

1 HOYER & HICKS  
Richard A. Hoyer (SBN 151931)  
2 rhoyer@hoyerlaw.com  
Ryan L. Hicks (SBN 260284)  
3 rhicks@hoyerlaw.com  
4 4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
tel (415) 766-3539  
5 fax (415) 276-1738

6 WALTER L. HAINES, ESQ. (SBN 71075)  
UNITED EMPLOYEES LAW GROUP, P.C.  
7 5500 Bolsa Ave., Suite 201  
Huntington Beach, CA 92649  
8 Tel.: (562) 256-1047  
Fax: (562) 256-1006  
9 whaines@uelglaw.com

10 Attorneys for Plaintiff  
WYATT COPPERNOLL

11 SUPERIOR COURT OF CALIFORNIA

12 IN AND FOR THE COUNTY OF ALAMEDA

13 WYATT COPPERNOLL on behalf of all  
14 Aggrieved Employees and the state of  
California,

15 Plaintiff,

16 vs.

17 HAMCOR INC. D/B/A DUBLIN TOYOTA,  
18 6450 MOTORS LLC D/B/A DUBLIN  
HYUNDAI, NISDAT LLC D/B/A DUBLIN  
19 NISSAN, CORNELIUS BROS. LLC D/B/A  
DUBLIN VOLKSWAGEN, TURIN DUBLIN  
20 LLC D/B/A DUBLIN FIAT, and DOES 1-25,

21 Defendants,

Case No. RG16843171  
ASSIGNED FOR ALL PURPOSES TO  
JUDGE BRAD SELIGMAN.  
DEPARTMENT 23

22 **CLASS, COLLECTIVE, AND  
REPRESENTATIVE ACTION**

23 **SECOND AMENDED COMPLAINT  
FOR VIOLATIONS OF THE  
CALIFORNIA LABOR CODE, THE  
FEDERAL LABOR STANDARDS ACT,  
THE CALIFORNIA BUSINESS AND  
PROFESSIONS CODE, AND PRIVATE  
ATTORNEY GENERAL ACT  
PENALTIES**

24 **DEMAND FOR A JURY TRIAL**

1 Pursuant to the parties' stipulation and Order of the Court thereon, Plaintiff WYATT  
2 COPPERNOLL (hereinafter "Plaintiff"), on behalf of himself and all others similarly situated,  
3 all other Aggrieved Employees, and the state of California, by and through his attorneys,  
4 files this Second Amended Complaint adding individual, class and collective claims  
5 previously pending in a parallel class action pending in the Northern District of California  
6 (Case No. 3:16-cv-05936-WHA) against Defendants HAMCOR INC. D/B/A DUBLIN  
7 TOYOTA, 6450 MOTORS LLC D/B/A DUBLIN HYUNDAI, NISDAT LLC D/B/A DUBLIN  
8 NISSAN, CORNELIUS BROS. LLC D/B/A DUBLIN VOLKSWAGEN, TURIN DUBLIN LLC  
9 D/B/A DUBLIN FIAT, and DOES 1-25 (collectively "Defendants") seeking to recover for  
10 Defendant's violations of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et seq.*  
11 ("FLSA"), applicable California Labor Code provisions, applicable Industrial Welfare  
12 Commission ("IWC") Wage Orders, and the Unfair Business Practices Act, California  
13 Business and Professions Code §§ 17200, *et seq.* ("UCL"), and penalties under the Private  
14 Attorney General Act (Labor Code §§ 2698, *et seq.*; "PAGA"). Plaintiff complains and  
15 alleges as follows:

## 16 **INTRODUCTION**

17 1. This is a collective, class, and representative action complaint against Defendants to  
18 challenge their policies and practices of: (1) failing to pay their non-exempt service  
19 technicians who work in service centers (collectively "service technicians," "putative class  
20 members," and/or "PCMs") at their dealerships for all hours worked, including overtime  
21 compensation, and minimum wage; (2) failing to authorize, permit, and/or make available to  
22 their service technicians the meal and rest periods to which they are entitled by law and  
23 failing to pay premium wages for these missed breaks; (3) failing to pay their service  
24 technicians the promised piece rate for all services performed, including but not limited to

1 “multi-point inspections;” (4) failing to provide such employees with accurate, itemized wage  
2 statements; and (5) failing to pay all wages after these service technicians voluntarily or  
3 involuntarily terminated their employment with Defendant. Plaintiff and the proposed  
4 collective and class members, and the other Aggrieved Employees, are current and former  
5 non-exempt service technicians at the dealerships owned and/or operated by Defendants  
6 during the applicable period (including but not limited to: Dublin Toyota, Dublin Fiat (now  
7 closed), Dublin Hyundai, Dublin Nissan, and Dublin Volkswagen) including but not limited to  
8 the positions of “Technician,” “Service Technician,” “Lube Tech,” “Used Car Tech,” and/or  
9 any other position that performs work at any of Defendants’ service. Plaintiff seeks to  
10 represent other current and former non-exempt service technicians who work in  
11 Defendants’ service centers in this class, collective, and representative action. Plaintiff  
12 alleges that Defendants have engaged in unlawful patterns and practices of failing to pay  
13 minimum wage and overtime pay as required by the FLSA and failing to meet the  
14 requirements of both the California Labor Code and California Business and Professions  
15 Code.

16 2. Plaintiff and the members of the class, the collective, and other Aggrieved  
17 Employees regularly worked in excess of eight hours per day and forty hours per week  
18 without being provided overtime compensation. Indeed, Defendants falsely manipulate the  
19 timesheets of Plaintiffs and the PCMs in order to avoid paying overtime to its employees  
20 (despite the fact that service records themselves indicate that the employees are working  
21 well in excess of eight hours per day and forty hours per week). Defendants also fail to fully  
22 compensate Plaintiff and the PCMs for time spent under its control but not performing work  
23 for which it has a designated piece-rate.

