  
17 scheme who was subjected to the DEFENDANT's deceptive practice and policy  
18 which failed to provide the legally required meal and rest periods to the  
19 CALIFORNIA CLASS and thereby systematically underpaid compensation to  
20 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic  
21 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the  
22 members of the CALIFORNIA CLASS were and are similarly or identically  
23 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
24 misconduct engaged in by DEFENDANT; and,

25 d. The representative PLAINTIFF will fairly and adequately represent and protect  
26 the interest of the CALIFORNIA CLASS, and have retained counsel who are  
27 competent and experienced in Class Action litigation. There are no material  
28 conflicts between the claims of the representative PLAINTIFF and the members

1 of the CALIFORNIA CLASS that would make class certification inappropriate.  
2 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all  
3 CALIFORNIA CLASS Members.

4 29. In addition to meeting the statutory prerequisites to a Class Action, this action is  
5 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

6 a. Without class certification and determination of declaratory, injunctive, statutory  
7 and other legal questions within the class format, prosecution of separate actions  
8 by individual members of the CALIFORNIA CLASS will create the risk of:

9 i. Inconsistent or varying adjudications with respect to individual members  
10 of the CALIFORNIA CLASS which would establish incompatible  
11 standards of conduct for the parties opposing the CALIFORNIA CLASS;  
12 and/or;

13 ii. Adjudication with respect to individual members of the CALIFORNIA  
14 CLASS which would as a practical matter be dispositive of interests of  
15 the other members not party to the adjudication or substantially impair or  
16 impede their ability to protect their interests.

17 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on  
18 grounds generally applicable to the CALIFORNIA CLASS, making appropriate  
19 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that  
20 DEFENDANT uniformly failed to pay all wages due to members of the  
21 CALIFORNIA CLASS as required by law;

22 i. With respect to the First Cause of Action, the final relief on behalf of the  
23 CALIFORNIA CLASS sought does not relate exclusively to restitution  
24 because through this claim PLAINTIFF seek declaratory relief holding  
25 that the DEFENDANT’S policy and practices constitute unfair  
26 competition, along with declaratory relief, injunctive relief, and incidental  
27 equitable relief as may be necessary to prevent and remedy the conduct  
28 declared to constitute unfair competition;

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c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or;

2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a

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subsequent employer, the Class Action is the only means to assert their claims through a representative; and

- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

30. The Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’s employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’s actions have inflicted upon the CALIFORNIA CLASS;

- 1 f. There is a community of interest in ensuring that the combined assets of  
2 DEFENDANT are sufficient to adequately compensate the members of the  
3 CALIFORNIA CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
5 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with  
6 respect to the CALIFORNIA CLASS as a whole;
- 7 h. The members of the CALIFORNIA CLASS are readily ascertainable from the  
8 business records of DEFENDANT; and
- 9 i. Class treatment provides manageable judicial treatment calculated to bring an  
10 efficient and rapid conclusion to all litigation of all wage and hour related claims  
11 arising out of the conduct of DEFENDANT as to the members of the  
12 CALIFORNIA CLASS.

13 31. DEFENDANT maintains records from which the Court can ascertain and  
14 identify by job title each of DEFENDANT’S employees who as have been systematically,  
15 intentionally and uniformly subjected to DEFENDANT’S company policy, practices and  
16 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include  
17 any additional job titles of similarly situated employees when they have been identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 32. PLAINTIFF further bring the Second, Third, Fourth Fifth, Sixth, and Seventh,  
20 causes of Action on behalf of a California sub-class, defined as all members of the  
21 CALIFORNIA CLASS who are or previously were employed by Defendant Larry Green  
22 Chrysler Jeep Dodge, Inc. and/or Larry Green Ford Inc. and/or Larry Green Auto Center Blythe  
23 Inc. in California and paid on a draw vs. commission compensation scheme in California (the  
24 “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to  
25 the filing of the complaint and ending on the date as determined by the Court (the  
26 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.  
27 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS  
28 Members is under five million dollars (\$5,000,000.00).

