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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**08/28/2020** at 01:28:06 PM  
Clerk of the Superior Court  
By Ashley Carini, Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO – NORTH COUNTY**  
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11 VERONICA NOLAN, on behalf of the State of  
California and all aggrieved employees;

12  
13 Plaintiff,

14 vs.

15 BOB BAKER AUTOMOTIVE INC, a  
California corporation; BOB BAKER  
16 VOLKSWAGEN, a California corporation;  
BAKER AUTOS, INC., a California  
17 corporation; BAKER CARLSBAD, INC., a  
California corporation; BOB BAKER  
18 ENTERPRISES, INC., a California corporation;  
19 and DOES 1 through 50, inclusive,

20 Defendants.  
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Case No. 37-2020-00030618-CU-OE-NC

**REPRESENTATIVE ACTION  
COMPLAINT**

1. Civil Penalties for Failure to Pay All Regular and Minimum Wages
2. Civil Penalties for Failure to Pay All Overtime Wages
3. Civil Penalties for Meal Period Violations
4. Civil Penalties for Rest Period Violations
5. Civil Penalties for Untimely Payment of Wages
6. Civil Penalties for Wage Statement Violations
7. Civil Penalties for Failure to Timely Pay All Wages Upon Separation of Employment
8. Civil Penalties for Failure to Reimburse Business Expenses
9. Civil Penalties for Recordkeeping Violations

1 Plaintiff VERONICA NOLAN (“Plaintiff”), as an individual and on behalf of the State of  
2 California as an “aggrieved employee” acting as a private attorney general under the Labor Code  
3 Private Attorneys General Act of 2004 (“PAGA,” California Labor Code § 2698, *et seq.*), brings  
4 this representative action against Defendants BOB BAKER AUTOMOTIVE INC., a California  
5 corporation; BOB BAKER VOLKSWAGEN, a California corporation; BAKER AUTOS, INC., a  
6 California corporation; BAKER CARLSBAD, INC., a California corporation; BOB BAKER  
7 ENTERPRISES, INC., a California corporation; and DOES 1 through 50, inclusive,; and DOES 1  
8 through 50 (hereinafter collectively referred to as “Defendants”), alleging as follows:

### 9 **INTRODUCTION**

10 1. This is a representative action brought under the California Labor Code.

11 2. This complaint challenges systemic unlawful employment policies and practices that  
12 resulted in violations of the Labor Code and IWC Wage Orders against individuals who worked for  
13 Defendants.

14 3. Plaintiff alleges on behalf of herself and the aggrieved employees that she received  
15 non-compliant wage statements, was not reimbursed for necessary business expenses, did not  
16 receive all meal and rest periods (or corresponding premiums), and was underpaid wages each pay  
17 day and upon separation of employment.

18 4. Plaintiff files this case as a PAGA-only action to recover civil penalties for the  
19 aggrieved employees and the State of California and to effect change upon Defendants’ workplace  
20 policies and practice in a manner consistent with the underlying enforcement purpose of the PAGA.

### 21 **JURISDICTION & VENUE**

22 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the  
23 California Constitution.

24 6. Venue as to each defendant is proper in this judicial district under Code of Civil  
25 Procedure sections 395 and 395.5 because Defendants conduct substantial business in this county,  
26 employed Plaintiff in this county, and committed some of the alleged violations in this county.

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**PARTIES**

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2 7. Plaintiff VERONICA NOLAN worked for Defendants in San Diego’s North County  
3 until April 2020 as an hourly, non-exempt employee.

4 8. The State of California, via the Labor and Workforce Development Agency  
5 (“LWDA”), is the real party in interest in this action with respect to the PAGA claims.

6 9. Plaintiff is informed, believes and alleges that Defendant BOB BAKER  
7 AUTOMOTIVE, INC. is a California corporation that does business throughout California,  
8 including San Diego, California.

9 10. Plaintiff is informed, believes and alleges that Defendant BOB BAKER  
10 VOLKSWAGEN is a California corporation that does business throughout California, including  
11 San Diego, California.

12 11. Plaintiff is informed, believes and alleges that Defendant BAKER AUTOS, INC. is a  
13 California corporation that does business throughout California, including San Diego, California.

14 12. Plaintiff is informed, believes and alleges that Defendant BAKER CARLSBAD,  
15 INC. is a California corporation that does business throughout California, including San Diego,  
16 California.