24 3. Plaintiff and the PCMs often worked in excess of six hours per day and were

1 routinely denied timely and compliant meal and rest periods and the requisite pay for  
2 working through such breaks. In addition, Plaintiffs performed off-the-clock work, including  
3 overtime work for which he was not adequately compensated. Defendants does not provide  
4 full compensation for time that Plaintiff and those similarly situated are not performing  
5 services but would be taking rest periods.

6 4. Defendants require service technicians like Plaintiff to perform uncompensated work  
7 at the beginning of and throughout their shifts. For example, Plaintiff and other Aggrieved  
8 Employees were required to remove cars left in their stalls by other workers, by driving  
9 them or pushing them to another location on the premises. Defendants also often requires  
10 them to perform "courtesy road tests," another service for which there was no  
11 corresponding piece-rate.

12 5. This daily time that Defendants requires Plaintiff to work without full compensation  
13 deprives him and the other Aggrieved Employees of substantial amounts of compensation  
14 to which they are entitled under California law. Depending upon how many hours Plaintiff  
15 works in a day and/or week, this unpaid time is owed to Plaintiff at both straight-time and  
16 overtime rates. Upon information and belief, Plaintiff further alleges that the system which  
17 Defendants have in place to pay him and other non-exempt service center employees does  
18 not address this wage deficiency.

19 6. Defendants routinely refuse to authorize, permit, and/or make available to Plaintiff  
20 and those similarly situated timely and compliant off-duty thirty-minute meal periods as  
21 required by law. Furthermore, Defendants regularly require Plaintiff and those similarly  
22 situated to work in excess of ten hours per day, but does not authorize, permit, and/or make  
23 available to them a second thirty-minute meal period as required by law. Under California  
24 law, generally, non-exempt employees are to receive one thirty-minute unpaid meal break

1 at the conclusion of every five hours of labor performed. Defendants' policy violates  
2 California law in this respect. Though Defendants' own records show that Plaintiff was  
3 performing work through out his shift, its timekeeping records show that supervisors were  
4 falsely inserting "meal periods" in whatever amount would reduce the remaining hours to  
5 only eight per day, often inserting purported meal periods of nearly two hours (of overtime)  
6 which never occurred in an effort to prevent overtime from accruing.

7 7. Defendants also routinely refuse to authorize or permit Plaintiff and those similarly  
8 situated to take paid ten-minute rest periods as required by law. Under California law, non-  
9 exempt employees are to receive one paid ten-minute rest period for every four hours, or  
10 major fraction thereof, worked. Since Defendants (under-)pay Plaintiff and those similarly  
11 situated only for any such time taking paid rest periods, Defendants' policy violates  
12 California law in this respect. There was no method of payment in place to compensate  
13 Plaintiff and the other Aggrieved Employees for non-piece work, or for rest periods, had  
14 they been authorized and permitted, itself another violation of the Labor Code.

15 8. Defendants engage in illegal behavior with respect to wage statements as well:  
16 failing to provide such employees with accurate, itemized wage statements.

17 9. Defendants have also failed to pay all wages after these service technicians  
18 voluntarily or involuntarily terminated their employment with Defendants.

19 10. In early 2017, Defendants purportedly instituted an "Alternative Work Schedule"  
20 ("AWS") whereby service technicians were scheduled to work in excess of eight hours per  
21 day without overtime compensation, but there are no records of any AWS on file with the  
22 appropriate state agency.

23 11. As a result of these violations, Defendants are liable for additional, various other  
24 penalties under the Labor Code which Plaintiff seeks on behalf of all other Aggrieved

1 Employees under PAGA.

2 12. Plaintiff seeks full compensation for all denied timely and compliant meal and rest  
3 periods, unpaid wages, including unpaid overtime and straight time wages, waiting time  
4 penalties, and premium pay, and for penalties under the PAGA for all of the Labor Code  
5 violations asserted herein. Plaintiff also seeks declaratory and injunctive relief, reasonable  
6 attorneys' fees, and costs under the PAGA. Finally, Plaintiff seeks reasonable attorneys'  
7 fees and costs under the California Labor Code and California Code of Civil Procedure §  
8 1021.5.

### 9 **JURISDICTION AND VENUE**

10 13. The amount of damages sought herein is greater than \$25,000. Hence this case is  
11 within the unlimited jurisdiction of this Court.

12 14. Venue is proper in Alameda County pursuant to California Code of Civil Procedure §  
13 395.5 because all of Defendants' dealerships currently or previously in operation are  
14 located in greater Dublin, CA area within Alameda County.

### 15 **PARTIES**

16 15. The named Plaintiff – Wyatt Coppernoll – resides in the state of California.

17 16. Plaintiff worked for Defendants from approximately January through July, 2016 at the  
18 service center at Defendant's "Dublin Toyota" dealership in Dublin, California. He was a  
19 non-exempt employee paid on a piece-rate basis as a Certified Line Technician.

20 17. On information and belief, Defendant Hamcor is a California corporation. Its  
21 headquarters are located at 4321 Toyota Drive, Dublin, CA 94568. Hamcor does business  
22 in California and has owned/operated at least five automobile dealerships with service  
23 centers during the applicable period, including but not limited to Dublin Toyota, Dublin  
24 Nissan, Dublin Hyundai, Dublin Fiat (now closed), and at least one other dealership in the

1 vicinity of Dublin California.

2 18. On information and belief, Defendant 6450 Motors LLC is a California Limited  
3 Liability Company. Its headquarters are located at 6015 Scarlett Court, Dublin, CA 94568.  
4 6450 Motors does business in California and has owned/operated at least five automobile  
5 dealerships with service centers during the applicable period, including but not limited to  
6 Dublin Toyota, Dublin Nissan, Dublin Hyundai, Dublin Fiat (now closed), and at least one  
7 other dealership in the vicinity of Dublin California.