1           33. DEFENDANT, as a matter of company policy, practice and procedure, and in  
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
4 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate  
5 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA  
6 LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work, required  
7 employees to perform this work and permitted or suffered to permit this work. DEFENDANT  
8 has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which  
9 these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To  
10 the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS  
11 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted  
12 accordingly.

13           34. DEFENDANT maintains records from which the Court can ascertain and  
14 identify by name and job title, each of DEFENDANT’s employees who have been  
15 systematically, intentionally and uniformly subjected to DEFENDANT’s company policy,  
16 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint  
17 to include any additional job titles of similarly situated employees when they have been  
18 identified.

19           35. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
20 CALIFORNIA LABOR SUB-CLASS Members is impracticable

21           36. Common questions of law and fact exist as to members of the CALIFORNIA  
22 LABOR SUB-CLASS, including, but not limited, to the following:

- 23           a. Whether DEFENDANT unlawfully failed to correctly calculate and pay  
24           compensation due to members of the CALIFORNIA LABOR SUB-CLASS for  
25           missed meal and rest breaks in violation of the California Labor Code and  
26           California regulations and the applicable California Wage Order;



- 1           b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
- 2           the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 3           statements;
- 4           c. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 5           conduct;
- 6           d. The proper measure of damages and penalties owed to the members of the
- 7           CALIFORNIA LABOR SUB-CLASS; and,
- 8           e. Whether DEFENDANT's conduct was willful.

9           37. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
10 under California law by:

- 11           a. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 12           members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 13           statement in writing showing the corresponding correct amount of wages earned
- 14           by the employee, the total amount of hours worked, and the correct legal entity
- 15           that was their employer;
- 16           b. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
- 17           employee is discharged or quits from employment, the employer must pay the
- 18           employee all wages due without abatement, by failing to tender full payment
- 19           and/or restitution of wages owed or in the manner required by California law to
- 20           the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
- 21           their employment,
- 22           c. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
- 23           accurately pay the PLAINTIFF and the members of the CALIFORNIA LABOR
- 24           SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable
- 25           pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 26           d. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
- 27           CALIFORNIA CLASS members with necessary expenses incurred in the
- 28           discharge of their job duties;

1 e. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF  
2 and the other members of the CALIFORNIA CLASS with all legally required  
3 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required  
4 paid rest breaks.

5 38. This Class Action meets the statutory prerequisites for the maintenance of a  
6 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

7 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
8 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members  
9 is impracticable and the disposition of their claims as a class will benefit the  
10 parties and the Court;

11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
12 raised in this Complaint are common to the CALIFORNIA LABOR SUB-  
13 CLASS and will apply uniformly to every member of the CALIFORNIA  
14 LABOR SUB-CLASS;

15 c. The claims of the representative PLAINTIFF are typical of the claims of each  
16 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the  
17 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt  
18 employee paid on an hourly basis who was subjected to the DEFENDANT'S  
19 practice and policy which failed to pay the correct amount of wages due to the  
20 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as  
21 a result of DEFENDANT'S employment practices. PLAINTIFF and the  
22 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or  
23 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern  
24 of misconduct engaged in by DEFENDANT; and

25 d. The representative PLAINTIFF will fairly and adequately represent and protect  
26 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained  
27 counsel who are competent and experienced in Class Action litigation. There are  
28 no material conflicts between the claims of the representative PLAINTIFF and

1 the members of the CALIFORNIA LABOR SUB-CLASS that would make class  
2 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
3 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS  
4 Members.