17 13. Plaintiff is informed, believes and alleges that Defendant BOB BAKER  
18 ENTERPRISES, INC. is a California corporation that does business throughout California,  
19 including San Diego, California.

20 14. The true names and capacities, whether individual, corporate, or otherwise, of the  
21 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such  
22 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes and  
23 alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions  
24 alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and  
25 capacities when they become known.

26 15. Plaintiff is informed, believes and alleges that all defendants in this action are  
27 employers and/or joint employers and part of an integrated employer enterprise, as each defendant  
28 exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved

1 employees, suffers and permits them to work, and engages the workforce creating a common law  
2 employment relationship. Additionally, all defendants have common ownership, common  
3 management, interrelationship of operations, and centralized control over labor relations and are  
4 therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and  
5 omissions alleged herein.

6 16. Plaintiff is informed, believes and alleges that each defendant acted in all respects  
7 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,  
8 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,  
9 such that the acts and omissions of each defendant are legally attributable to all others.

10 17. Plaintiff is informed, believes and alleges that the above-mentioned DOE defendants  
11 violated and caused to be violated Labor Code and IWC Wage Order provisions regulating  
12 minimum wages and days of work and Labor Code sections 203, 226, 226.7, 1193.6, 1194 and/or  
13 2802 and may be held liable as the employer for such violation, as provided in Labor Code  
14 section 558.1.

### 15 **GENERAL ALLEGATIONS**

16 18. Defendants violated Labor Code section 226(a)(9) because they failed to accurately  
17 state each pay period on the statutorily-required wage statement all applicable hourly rates in effect  
18 and the corresponding number of hours worked at each hourly rate by the aggrieved employees.  
19 The incorrect hourly rates and number of hours worked include those listed on wage statements as  
20 "Rest & Rec . C" and "R&R," which were intended to denote rest and recovery periods paid to  
21 aggrieved employees under Cal. Code. Regs., tit. 8 § 1170, subd. 1, as explained in *Vaquero v.*  
22 *Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 105-118. As one illustrative example, this  
23 violation occurred during Plaintiff's pay period of 03/01/2020 to 03/15/2020 (pay date of  
24 03/20/2020), whereby 0.80 hours is the incorrect number of hours worked and because \$35.2125 is  
25 the incorrect hourly rate.

26 19. Regarding current and former employees who earned hourly compensation plus non-  
27 discretionary bonuses and commissions, Plaintiff alleges that those aggrieved employees were paid  
28 overtime at the incorrect hourly rate. Therefore, Defendants separately violated Labor Code section

1 226(a)(1), (2), (5), and (9) as the respective wage statements do not correctly itemize gross wages  
2 earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the  
3 applicable pay periods.

4 20. In violation of Labor Code section 226(a)(2), Defendants did not correctly list the  
5 total hours worked each pay period on wage statements for Plaintiff and other aggrieved employees.  
6 The wage statements issued by Defendants do not list the total hours worked during the pay period.  
7 The hours listed for “regular” and “overtime,” among other categories, do not match or total the  
8 hours recorded on the time punches (i.e., Time and Detail Attendance Reports) for Plaintiff or the  
9 aggrieved employees. Plaintiff alleges that this is because Defendants maintained a pattern, practice  
10 and uniform administration of corporate policy of adjusting and modifying time records and also  
11 failing to compensate employees for time worked “off the clock.”

12 21. In further violation of Labor Code § 226(a)(1)-(9), in pay periods where employees  
13 did not earn wages based on a commission or piece rate plan, Plaintiff alleges on information and  
14 belief that Defendants failed to accurately state the correct gross wages earned, total hours worked,  
15 net wages earned, and all applicable hourly rates in effect and the corresponding number of hours  
16 worked at those rates. Plaintiff alleges that this was due to a miscalculation of the regular rate of  
17 pay for the purposes of paying overtime.

18 22. In violation of Labor Code § 226(a)(8), Plaintiff alleges on information and belief  
19 that Defendants failed to list the proper name and address of the legal entity that is the employer  
20 and on her wage statements and the wage statements of the aggrieved employees.