8 19. On information and belief, Defendant Nisdat LLC is a California Limited Liability  
9 Company. Its headquarters are located at 6450 Dublin Ct., Dublin, CA 94568. Nisdat does  
10 business in California and has owned/operated at least five automobile dealerships with  
11 service centers during the applicable period, including but not limited to Dublin Toyota,  
12 Dublin Nissan, Dublin Hyundai, Dublin Fiat (now closed), and at least one other dealership  
13 in the vicinity of Dublin California.

14 20. On information and belief, Defendant Cornelius Bros. LLC is a California Limited  
15 Liability Company. Its headquarters are located at 6085 Scarlett Court, Dublin, CA 94586.  
16 Cornelius Bros. does business in California and has owned/operated at least five  
17 automobile dealerships with service centers during the applicable period, including but not  
18 limited to Dublin Toyota, Dublin Nissan, Dublin Hyundai, Dublin Fiat (now closed), and at  
19 least one other dealership in the vicinity of Dublin California.

20 21. On information and belief, Defendant Turin Dublin LLC is a California Limited  
21 Liability Company. Its headquarters are located at 6450 Dublin Ct., Dublin, CA 94568. Turin  
22 Dublin does business in California and has owned/operated at least five automobile  
23 dealerships with service centers during the applicable period, including but not limited to  
24 Dublin Toyota, Dublin Nissan, Dublin Hyundai, Dublin Fiat (now closed), and at least one

1 other dealership in the vicinity of Dublin California.

2 22. At all relevant times, Defendants have done business under the laws of California,  
3 have had places of business in the State of California, including in this county, and have  
4 employed PCMs within this county. Defendants are all “persons” as defined in California  
5 Labor Code § 18 and California Business and Professions Code § 17201. Defendants are  
6 also “employers” as that term is used in the California Labor Code and the IWC’s Wage  
7 Orders.

8 23. Plaintiffs do not know the true names and capacities of Defendants sued herein as  
9 DOES 1–25 and therefore sues these Defendants by such fictitious names. Plaintiffs will  
10 amend this Demand to allege their true identity and capacities when ascertained. Plaintiffs  
11 are informed and believe, and on that basis allege, that each of these fictitiously named  
12 Defendants is responsible in some manner for the occurrences alleged herein and thereby  
13 proximately caused Plaintiffs’ injuries alleged herein.

14 24. Plaintiffs are informed and believe, and on that basis allege, that, at all relevant  
15 times, each of the Defendants was the agent or employee of each of the remaining  
16 Defendants, and, in doing the things herein alleged was acting within the course and scope  
17 of such employment, and that Defendants authorized, ratified, and approved, expressly or  
18 implicitly, all of the conduct alleged herein.

19 25. At all times relevant hereto, Defendants, and each of them, were the agents,  
20 employees, managing agents, supervisors, co-conspirators, parent corporation, joint  
21 employers, alter ego, and/or joint ventures of the other Defendants, and each of them, and  
22 in doing the things alleged herein, were acting at least in part within the course and scope  
23 of said agency, employment, conspiracy, joint employer, alter ego status, and/or joint  
24 venture and with the permission and consent of each of the other Defendants.



1 26. Whenever and wherever reference is made in this Complaint to any act or failure to  
2 act by a Defendant or co-Defendant, such allegations and references shall also be deemed  
3 to mean the acts and/or failures to act by each Defendant acting individually, jointly and  
4 severally.

5 **FACTUAL ALLEGATIONS**

6 27. Defendants are in the business of automobile sales, including providing maintenance  
7 and other automotive services to customers. Defendants operate and/or have operated a  
8 number of car dealerships and service centers in California.

9 28. Plaintiff and the Aggrieved Employees are current and former non-exempt  
10 employees, who work and/or worked in positions in Defendants' service centers at any of  
11 their dealerships. As Defendants' employees, Plaintiff and those similarly situated were and  
12 are expected to perform services as instructed by their supervisors at Defendants'  
13 automotive service centers.

14 29. Plaintiff worked for Defendant Hamcor, Inc. from approximately January 2, 2016  
15 through July 15, 2016 at its Dublin Toyota service center. He held the position of "Certified  
16 Line Technician (also known "Service Technician," or simply "Technician"). Plaintiff was  
17 generally scheduled to work at least nine and one-half hours per day, five days a week,  
18 Usually Tuesday through Saturday for a total of a workweek of at least 47.5 hours, and  
19 routinely was required by management to work additional hours beyond this scheduled  
20 time. Plaintiff almost always worked beyond his scheduled hours, and usually worked from  
21 ten (10) to twelve (12) hours per day.

22 30. Similar to Plaintiff, the other Class and Collective Members, and other Aggrieved  
23 Employees are current and former non-exempt service technicians and other similarly  
24 situated non-exempt employees who work, or have worked, at Defendants' service centers

1 in California. Plaintiff is informed, believes, and thereon alleges that the policies and  
2 practices of Defendants have at all relevant times been similar for Plaintiff and the PCMs,  
3 regardless of dealership and/or service center location.

4 31. Plaintiff and those similarly situated are paid a flag rate for each service that they  
5 perform during a workday for which there is a flat rate times provided by either the  
6 "ALLDATA" service or from information provided by Toyota itself and available online  
7 through websites not accessible to the public like [www.one.tis.Toyota.com](http://www.one.tis.Toyota.com) and  
8 [www.dealerdaily.com](http://www.dealerdaily.com). These flag hours are then incorporated into a "hourly production  
9 bonus" applied to the clocked hours worked. For some portion of the applicable statutory  
10 period, some of the service technicians were paid only for the time that they were  
11 performing services, and no hourly rate whatsoever and no compensation for non-  
12 productive time. Due to the high pressure from management to complete as much work  
13 each day as possible, as soon as a service center employee finishes a service, they are  
14 expected to return to their dispatcher and are given their next project and they immediately  
15 get to work. Management often indicates that a particular project must be finished by a  
16 certain time in the afternoon, and the employees are expected to do whatever is necessary  
17 to complete the service by the time the manager has promised to the customer that the  
18 service will be complete. Plaintiff and the service technicians were required to perform Multi  
19 Point Inspections ("MPI") on average of once per day without being paid any flag hours  
20 (other dealerships pay .2 pay units for performing MPis).