5 39. In addition to meeting the statutory prerequisites to a Class Action, this action is  
6 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

7 a. Without class certification and determination of declaratory, injunctive, statutory  
8 and other legal questions within the class format, prosecution of separate actions  
9 by individual members of the CALIFORNIA LABOR SUB-CLASS will create  
10 the risk of:

11 i. Inconsistent or varying adjudications with respect to individual members  
12 of the CALIFORNIA LABOR SUB-CLASS which would establish  
13 incompatible standards of conduct for the parties opposing the  
14 CALIFORNIA LABOR SUB-CLASS; or

15 ii. Adjudication with respect to individual members of the CALIFORNIA  
16 LABOR SUB-CLASS which would as a practical matter be dispositive of  
17 interests of the other members not party to the adjudication or  
18 substantially impair or impede their ability to protect their interests.

19 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
20 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
21 SUB-CLASS, making appropriate class-wide relief with respect to the  
22 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT  
23 uniformly fail to pay all wages due. Including the correct wages for all time  
24 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required  
25 by law;

26 c. Common questions of law and fact predominate as to the members of the  
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and  
28 violations of California Law as listed above, and predominate over any question

1 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a  
2 Class Action is superior to other available methods for the fair and efficient  
3 adjudication of the controversy, including consideration of:

4 i. The interests of the members of the CALIFORNIA LABOR SUB-  
5 CLASS in individually controlling the prosecution or defense of separate  
6 actions in that the substantial expense of individual actions will be  
7 avoided to recover the relatively small amount of economic losses  
8 sustained by the individual CALIFORNIA LABOR SUB-CLASS  
9 Members when compared to the substantial expense and burden of  
10 individual prosecution of this litigation;

11 ii. Class certification will obviate the need for unduly duplicative litigation  
12 that would create the risk of:

13 1. Inconsistent or varying adjudications with respect to individual  
14 members of the CALIFORNIA LABOR SUB-CLASS, which  
15 would establish incompatible standards of conduct for the  
16 DEFENDANT; and/or,

17 2. Adjudications with respect to individual members of the  
18 CALIFORNIA LABOR SUB-CLASS would as a practical matter  
19 be dispositive of the interests of the other members not parties to  
20 the adjudication or substantially impair or impede their ability to  
21 protect their interests;

22 iii. In the context of wage litigation because a substantial number of  
23 individual CALIFORNIA LABOR SUB-CLASS Members will avoid  
24 asserting their legal rights out of fear of retaliation by DEFENDANT,  
25 which may adversely affect an individual's job with DEFENDANT or  
26 with a subsequent employer, the Class Action is the only means to assert  
27 their claims through a representative; and,  
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iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

40. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’S actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

- 1 f. There is a community of interest in ensuring that the combined assets of  
2 DEFENDANT are sufficient to adequately compensate the members of the  
3 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
5 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
6 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 7 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily  
8 ascertainable from the business records of DEFENDANT. The CALIFORNIA  
9 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were  
10 employed by DEFENDANT in California during the CALIFORNIA LABOR  
11 SUB-CLASS PERIOD; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring an  
13 efficient and rapid conclusion to all litigation of all wage and hour related claims  
14 arising out of the conduct of DEFENDANT as to the members of the  
15 CALIFORNIA LABOR SUB-CLASS.

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

23 42. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
24 Code § 17021.

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

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

8 44. By the conduct alleged herein, DEFENDANT has engaged and continues to  
9 engage in a business practice which violates California law, including but not limited to, the  
10 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
11 including Sections 204, 206.5, 210, 226.7, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, for  
12 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &  
13 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute  
14 unfair competition, including restitution of wages wrongfully withheld.

15 45. By the conduct alleged herein, DEFENDANT'S practices were unlawful and  
16 unfair in that these practices violated public policy, were immoral, unethical, oppressive  
17 unscrupulous or substantially injurious to employees, and were without valid justification or  
18 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
19 17203 of the California Business & Professions Code, including restitution of wages wrongfully  
20 withheld.

21 46. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
22 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally  
23 mandated meal and rest periods and the required amount of compensation for missed meal and  
24 rest periods and minimum wages due to a systematic business practice that cannot be justified,  
25 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in  
26 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive  
27 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages  
28 wrongfully withheld.