21 23. Additionally, Defendants violated Labor Code section 2802 by underpaying cell  
22 phone reimbursements to Plaintiff and aggrieved employees. Defendants either failed to provide  
23 reimbursements or underpaid cell phone reimbursements to aggrieved employees like Plaintiff who  
24 were required to use their personal cell phones for work-related purposes. Specifically, Plaintiff  
25 and other aggrieved employees used their personal cell phones to communicate with customers,  
26 were required to be responsive to the customers during waking hours, including on days where they  
27 were not scheduled to work, frequently texted customers, and accessed, received, and sent emails  
28 through their work-provided email accounts. Aggrieved employees like Plaintiff were required to

1 list their personal cell phone number on the Defendants-branded business card. Defendants  
2 reimbursement of \$10.00 semi-monthly (for a monthly total of \$20.00) is an insufficient  
3 reimbursement for the level of employees' work-related use of personal cell phones and shifts the  
4 operating expenses of Defendants to their workforce.

5         24. Despite the foregoing facts, Defendants tacitly reveals that it understands the  
6 "Personal Mobile/PDA Device Supplement" of \$10.00 is grossly insufficient to reimburse  
7 employee expenses. The policy attempts to make it seem like it was an employee choice to use his  
8 or her personal cell phone for work-related use: "The Dealership does not require or recommend  
9 that you use your personal device, but acknowledges that sales associates may choose to do so as a  
10 matter of personal convenience." Employees earned commissions for sales by using their personal  
11 phone and were required to list their personal number on the company business card, rendering it  
12 impossible to perform their jobs without the use of their personal cell phones. *See e.g., Cochran v.*  
13 *Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137. Defendants also failed to reimburse  
14 other (non-sales) employees for a reasonable percentage of their cell phone bill when they required  
15 to use their personal cell phones for work-related purposes.

16         25. Moreover, Defendants violated Labor Code sections 226.7, 512 and the IWC Wage  
17 Orders by failing to consistently provide lawful meal periods or pay meal period premiums in lieu  
18 thereof. Defendants systemically violated Labor Code sections 226.7 and 512 by failing to provide  
19 complaint meal periods, as evidenced by an extensive collection of "Time Clock Correction" forms  
20 that aggrieved employees were required to sign without receiving a corresponding meal period  
21 premium.

22         26. Defendants failed to consistently provide timely, off-duty 30-minute meal periods to  
23 Plaintiff and other aggrieved employees within the first five hours of work, and timely second off-  
24 duty 30-minute meal periods to the extent they worked shifts of 10 hours or more, in violation of  
25 Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. Although  
26 Defendants' meal period violations apply to all aggrieved employees, as an illustrative example,  
27 Plaintiff and other aggrieved sales employees were required to and did in fact work through meal  
28 periods as they were required and expected to sell to earn commissions. Plaintiff and other

1 aggrieved employees were also expected and required by Defendants to refrain from leaving the  
2 premise for meal periods so that they could remain available for work. Any meal periods taken  
3 under these circumstances (i.e., on-site) cannot be considered duty-free. Plaintiffs and the  
4 aggrieved employees' meal periods were often late, short, interrupted, or missed entirely due to  
5 Defendants' policies and practices.

6 27. Defendants' policies, practices and management directives, on some occasions,  
7 required Plaintiff and other aggrieved employees to clock out for meal periods, regardless of  
8 whether meal periods were actually taken. Defendants would have managers "correct" and "adjust"  
9 hours worked to avoid the payment of meal period premiums and would often require employees to  
10 sign "Time Clock Correction Forms" to adjust hours worked in an effort to avoid the records  
11 showing evidence of meal period non-compliance. Defendants knew Plaintiff and other aggrieved  
12 employees performed work during meal periods but did not pay all required meal period premiums.  
13 Additionally, Plaintiff alleges that Defendants did not maintain a lawful first meal period waiver yet  
14 failed to pay premiums for missed meal periods in shifts of 6 hours or less.

15 28. When Defendants did not provide fully-compliant meal periods, Defendants failed to  
16 pay Plaintiff and other aggrieved employees a meal period premium in violation of Labor Code  
17 section 226.7. On information and belief, Plaintiff alleges that Defendants failed to abide by their  
18 own written policies regarding the payment of meal period premiums in such cases. Although  
19 Defendants did pay Plaintiff and other aggrieved employees some period premiums during their  
20 employment (the wage statements do not specify whether these were for meal or rest periods, or  
21 both), Plaintiff does not know why those premiums were paid, where other premiums were not for  
22 instances in which her meal period was missed or otherwise non-compliant. Regardless, Plaintiff  
23 experienced more non-compliant meal periods and was not paid all required premiums during her  
24 employment.