21 32. Even though Plaintiff and the Aggrieved Employees are paid on a piece-rate basis,  
22 they still clock in and out each day. Their work times are also recorded by Defendants'  
23 "Reynolds and Reynolds" software which records the start and end times for each service  
24 performed by every Aggrieved Employee. Plaintiff and those similarly situated routinely

1 worked more than eight hours per day and forty hours per week, but his wage statements  
2 and other records provided to him never indicated the actual full hours we worked each day  
3 or week, and he was not paid overtime for the days and weeks to which he was entitled to  
4 such premium compensation. Indeed, Defendants falsely edited Plaintiff's timekeeping  
5 records to never show overtime hours worked, and falsely edited his timekeeping records to  
6 falsely include meal periods of ninety minutes or that were not provided, or actually  
7 compelled him to sign timesheets that were inaccurate. However, the service records  
8 clearly show that he was working during the purported meal periods.

9 33. Defendants routinely denied Plaintiff and the PCMs timely and compliant off-duty  
10 meal periods and routinely refused to authorize or permit them to take compliant rest  
11 periods. Plaintiff and similarly situated service technicians typically work at least six-hour  
12 days, yet are routinely denied meal and rest periods for two reasons: (1) Defendants do not  
13 authorize, permit, and/or make available meal and rest breaks to PCMs; and (2) even to the  
14 extent that Defendants do purport to authorize, permit, and/or make available meal and rest  
15 breaks for PCMs, Defendants know or have reason to know that PCMs are too busy with  
16 work during the day as directed by managers to have time to take bona fide timely and  
17 complaint meal and rest breaks. Specifically, Plaintiff and those similarly situated were  
18 often too busy or not able to take timely and compliant meal and rest periods despite  
19 clocking out for their lunch because their managers or dispatchers would instruct them to  
20 complete specific services by a certain time that the managers or dispatchers had promised  
21 customers that their vehicle service would be complete. Management would interrupt with  
22 other work requests as well if they observed an employee not actually performing work.  
23 Defendants' service records show that Plaintiff routinely worked straight through his shift  
24 despite time entries showing he clocked out for a meal period, and on information and

1 belief, so did the PCMs.

2 34. Defendants are aware of the fact that their non-exempt piece-rate employees do not  
3 get the meal and rest periods to which they are entitled and that it maintains policies and  
4 practices that deprive its service technicians of compensation for time worked, including  
5 overtime compensation. Indeed, they fraudulently manipulate the time records for the  
6 specific purpose of depriving Plaintiff and the PCMs of overtime pay and falsely claim that  
7 the employees took meal periods.

8 35. As discussed above, Defendants required Plaintiff and the Aggrieved Employees to  
9 perform work tasks before the beginning of their paid shifts, including moving cars assigned  
10 to other technicians from their work area, performing “health checks,” performing “Courtesy  
11 Road Tests,” MPIs, and other tasks. This work requirement results in Defendants’ service  
12 technicians performing off-the-clock work, including overtime work, which goes unpaid by  
13 Defendants.

14 36. Defendants also require Plaintiff and the PCMs to perform work during their shifts  
15 which is uncompensated because it is not a part of the services for which a piece-rate is  
16 paid, including “upselling” other services, performing “courtesy health checks,” “Courtesy  
17 Road Tests,” and other tasks required by Defendants. The Aggrieved Employees are not  
18 compensated for this time worked with any flag rate.

19 37. Defendants refused to pay Plaintiff and the PCMs for services performed for like  
20 MPIs, which have a flag hour value at other dealerships and were performed on nearly  
21 every single car for which another service was provided, but for which Plaintiff and the  
22 Aggrieved Employees were not paid any flag compensation.

23 38. Defendants also regularly manipulate Plaintiff and the PCMs’ timekeeping records,  
24 changing clock in and out times to inaccurately reflect hours of no more than eight hours

1 per day and/or forty hours per week worked, in order to avoid paying the overtime for which  
2 they are scheduled and owed.

3 39. Defendants are aware of the fact that its service technicians do not get timely and  
4 compliant meal and rest periods to which they are entitled and that they have, and are  
5 depriving those employees of compensation for all time worked, including compensation for  
6 rest breaks pursuant to Labor Code Section 226.2. Defendants' unlawful conduct has been  
7 widespread, repeated, and willful throughout its dealerships in California.

8 **COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA**

9 40. Plaintiff brings the First Count (the FLSA claim) as an "opt-in" collective action  
10 pursuant to 29 U.S.C. § 216(b) on behalf of himself and a proposed collection of similarly  
11 situated employees defined as:

12 All technicians employed by Defendants in the State of California who are  
13 or were paid on a piece-rate basis and/or hourly plus production bonus  
14 basis during the period from October 13, 2013 until resolution of this  
15 action. (the "Collective")

16 41. Plaintiff, individually and on behalf of other similarly situated persons defined above,  
17 seeks relief on a collective basis challenging Defendants' policies and practices of failing to  
18 accurately record all hours worked and failing to properly pay Plaintiff for all hours worked,  
19 including overtime compensation. The number and identity of other similarly situated  
20 persons yet to opt-in and consent to be party-Plaintiffs may be determined from  
21 Defendants' records, and potential opt-ins may be easily and quickly notified of the  
22 pendency of this action.

23 42. Plaintiff's claims for violations of the FLSA may be brought and maintained as an  
24 "opt-in" collective action pursuant to § 216(b) of the FLSA because Plaintiff's FLSA claims  
are similar to the claims of the members of the Collective.