1           47. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,  
2 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the  
3 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
4 DEFENDANT.

5           48. By the conduct alleged herein, DEFENDANT’S practices were also unfair and  
6 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide  
7 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS  
8 members as required by Cal. Lab. Code §§ 226.7 and 512.

9           49. Therefore, PLAINTIFF demand on behalf of themselves and on behalf of each  
10 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty  
11 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
12 for each workday in which a second off-duty meal period was not timely provided for each ten  
13 (10) hours of work.

14           50. PLAINTIFF further demand on behalf of themselves and on behalf of each  
15 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period  
16 was not timely provided as required by law.

17           51. By and through the unlawful and unfair business practices described herein,  
18 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the  
19 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and  
20 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
21 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
22 to unfairly compete against competitors who comply with the law.

23           52. All the acts described herein as violations of, among other things, the Industrial  
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California  
25 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,  
26 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and  
27 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
28





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

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

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

### 18 **THIRD CAUSE OF ACTION**

#### 19 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

21 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**  
22 **Defendants)**

23 60. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
24 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
25 paragraphs of this Complaint.

26 61. In addition, because of DEFENDANT's compensation pay plan described herein,  
27 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS  
28 Members for their rest periods as required by the applicable Wage Order and Labor Code.

1 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to  
2 PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members. As a result,  
3 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
4 Members with all the legally required paid rest periods is evidenced by DEFENDANT's  
5 business records. Additionally, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS  
6 Members were also required to work in excess of four (4) hours without being provided ten (10)  
7 minute rest periods. Further, these employees were denied their first rest periods of at least ten  
8 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest  
9 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,  
10 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten  
11 (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members  
12 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work  
13 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were  
14 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

15 62. DEFENDANT further violated California Labor Code §§ 226.7 and the  
16 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR  
17 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable  
18 Wage Order, one additional hour of compensation at each employee's regular rate of pay for  
19 each workday that rest period was not provided.

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM WAGES**

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

26 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**  
27 **Defendants)**

28

1           64. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
2 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
3 paragraphs of this Complaint.

4           65. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
5 bring a claim for DEFENDANT's willful and intentional violations of the California Labor  
6 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
7 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS  
8 Members.

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

11           67. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
12 commission is the minimum wage to be paid to employees, and the payment of a lesser wage  
13 than the minimum so fixed is unlawful.

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

16           69. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and  
17 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
18 amount of time they worked, including time spent engaging in non sales related work tasks  
19 while off the clock. As set forth herein, DEFENDANT's uniform policy and practice was to  
20 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other  
21 members of the CALIFORNIA LABOR SUB-CLASS.

22           70. DEFENDANT's uniform pattern of unlawful wage and hour practices  
23 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a  
24 whole, as a result of implementing a uniform policy and practice that denied accurate  
25 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
26 CLASS in regards to minimum wage pay.

27           71. In committing these violations of the California Labor Code, DEFENDANT  
28 inaccurately calculated the correct time worked and consequently underpaid the actual time

1 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.  
2 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other  
3 benefits in violation of the California Labor Code, the Industrial Welfare Commission  
4 requirements and other applicable laws and regulations.

5 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
7 receive the correct minimum wage compensation for their time worked for DEFENDANT.

8 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the  
9 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked  
10 than they were entitled to, constituting a failure to pay all earned wages.

11 74. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned  
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
13 CLASS for the true time they worked, PLAINTIFF and the other members of the  
14 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
15 injury in amounts which are presently unknown to them and which will be ascertained  
16 according to proof at trial.

17 75. DEFENDANT knew or should have known that PLAINTIFF and the other  
18 members of the CALIFORNIA LABOR SUB-CLASS are under-compensated for their time  
19 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross  
20 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy,  
21 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to  
22 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the  
23 correct minimum wages for their time worked.