25 29. For the same reasons described with respect to meal periods, including customer and  
26 management demands and the sales incentives of Plaintiff and other aggrieved employees,  
27 Defendants violated Labor Code sections 226.7 and 516 and the IWC Wage Orders by failing to  
28 consistently authorize and permit lawful rest periods or pay rest period premiums in lieu thereof.

1 Similarly, Plaintiff and the aggrieved employees were restricted from leaving the worksite due to  
2 sales and employment demands, rendering the rest periods not duty free. *See Augustus v. AMB*  
3 *Security Services, Inc.* (2016) 5 Cal. 5th 257, 269.

4 30. Defendants systemically violated Labor Code sections 510, 1194, and 1198 and the  
5 IWC Wage Orders by miscalculating the regular rate of pay for employees who earned additional  
6 forms of remuneration that were not properly factored into their respective overtime regular rate of  
7 pay.

8 31. Furthermore, Defendants violated sections 510, 1182.12, 1197, 1194, and 1198 and  
9 the IWC Wage Orders by failing to pay for all regular and overtime hours worked by Plaintiff and  
10 the aggrieved employees.

11 32. Specifically, with respect to the “Time Clock Correction Forms,” these required  
12 adjustments of time entries to avoid meal periods reduced the amount of paid hours and eligible  
13 overtime hours for aggrieved employees by reducing the total number of hours worked in a  
14 workweek or workday. As a result, Defendants underpaid overtime and regular wages (including  
15 minimum wage) to aggrieved employees in a manner that can be proven based on an analysis of  
16 Time Clock Correction Forms, and time records alone, supported by relevant testimony.

17 33. Similarly, Defendants’ employees worked off-the-clock outside of their scheduled  
18 hours and during meal periods without compensation. The aggrieved employees in various  
19 positions, including sales, finance, and service, among others, routinely worked throughout their  
20 shift without receiving a lawful meal period. However, meal periods were nevertheless recorded or  
21 retroactively “corrected” so that the time records portray the meal period as taken. The result of this  
22 policy and practice is that employees are deprived of pay for hours worked during time that is  
23 rendered uncompensated due to the illusory recording of certain meal periods, which are unpaid and  
24 not included in daily hours worked for purposes of wage payment.

25 34. Plaintiff and certain other aggrieved employees maintained access to work-related  
26 emails and answered and responded to work-related emails and telephone calls outside of scheduled  
27 working hours. For employees paid on a commission or piece rate basis, they were not  
28 compensated at the lawful minimum wage for these hours worked when their commission dropped



1 below the threshold necessary for payment on a commission or piece rate basis to apply. For  
2 employees paid on an hourly basis who were similarly incentivized and who maintained access to  
3 their work email address on their personal cellular devices, these aggrieved employees also worked  
4 off-the-clock hours and were not paid for this time, rendering regular and overtime hours unpaid.

5 35. As a result of these transgressions, Defendants failed to pay aggrieved employees all  
6 wages earned, on time, each pay period in violation of Labor Code section 204 and upon separation  
7 of employment in violation of Labor Code sections 201 through 203.

8 36. Lastly, as a result of the foregoing issues, Defendants violated Labor Code section  
9 1174 and the IWC Wage Orders by failing in their affirmative obligation to maintain accurate  
10 records showing the daily hours worked and wages paid to the aggrieved employees.

11 37. In closing, Plaintiff is informed, believes and alleges that Defendants have engaged  
12 in willful violations of the Labor Code and IWC Wage Orders by creating and maintaining policies,  
13 practices, and customs that knowingly deny Plaintiff and aggrieved employees their legal rights and  
14 benefits, entitling them to recover civil penalties under the PAGA.

15 **PAGA ALLEGATIONS**

16 38. “Notwithstanding any other provision of law, any provision of this code that  
17 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development  
18 Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a  
19 violation of this code, may, as an alternative, be recovered through a civil action brought by an  
20 aggrieved employee on behalf of himself or herself and other current or former employees pursuant  
21 to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

22 39. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and on  
23 behalf of the State of California and all other current and former non-exempt employees of  
24 Defendants who work or worked within the State of California within the one-year period prior to  
25 the date on which Plaintiff first provided written notice to the Labor and Workforce Development  
26 Agency and Defendants under Labor Code § 2699.3 and continuing through the present (the  
27 “aggrieved employees” and the “PAGA Period”).