1 43. The members of the Collective are similarly situated, as they have substantially  
2 similar job duties and requirements and are subject to a common policy, practice, or plan  
3 that requires them to perform work in excess of forty (40) hours per week which is not  
4 recorded and without being paid overtime compensation in violation of the FLSA.

5 44. Plaintiff's claims are representative of the members of the Collective and is acting on  
6 behalf of their interests as well as Plaintiff's own interests in bringing this action.

7 45. Plaintiff will fairly and adequately represent and protect the interests of the members  
8 of the Collective. Plaintiff has retained counsel competent and experienced in employment  
9 and wage and hour class action and collective action litigation.

10 46. The similarly situated members of the Collective are known to Defendants, are  
11 readily identifiable, and may be located through Defendants' records. These similarly  
12 situated employees may readily be notified of this action, and allowed to "opt-in" to this  
13 case pursuant to 29 U.S.C. § 216(b) for the purpose of collectively adjudicating their claims  
14 for unpaid wages, unpaid overtime compensation, liquidated damages (or, alternatively,  
15 interest), and attorneys' fees and costs under the FLSA.

16 47. Plaintiff contemplates providing a notice or notices to all of the employees, as  
17 approved by the Court, to be delivered through the United States mail. The notice or  
18 notices shall, among other things, advise each of the FLSA employees that they shall be  
19 entitled to "opt in" to the FLSA Action if they so request by the date specified within the  
20 notice, and that any judgment on the FLSA Action, whether favorable or not, entered in this  
21 case will bind all FLSA collective members who timely request inclusion in the class.

22 **CLASS ACTION ALLEGATIONS UNDER FED. R. CIV. P. 23**

23 48. Plaintiff brings the Second through Seventh Counts (the California Class claims) as  
24 an "opt-out" class action pursuant to Federal Rule of Civil Procedure 23. The California

1 Class is initially defined as:

2 All technicians employed by Defendants in the State of California who are  
3 or were paid on a piece-rate basis and/or hourly plus production bonus  
4 basis during the period from October 13, 2012 until resolution of this  
5 action. (the "Class")

6 49. **Numerosity**: Defendants have employed potentially hundreds of service technicians  
7 in their dealerships' service centers during the applicable statutory period. The number of  
8 Putative Class Members are therefore far too numerous to be individually joined in this  
9 lawsuit.

10 50. **Existence and Predominance of Common Questions**: There are questions of law  
11 and fact common to Plaintiff that predominate over any questions affecting only individual  
12 members of the Class. These common questions of law and fact include, without limitation:

- 13 a. Whether Defendants fail to compensate Putative Class Members for all  
14 hours worked, including overtime compensation, in violation of the Labor  
15 Code and Wage Orders;
- 16 b. Whether Defendants fail to compensate Putative Class Members for all  
17 hours worked in violation of Business and Professions Code §§ 17200 *et*  
18 *seq.*;
- 19 c. Whether Defendants fail to authorize and permit, make available, and/or  
20 provide Putative Class Members meal periods to which they are entitled in  
21 violation of the Labor Code and Wage Orders;
- 22 d. Whether Defendants fail to authorize and permit, make available, and/or  
23 provide Putative Class Members meal periods to which they are entitled in  
24 violation of Business and Professions Code §§ 17200 *et seq.*;
- e. Whether Defendants fail to authorize and permit, make available, and/or

1 provide Putative Class Members rest periods to which they are entitled in  
2 violation of the Labor Code and Wage Orders;

3 f. Whether Defendants fail to authorize and permit, make available, and/or  
4 provide Putative Class Members rest periods to which they are entitled in  
5 violation of Business and Professions Code §§ 17200 *et seq.*;

6 g. Whether Defendants have a policy and/or practice of requiring Putative  
7 Class Members to perform work off-the-clock and without compensation;

8 h. Whether Defendants fail to provide Putative Class Members with timely,  
9 accurate itemized wage statements in violation of the Labor Code and  
10 Wage Orders;

11 i. Whether Defendants fail to pay Putative Class Members all wages due  
12 upon the end of their employment in violation of the Labor Code and Wage  
13 Orders;

14 j. Whether Defendants' failure to pay Putative Class Members all wages due  
15 upon the end of their employment has been an unlawful, unfair, or  
16 fraudulent business act or practice in violation of Business and  
17 Professions Code §§ 17200 *et seq.*; and

18 k. The proper formula for calculating restitution, damages, and penalties  
19 owed to Plaintiff and the Putative Class Members as alleged herein.

20 51. **Typicality**: Plaintiff's claims are typical of the claims of the Class. Defendants'  
21 common policies, practices, and course of conduct in violation of law as alleged herein  
22 have caused Plaintiff to sustain the same or similar injuries and damages. Plaintiff's claims  
23 are thereby representative of and co-extensive with the claims of the Class.

24 52. **Adequacy**: Plaintiff will fairly and adequately represent and protect the interests of



1 the Class because Plaintiff's interests do not conflict with the interests of the members of  
2 the Class he seeks to represent. Plaintiff has retained Counsel competent and experienced  
3 in complex employment and wage and hour class action litigation, and intends to prosecute  
4 this action vigorously. Plaintiff and his Counsel will fairly and adequately protect the  
5 interests of the Class.

6 53. **Superiority**: A class action is superior to other available means for the fair and  
7 efficient adjudication of this controversy. Individual joinder of all putative class members is  
8 not practicable, and questions of law and fact common to Plaintiff and the class  
9 predominate over any questions affecting only individual members of the Class. The injury  
10 suffered by each Putative Class Member, while meaningful on an individual basis, is not of  
11 such magnitude as to make the prosecution of individual actions against Defendants  
12 economically feasible. Individualized litigation increases the delay and expense to all  
13 Parties and the Court. By contrast, class action treatment will allow those similarly situated  
14 persons to litigate their claims in the manner that is most efficient and economical for the  
15 parties and the judicial system.