24 76. In performing the acts and practices herein alleged in violation of California  
25 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-  
26 CLASS for all time worked and provide them with the requisite compensation, DEFENDANT  
27 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and  
28 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter

1 disregard for their legal rights, or the consequences to them, and with the despicable intent of  
2 depriving them of their property and legal rights, and otherwise causing them injury in order to  
3 increase company profits at the expense of these employees.

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

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

17 **(Cal. Lab. Code § 226)**

18 **(Alleged by PLAINTIFF ELIAS BARBA-REYES, PEDRO MURGUIA, and EDGARDO**  
19 **MARTINEZ and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)**

20 78. PLAINTIFF ELIAS BARBA-REYES, PEDRO MURGUIA, and EDGARDO  
21 MARTINEZ, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and  
22 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
23 Complaint.

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

- 26 a. Gross wages earned,  
27 b. (2) total hours worked by the employee, except for any employee whose  
28 compensation is solely based on a salary and who is exempt from payment of

- 1 overtime under subdivision (a) of Section 515 or any applicable order of
- 2 the Industrial Welfare Commission,
- 3 c. the number of piecerate units earned and any applicable piece rate if the
- 4 employee is paid on a piece-rate basis,
- 5 d. all deductions, provided that all deductions made on written orders of the
- 6 employee may be aggregated and shown as one item,
- 7 e. net wages earned,
- 8 f. the inclusive dates of the period for which the employee is paid,
- 9 g. the name of the employee and his or her social security number, except that by
- 10 January 1, 2008, only the last four digits of his or her social security number of
- 11 an employee identification number other than social security number may be
- 12 shown on the itemized statement,
- 13 h. the name and address of the legal entity that is the employer, and
- 14 i. all applicable hourly rates in effect during the pay period and the corresponding
- 15 number of hours worked at each hourly rate by the employee.

16 80. When DEFENDANT did not accurately record PLAINTIFF’S and other  
17 CALIFORNIA CLASS Members’ missed meal breaks and unpaid rest breaks and/or minimum  
18 wages owed, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to  
19 provide an accurate wage statement in writing that properly and accurately itemizes all missed  
20 meal periods incurred by PLAINTIFF and the other members of the CALIFORNIA LABOR  
21 SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees.  
22 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to  
23 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor  
24 Code 226 *et seq.*

25 81. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code  
26 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA  
27 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended  
28 calculating the correct wages for all missed meal and rest breaks and the amount of employment

1 taxes which were not properly paid to state and federal tax authorities. These damages are  
2 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA  
3 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the  
4 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each  
5 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according  
6 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for  
7 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

8 **SIXTH CAUSE OF ACTION**

9 **FOR FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES**

10 **(Cal. Lab. Code §§ 2802)**

11 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**  
12 **Defendants)**

13 82. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
14 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
15 paragraphs of this Complaint.

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

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

22 84. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
23 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
24 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
25 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-  
26 CLASS members for expenses which included, but were not limited to, costs related to using  
27 their personal cellular phones all on behalf of and for the benefit of DEFENDANT.  
28 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by



1 DEFENDANT to use their personal cell phones to respond to work related issues.  
2 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and  
3 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their  
4 personal cellular phones for DEFENDANT within the course and scope of their employment for  
5 DEFENDANT. These expenses were necessary to complete their principal job duties.  
6 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation.  
7 Although these expenses were necessary expenses incurred by PLAINTIFF and the  
8 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and  
9 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these  
10 expenses as an employer is required to do under the laws and regulations of California.

11 85. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred  
12 by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job  
13 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at  
14 the statutory rate and costs under Cal. Lab. Code § 2802.

15 **SEVENTH CAUSE OF ACTION**

16 **FOR FAILURE TO TIMELY PAY WAGES WHEN DUE**

17 **(Cal. Lab. Code §§ 201, 202, 203)**

18 **(Alleged By PLAINTIFF BRIAN REYES, JESUS ROCHA, JONATHAN ZARATE-**  
19 **ARANA, and STEVEN SALAZAR and the CALIFORNIA LABOR SUB-CLASS against all**  
20 **Defendants)**

21 86. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
22 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
23 paragraphs of this Complaint.