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1 40. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants  
2 and suffered one or more of the Labor Code violations committed by Defendants and alleged in this  
3 Complaint.

4 41. On June 18, 2020, Plaintiff gave written notice by online filing with the LWDA and  
5 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been  
6 violated, including the facts and theories to support the alleged violations. Plaintiff paid the  
7 requisite filing fee to the LWDA.

8 42. On June 25, 2020, Plaintiff gave written notice to the LWDA and to Defendants of  
9 additional defendants to be named in this civil action via a supplemented notice.

10 43. Attached to this Complaint as “Exhibit A” are Plaintiff’s Notice of Labor Code  
11 Violations submitted to the LWDA on June 18, 2020 and Plaintiff’s Supplemented Notice of Labor  
12 Code Violations submitted to the LWDA on June 25, 2020. Plaintiff incorporates these notices in  
13 this Complaint as if fully set forth herein.

14 44. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,  
15 Defendants did not give written notice by certified mail to Plaintiff providing a description of any  
16 actions taken to cure the alleged violations.

17 45. Now that at least 65 days have passed from Plaintiff notifying Defendants of these  
18 violations, without any notice of cure from them or notice from the LWDA of its intent to  
19 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff  
20 exhausted all prerequisites and commences this civil action under Labor Code § 2699.

21 **FIRST CAUSE OF ACTION**

22 **CIVIL PENALTIES FOR FAILURE TO PAY**

23 **ALL REGULAR AND MINIMUM WAGES (PAGA)**

24 **Labor Code §§ 2698, *et seq.***

25 46. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

26 47. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,  
27 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor  
28 and Workforce Development Agency or any of its departments, divisions, commissions, boards,

1 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a  
2 civil action brought by an aggrieved employee on behalf of himself or herself and other current or  
3 former employees pursuant to the procedures specified in Section 2699.3 .”

4 48. Labor Code section 2699(f) provides: “For all provisions of this code except those  
5 for which a civil penalty is specifically provided, there is established a civil penalty for a violation  
6 of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs  
7 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved  
8 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved  
9 employee per pay period for each subsequent violation.”

10 49. Labor Code section 558(a) provides: “Any employer or other person acting on behalf  
11 of an employer who violates, or causes to be violated, a section of this chapter or any provision  
12 regulating hours and days of work in any order of the Industrial Welfare Commission shall be  
13 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each  
14 underpaid employee for each pay period for which the employee was underpaid in addition to an  
15 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred  
16 dollars (\$100) for each underpaid employee for each pay period for which the employee was  
17 underpaid in addition to an amount sufficient to recover underpaid wages.”

18 50. Labor Code section 1197.1(a) provides: “Any employer or other person acting either  
19 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to  
20 any employee a wage less than the minimum fixed by an applicable state or local law, or by an  
21 order of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed  
22 pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one  
23 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is  
24 underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For each  
25 subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each  
26 underpaid employee for each pay period for which the employee is underpaid regardless of whether  
27 the initial violation is intentionally committed.”

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1 51. Plaintiff does not seek for any cause of action in this Complaint under PAGA any  
2 amounts that are not recoverable pursuant to Labor Code section 2699 *et seq.* (*i.e.*, underpaid  
3 wages).

4 52. Defendants willfully failed in their affirmative obligation to pay Plaintiff and  
5 aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor  
6 Code sections 1182.12, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days of Work”  
7 and “Minimum Wages” sections of the applicable orders).

8 53. Specifically, Plaintiff and the aggrieved employees worked off the clock and were  
9 subject to time sheet adjustments that rendered certain hours worked unpaid, as addressed in the  
10 above sections of this Complaint.

11 54. As a result, Defendants violated the Labor Code and IWC Wage Orders and are  
12 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required  
13 by Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys’ fees,  
14 and costs to the extent permitted by law, including under Labor Code section 2699(g).