16 54. In the alternative, the Class may be certified because the prosecution of separate  
17 actions by the individual members of the Class would create a risk of inconsistent or  
18 varying adjudication with respect to individual members of the Class, and, in turn, would  
19 establish incompatible standards of conduct for Defendant.

20 55. Class treatment will allow those similarly situated persons to litigate their claims in  
21 the manner most efficient and economical for the Parties and the judicial system.

22 56. Plaintiff knows of no difficulty that would be encountered in the management of this  
23 litigation that would preclude its maintenance as a class action.

24 57. Plaintiff intends to send notice to all Putative Class Members to the extent required

1 under applicable class action procedures. Plaintiff contemplates providing a notice or  
2 notices to the Class, as approved by the Court, to be delivered through the United States  
3 mail. The notice or notices shall, among other things, advise the Class that they shall be  
4 entitled to “opt out” of the class certified for the non-FLSA claims if they so request by a  
5 date specified within the notice, and that any judgment on the non-FLSA claims, whether  
6 favorable or not, entered in this case will bind all Putative Class Members except those who  
7 affirmatively exclude themselves by timely opting out.

8  
9 **PAGA ALLEGATIONS**

10 58. On October 13, 2016, Plaintiff provided notice to the Labor Workforce and  
11 Development Agency (“LWDA”) and also to Defendants of his intent to seek penalties  
12 pursuant to PAGA as required by that statute. If the LWDA intended to investigate Plaintiff’s  
13 allegations, it had to provide Plaintiff notice of that intent. Sixty-five days have passed since  
14 Plaintiff provided the LWDA notice on October 13, 2016, but Plaintiff did not receive any  
15 notice that the LWDA intended to investigate his allegations. Hence, pursuant to Cal. Labor  
16 Code § 2699.3(a)(2)(a-c), Plaintiff has the right to bring a claim for PAGA penalties.

17 59. On February 2, 2017, Plaintiff submitted to the LWDA and Defendants an amended  
18 notice regarding his intent to seek penalties for violations of Labor Code § 226.2. Sixty-five  
19 days have passed since Plaintiff submitted the amended notice without any indication from  
20 the LWDA of any intent to investigate the allegations. Hence, pursuant to Cal. Labor Code  
21 § 2699.3(a)(2)(a-c), Plaintiff has the right to file this amended complaint adding a claim for  
22 PAGA penalties for § 226.2 violations.

23 60. Plaintiff brings all causes of action as representative claims for penalties and relief  
24 under the PAGA. Plaintiff seeks penalties and relief on behalf of all Aggrieved Employees,

1 initially defined as:

2 All technicians employed by Defendants in the State of California who are  
3 or were paid on a piece-rate basis and/or hourly plus production bonus  
4 basis during the period from October 13, 2015 until resolution of this  
5 action. (the "Aggrieved Employees")

6 61. There are questions of law and fact common to Plaintiff are applicable to all  
7 Aggrieved Employees. These common questions of law and fact include, without limitation:

- 8 1. Whether Defendants fail to compensate the Aggrieved Employees for all  
9 hours worked, including overtime compensation, in violation of the Labor  
10 Code and Wage Orders;
- 11 m. Whether Defendants fail to authorize and permit, make available, and/or  
12 provide the Aggrieved Employees meal periods to which they are entitled  
13 in violation of the Labor Code and Wage Orders;
- 14 n. Whether Defendants fail to authorize and permit, make available, and/or  
15 provide the Aggrieved Employees rest periods to which they are entitled in  
16 violation of the Labor Code and Wage Orders;
- 17 o. Whether Defendants have a policy and/or practice of requiring the  
18 Aggrieved Employees to perform non-piece work off-the-clock and/or  
19 without compensation;
- 20 p. Whether Defendants fail to provide the Aggrieved Employees with timely,  
21 accurate itemized wage statements in violation of the Labor Code and  
22 Wage Orders;
- 23 q. Whether Defendants fail to pay the Aggrieved Employees all wages due  
24 upon the end of their employment in violation of the Labor Code and Wage  
Orders;

1 r. The proper formula for calculating restitution, damages, and penalties  
2 owed to Plaintiff and the Aggrieved Employees as alleged herein.

3 62. As described herein, during the Period one year prior to the filing of this action,  
4 Defendants' wage and hour practices with respect to Plaintiffs and other Aggrieved  
5 Employees who worked in the service centers in its dealerships and were paid on a piece-  
6 rate basis violated Labor Code §§ 201-203, 204, 226, 226.2 226.3, 226.7, 510, 558, 1174,  
7 1174.5 and 1197.

8 63. Labor Code §§ 2699(a) and (g) authorize an Aggrieved Employee to bring a civil  
9 action to recover civil penalties pursuant to the procedures specified in Labor Code §  
10 2699.3. Pursuant to those sections Plaintiffs are entitled to recover civil penalties for  
11 Defendant's violations of the Labor Code as described hereinabove.

12 64. Pursuant to Labor Code § 2699.3, Plaintiffs gave written notice to the California  
13 Labor and Workforce Development Agency ("LWDA") and to Defendants of the specific  
14 provisions of the Labor Code alleged to have been violated and the facts and theories to  
15 support the alleged violations. The LWDA failed to respond to that notice within sixty-five  
16 calendar days. Thus, under California law, Plaintiffs are permitted by Labor Code §  
17 2699.3(a)(2)(C) to file a Complaint for PAGA penalties.

18 65. Pursuant to Labor Code § 2699(g), Plaintiffs are entitled to an award of reasonable  
19 attorneys' fees and costs in connection with their claim for civil penalties.

20 **FIRST CAUSE OF ACTION**  
21 **Violation of the Fair Labor Standards Act**  
22 **29 U.S.C. §§ 201, et seq.**  
23 **(By Plaintiff and the Collective)**

24 66. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
forth herein.

1 67. The FLSA requires that covered employees receive compensation for all hours  
2 worked and overtime compensation not less than one and one-half times the regular rate of  
3 pay for all hours worked in excess of forty hours in a work week. 29 U.S.C. § 207(a)(1).