24 87. Cal. Lab. Code § 200 provides, in relevant part, that:

25 As used in this article:(a) "Wages" includes all amounts for labor performed by  
26 employees of every description, whether the amount is fixed or ascertained by the  
27 standard of time, task, piece, Commission basis, or other method of calculation.(b)  
28 "Labor" includes labor, work, or service whether rendered or performed under

1 contract, subcontract, partnership, station plan, or other agreement if the labor to be  
2 paid for is performed personally by the person demanding payment.

3 88. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer discharges  
4 an employee, the wages earned and unpaid at the time of discharge are due and payable  
5 immediately.”

6 89. Cal. Lab. Code § 202 provides, in relevant part, that:

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

16 90. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR  
17 SUB-CLASS Members’ employment contract.

18 91. Cal. Lab. Code § 203 provides, in relevant part, that:

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

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

27 93. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the  
28 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and

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

6 **EIGHTH CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§ 2698 et seq.)**

9 **(Alleged by PLAINTIFF BRIAN REYES against all Defendants)**

10 94. PLAINTIFF reallege and incorporates by this reference, as though fully set forth  
11 herein, the prior paragraphs of this Complaint.

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

22 96. 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 to  
25 themselves and all individuals who are or previously were employed by DEFENDANT and  
26 classified as non-exempt employees in California during the time period of August 16, 2018  
27 until the present (the "AGGRIEVED EMPLOYEES").  
28



- 1 c. An order requiring DEFENDANT to pay all overtime wages and all sums
- 2 unlawfully withheld from compensation due to PLAINTIFF and the other
- 3 members of the CALIFORNIA CLASS; and
- 4 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
- 5 for restitution of the sums incidental to DEFENDANT's violations due to
- 6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 7 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 8 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
- 9 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
- 10 pursuant to Cal. Code of Civ. Proc. § 382;
- 11 b. Compensatory damages, according to proof at trial, including compensatory
- 12 damages for minimum wage compensation due to PLAINTIFF and the other
- 13 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
- 14 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
- 15 statutory rate;
- 16 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
- 17 the applicable IWC Wage Order;
- 18 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
- 19 which a violation occurs and one hundred dollars (\$100) per each member of the
- 20 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 21 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 22 an award of costs for violation of Cal. Lab. Code § 226; and
- 23 e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
- 24 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
- 25 costs of suit;
- 26 f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
- 27 1197; and
- 28 g. The wages of all terminated employees in the CALIFORNIA LABOR

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SUB-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.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

4. 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

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

DATED: \_\_\_\_\_, 2020

**ZAKAY LAW GROUP, APLC**

By: \_\_\_\_\_  
Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: \_\_\_\_\_, 2020

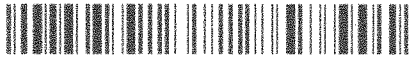
**ZAKAY LAW GROUP, APLC**

By: \_\_\_\_\_  
Shani O. Zakay  
Attorney for PLAINTIFF

**SENDER: COMPLETE THIS SECTION**

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

1. Article Addressed to: *AVML, LLC*  
*c/o Marc Feldman*  
*4490 Stevens Creek Blvd.*  
*San Jose, CA 95129*



9590 9402 6111 0209 9341 94

2. Article Number (Transfer from service label)  
 7020 2450 0001 4373 5515

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X  Agent  
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type
- |                                                                  |                                                                     |
|------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> Adult Signature                         | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery     | <input type="checkbox"/> Registered Mail™                           |
| <input type="checkbox"/> Certified Mail®                         | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery      | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                     | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                            |                                                                     |
| <input type="checkbox"/> Insured Mail Restricted Delivery (300)  |                                                                     |