15 **SECOND CAUSE OF ACTION**

16 **CIVIL PENALTIES FOR FAILURE TO PAY**

17 **ALL OVERTIME WAGES (PAGA)**

18 **Labor Code §§ 2698, *et seq.***

19 55. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

20 56. Defendants failed in their affirmative obligation to pay Plaintiff and aggrieved  
21 employees no less than one and one-half times their respective “regular rate of pay” for all hours  
22 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on  
23 the seventh day of work in any one workweek, and no less than twice their respective “regular rate  
24 of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh  
25 day of a workweek in violation of Labor Code sections 510 and 1198 and the IWC Wage Orders  
26 and the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

27 57. Specifically, Plaintiff and the aggrieved employees worked off the clock and were  
28 subject to time sheet adjustments that rendered certain hours worked unpaid at the lawful overtime

1 rate, as addressed in the above sections of this Complaint. Additionally, Defendants failed to  
2 include all forms of remuneration in the regular rate of pay for purposes of overtime computation  
3 and payment for the aggrieved employees, as addressed in the above sections of this Complaint.

4 58. As a result, Defendants violated the Labor Code and IWC Wage Orders and are  
5 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required  
6 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs  
7 to the extent permitted by law, including under Labor Code section 2699(g).

8 **THIRD CAUSE OF ACTION**

9 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS (PAGA)**

10 **Labor Code §§ 2698, *et seq.***

11 59. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

12 60. Defendants willfully failed in their affirmative obligation to consistently provide  
13 Plaintiff and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes  
14 beginning before the fifth hour of hour for each work period of more than five hours per day and a  
15 second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour of  
16 work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the "Meal  
17 Periods" sections of the applicable orders).

18 61. Further, Defendants willfully failed in their affirmative obligation to consistently pay  
19 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of  
20 compensation for each workday that a fully compliant meal period was not provided, in violation of  
21 Labor Code sections 226.7 and the IWC Wage Orders.

22 62. Specifically, Plaintiff and the aggrieved employees were required to work and  
23 remain on site during meal periods, were subject to unlawful meal period adjustments, worked  
24 through recorded meal periods, experienced non-compliant meal periods, and were not paid meal  
25 period premiums when they were due based on these facts and also based on the recorded time  
26 entries maintained by Defendants, as addressed in the above sections of this Complaint.

27 63. As a result, Defendants violated the Labor Code and IWC Wage Orders and are  
28 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required

1 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs  
2 to the extent permitted by law, including under Labor Code section 2699(g).

3 **FOURTH CAUSE OF ACTION**

4 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS (PAGA)**

5 **Labor Code §§ 2698, *et seq.***

6 64. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

7 65. Defendants willfully failed in their affirmative obligation to consistently authorize  
8 and permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less  
9 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor  
10 Code sections 226.7 and 516 and the IWC Wage Orders (the "Rest Periods" sections of the  
11 applicable orders).

12 66. Further, Defendants willfully failed in their affirmative obligation to consistently pay  
13 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of  
14 compensation for each workday that a fully compliant rest period was not provided, in violation of  
15 Labor Code sections 226.7 and the IWC Wage Orders.

16 67. Specifically, Plaintiff and the aggrieved employees were required to work and  
17 remain on site during rest periods, worked through rest periods, and did not receive lawful rest  
18 period premiums when they were due, as addressed in the above sections of this Complaint.

19 68. As a result, Defendants violated the Labor Code and IWC Wage Orders and are  
20 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required  
21 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs  
22 to the extent permitted by law, including under Labor Code section 2699(g).

23 **FIFTH CAUSE OF ACTION**

24 **CIVIL PENALTIES FOR UNTIMELY PAYMENT OF WAGES (PAGA)**

25 **Labor Code §§ 2698, *et seq.***

26 69. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

27 70. Defendants willfully failed in their affirmative obligation to timely pay all wages and  
28 premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days

1 designated in advance by the employer as regular paydays (for employees paid on a non-weekly  
2 basis) and on the regularly-scheduled weekly payday for any weekly employees, in violation of  
3 Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of  
4 the applicable orders).

5 71. Specifically, as set forth in this Complaint, Defendants failed to pay wages earned by  
6 Plaintiff and the aggrieved employees on time, in full, each pay date.

7 72. As a result, Defendants violated the Labor Code and IWC Wage Orders and are  
8 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required  
9 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs  
10 to the extent permitted by law, including under Labor Code section 2699(g).