4 68. At all times material herein, Plaintiff and the Collective are covered employees  
5 entitled to the rights, protections, and benefits provided under the FLSA.

6 69. Defendants are covered employers required to comply with the FLSA's mandates.

7 70. Defendants have violated the FLSA with respect to Plaintiff and the Collective, by,  
8 *inter alia*, failing to compensate Plaintiff and the Collective for all hours worked and, with  
9 respect to such hours, failing to pay the legally mandated overtime premium for such work  
10 and/or minimum wage. Defendants have also violated the FLSA by failing to keep required,  
11 accurate records of all hours worked by Plaintiff and the Collective. 29 U.S.C. § 211(c).

12 71. Plaintiff and the Collective are victims of a uniform and company-wide compensation  
13 policy across all of Defendants' dealerships. This uniform policy, in violation of the FLSA,  
14 has been applied to current and former non-exempt service technicians of Defendants,  
15 working in its dealerships' service centers throughout the United States.

16 72. Plaintiff and the Collective are entitled to damages equal to the mandated pay,  
17 including minimum wage, straight time and overtime premium pay within the three years  
18 preceding the filing of the original complaint, plus periods of equitable tolling, because  
19 Defendants have acted willfully and knew or showed reckless disregard for whether the  
20 alleged conduct was prohibited by the FLSA.

21 73. Defendants have acted neither in good faith nor with reasonable grounds to believe  
22 that its actions and omissions were not a violation of the FLSA, and as a result thereof,  
23 Plaintiff and the Collective are entitled to recover an award of liquidated damages in an  
24 amount equal to the amount of unpaid overtime pay, and/or prejudgment interest at the

1 applicable rate. 29 U.S.C. § 216(b).

2 74. As a result of the aforesaid violations of the FLSA's provisions, pay, including  
3 minimum wage, straight time, and overtime compensation, has been unlawfully withheld by  
4 Defendants from Plaintiff and the Collective. Accordingly, Defendants are liable for unpaid  
5 wages, together with an amount equal as liquidated damages, attorneys' fees, and costs of  
6 this action.

7 75. Wherefore, Plaintiff and the Collective request relief as hereinafter provided.

8  
9 **SECOND CAUSE OF ACTION**  
10 **Failure to Compensate for All Hours Worked**  
11 **(By Plaintiff and the California Class)**

12 76. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
13 forth herein.

14 77. California Labor Code § 1194(a) provides as follows:

15 Notwithstanding any agreement to work for a lesser wage, any employee  
16 receiving less than the legal minimum wage or the legal overtime  
17 compensation applicable to the employee is entitled to recover in a civil  
18 action the unpaid balance of the full amount of this minimum wage or  
19 overtime compensation, including interest thereon, reasonable attorneys'  
20 fees, and costs of suit.

21 78. California Labor Code § 200 defines wages as "all amounts for labor performed by  
22 employees of every description, whether the amount is fixed or ascertained by the standard  
23 of time, task, piece, commission basis or other method of calculation."

24 79. Defendants required Plaintiff and the Class to work off-the-clock without  
25 compensation for their work performed. In other words, Plaintiff and the Class were forced  
26 to perform work for the benefit of Defendants without compensation.

27 80. Specifically, Defendants require its service technicians to perform work "off-the-

1 clock” and without compensation. Plaintiff and the Class Members’ timesheets are edited to  
2 remove any overtime hours, and to insert meal periods that were not actually taken.  
3 Plaintiffs and the class members are also required to perform various services and tasks  
4 that are not a part of services for which they are paid by piece. This results in these  
5 employees performing unpaid, off-the-clock work, which goes unrecorded and unpaid by  
6 Defendants.

7 81. In violation of California law, Defendants knowingly and willfully refuse to perform its  
8 obligations to provide Plaintiff and the Class with compensation for all time worked.  
9 Specifically, Defendants requires its service technicians to perform work that it then  
10 removes from their timekeeping records. Therefore, Defendants committed, and continue to  
11 commit, the acts alleged herein knowingly and willfully and in conscious disregard of the  
12 Plaintiff’s and the Class’s rights. Plaintiff and the Class are thus entitled to recover nominal,  
13 actual, and compensatory damages in amounts according to proof at time of trial.

14 82. As a proximate result of the aforementioned violations, Plaintiff and the Class have  
15 been damaged in an amount according to proof at time of trial.

16 83. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

17 **THIRD CAUSE OF ACTION**  
18 **Failure to Pay Overtime Wages**  
**(By Plaintiff and the California Class)**

19 84. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
20 forth herein.

21 85. California Labor Code § 510(a) provides as follows:

22 Eight hours of labor constitutes a day’s work. Any work in excess of eight  
23 hours in one workday and any work in excess of 40 hours in any one  
24 workweek and the first eight hours worked on the seventh day of work in  
any one workweek shall be compensated at the rate of no less than one  
and one-half times the regular rate of pay for an employee. Any work in

1 excess of 12 hours in one day shall be compensated at the rate of no less  
2 than twice the regular rate of pay for an employee. In addition, any work in  
3 excess of eight hours on any seventh day of a workweek shall be  
4 compensated at the rate of no less than twice the regular rate of pay of an  
employee. Nothing in this section requires an employer to combine more  
than one rate of overtime compensation in order to calculate the amount  
to be paid to an employee for any hour of overtime work.

5 86. California Labor Code § 1194(a) provides as follows:

6 Notwithstanding any agreement to work for a lesser wage, any employee  
7 receiving less than the legal minimum wage or the legal overtime  
8 compensation applicable to the employee is entitled to recover in a civil  
9 action the unpaid balance of the full amount of this minimum wage or  
overtime compensation, including interest thereon, reasonable attorney's  
fees, and costs of suit.