11 **SIXTH CAUSE OF ACTION**

12 **CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS (PAGA)**

13 **Labor Code §§ 2698, *et seq.***

14 73. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

15 74. Labor Code section 226.3 provides: “Any employer who violates subdivision (a) of  
16 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
17 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for  
18 each violation in a subsequent citation, for which the employer fails to provide the employee a  
19 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.  
20 The civil penalties provided for in this section are in addition to any other penalty provided by law.”

21 75. Defendants failed in their affirmative obligation provide accurate itemized wage  
22 statements to Plaintiff and aggrieved employees in violation of Labor Code section 226(a).

23 76. As a result, Defendants violated the Labor Code and IWC Wage Orders and are  
24 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required  
25 by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and  
26 costs to the extent permitted by law, including under Labor Code section 2699(g).

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**SEVENTH CAUSE OF ACTION**

**CIVIL PENALTIES FOR FAILURE TO TIMELY PAY ALL WAGES UPON SEPARATION OF EMPLOYMENT (PAGA)**

**Labor Code §§ 2698, *et seq.***

77. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

78. Defendants willfully failed in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

79. Specifically, as set forth in this Complaint, Defendants failed to pay wages earned by Plaintiff and the aggrieved employees on time, in full, upon separation of employment.

80. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

**EIGHTH CAUSE OF ACTION**

**CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES (PAGA)**

**Labor Code §§ 2698, *et seq.***

81. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

82. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and aggrieved employees for all necessary expenditures, losses, expenses and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

83. Specifically, on information and belief, Plaintiff alleges Defendants did not pay aggrieved employees and underpaid Plaintiff and other aggrieved employees cell phone expenses incurred for required work-related purposes, including sales and use of email, data, and telephone minutes.



1 84. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the  
2 aggrieved employees and the State of California for civil penalties as required by Labor Code  
3 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted  
4 by law, including under Labor Code section 2699(g).

5 **NINTH CAUSE OF ACTION**

6 **CIVIL PENALTIES FOR RECORDKEEPING VIOLATIONS (PAGA)**

7 **Labor Code §§ 2698, *et seq.***

8 85. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

9 86. Labor Code section 1174 provides: "Every person employing labor in this state  
10 shall: ...(d) Keep, at a central location in the state or at the plants or establishments at which  
11 employees are employed, payroll records showing the hours worked daily by and the wages paid to,  
12 and the number of piece-rate units earned by and any applicable piece rate paid to, employees  
13 employed at the respective plants or establishments. These records shall be kept in accordance with  
14 rules established for this purpose by the commission, but in any case shall be kept on file for not  
15 less than three years."

16 87. Labor Code section 1174.5 provides: "Any person employing labor who willfully  
17 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete  
18 records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five  
19 hundred dollars (\$500)."

20 88. Defendants willfully failed in their affirmative obligation to maintain accurate  
21 records showing the hours worked daily and wages paid to the aggrieved employees, in violation of  
22 Labor Code section 1174.

23 89. Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing  
24 in their affirmative obligation to maintain accurate records showing the hours worked daily and  
25 wages paid to the aggrieved employees, as a result of the foregoing issues set forth in this  
26 Complaint.

27 90. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the  
28 aggrieved employees and the State of California for civil penalties as required by Labor Code

1 section 1174.5, in addition to interest, attorneys' fees, and costs to the extent permitted by law,  
2 including under Labor Code section 2699(g).

3 **PRAYER FOR RELIEF**

4 Plaintiff, as an individual and on behalf of the aggrieved employees, State of California, and  
5 as a representative under the PAGA, prays for judgment as follows:

- 6 a. For this action to be maintained as a representative action under the PAGA and for  
7 Plaintiff and counsel to be provided with all enforcement capability as if the action  
8 were brought by the State of California or the California Division of Labor  
9 Enforcement;
- 10 b. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 11 c. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent  
12 permitted by law, including under California Labor Code sections 226, 1194, 2802,  
13 2699(g) and Code of Civil Procedure section 1021.5;
- 14 d. For such other relief the Court deems just and proper.

15  
16 Dated: August 28, 2020

FERRARO EMPLOYMENT LAW, INC.

17 

18 NICHOLAS J. FERRARO, ESQ.

19 LAUREN N. VEGA, ESQ.

20 Attorney for Plaintiff Veronica Nolan