10 87. California Labor Code § 200 defines wages as "all amounts for labor performed by  
11 employees of every description, whether the amount is fixed or ascertained by the standard  
12 of time, task, piece, commission basis or other method of calculation." All such wages are  
13 subject to California's overtime requirements, including those set forth above.

14 88. Defendants' policy and practice of refusing to pay Plaintiff and the Class overtime  
15 compensation when they work in excess of eight hours in a day and/or forty hours in a  
16 week is unlawful. Plaintiff and the Class have worked overtime hours for Defendants  
17 without being paid overtime premiums in violation of the California Labor Code, applicable  
18 IWC Wage Orders, and other applicable law.

19 89. As alleged above, Defendants require their service technicians to perform off-the-  
20 clock work, including unpaid overtime work, knowing full well that such work is being  
21 performed before and after their scheduled or paid shift. Defendants have, therefore,  
22 knowingly and willfully refused to perform its obligations to compensate Plaintiff and the  
23 Class for all premium wages for overtime work. As a proximate result of the aforementioned  
24 violations, Defendants have damaged Plaintiff and the Class in amounts to be determined



1 according to proof at time of trial, but in an amount in excess of the jurisdictional  
2 requirements of this Court.

3 90. Furthermore, Defendants instituted an Alternative Work Schedule without complying  
4 with the reporting requirements of Labor Code § 511 and the applicable Wage Order.  
5 Hence, the Alternative Work Schedule is invalid, and service technicians who worked under  
6 the AWS are entitled to overtime compensation for hours worked in excess of eight per day.

7 91. Defendants are liable to Plaintiff and the Class for the unpaid overtime and civil  
8 penalties, with interest thereon. Furthermore, they are entitled to an award of attorneys'  
9 fees and costs as set forth below.

10 92. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

11 **FOURTH CAUSE OF ACTION**  
12 **Failure to Authorize, Permit, and/or Make Available Meal and Rest Periods**  
**(By Plaintiff and the California Class)**

13 93. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
14 forth herein.

15 94. California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Orders  
16 require Defendants to authorize, permit, and/or make available timely and compliant meal  
17 and rest periods to its employees. Labor Code §§ 226.7 and 512 and the IWC Wage  
18 Orders prohibit employers from employing an employee for more than five hours without an  
19 off-duty meal period of not less than thirty minutes, and from employing an employee more  
20 than ten hours per day without providing the employee with a second off-duty meal period  
21 of not less than thirty minutes. Section 226.7 and the applicable Wage Orders also require  
22 employers to authorize and permit employees to take ten minutes of net rest time per four  
23 hours, or major fraction thereof of work, and to pay employees their full wages during those  
24 rest periods. Unless the employee is relieved of all duty during the thirty-minute meal period

1 and ten-minute rest period, the employee is considered “on duty” and the meal or rest  
2 period is counted as time worked under the applicable wage orders.

3 95. Under Labor Code § 226.7(b) and the applicable Wage Orders, an employer who  
4 fails to authorize and permit a required meal period must, as compensation, pay the  
5 employee one hour of pay at the employee’s regular rate of compensation for each  
6 workday that the meal period was not authorized and permitted. Similarly, an employer  
7 must pay an employee denied a required rest period one hour of pay at the employee’s  
8 regular rate of compensation for each workday that the rest period was not authorized and  
9 permitted.

10 96. Despite these requirements, Defendants have knowingly and willfully refused to  
11 perform their obligations to authorize and permit Plaintiff and the Class to take the timely  
12 and compliant off-duty meal and rest periods to which they are entitled. Plaintiff and the  
13 Class are routinely denied rest periods and work through their meal periods. Furthermore,  
14 Defendants knowingly compel Plaintiff and the Class Members to falsely sign timesheets  
15 that include breaks that were never taken, or simply falsely inserts (untaken) meal periods  
16 into the timekeeping records without even informing the employees of the unilateral,  
17 improper and inaccurate manipulations.

18 97. Defendants have also failed to pay Plaintiff and the Class one hour of pay for each  
19 untimely, non-compliant meal and/or rest period that they are denied.

20 98. Defendants’ conduct described herein violates California Labor Code §§ 226.7 and  
21 512 and the applicable Wage Orders. Therefore, pursuant to Labor Code § 226.7(b),  
22 Plaintiff and the Class are entitled to compensation for the failure to authorize and permit  
23 meal and rest periods, plus interest, attorneys’ fees, expenses, and costs of suit.

24 99. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

1 **FIFTH CAUSE OF ACTION**  
2 **Waiting Time Penalties Pursuant to Labor Code §§ 201-203**  
3 **(By Plaintiff and the California Class)**

4 100. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
5 forth herein.

6 101. Labor Code § 201 provides:

7 If an employer discharges an employee, the wages earned and unpaid at  
8 the time of discharge are due and payable immediately.

9 102. Labor Code § 202 provides:

10 If an employee not having a written contract for a definite period quits his  
11 or her employment, his or her wages shall become due and payable not  
12 later than 72 hours thereafter, unless the employee has given 72 hours  
13 previous notice of his or her intention to quit, in which case the employee  
14 is entitled to his or her wages at the time of quitting.

15 103. Labor Code § 203 provides, in relevant part:

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

22 104. Plaintiff and some of the Putative Class Members have left their employment with  
23 Defendants during the statutory period, at which time Defendants owed them unpaid  
24 wages. These earned, but unpaid, wages derive from uncompensated overtime, time spent  
working through their meal and rest breaks, and from other uncompensated time spent  
performing other work-related activities.

105. Defendants willfully refused, and continue to refuse, to provide Plaintiff and the Class  
with overtime pay, meal and rest period premium pay, and with payment for unrecorded  
work performed. In particular, as alleged above, Defendants are aware Plaintiff and the  
Class regularly work in excess of eight hours per day and/or forty hours per week yet

1 affirmatively refuses to provide overtime compensation; it is aware that Plaintiff and the  
2 Class miss or have interrupted their meal and unpaid rest breaks as a result of Defendants'  
3 unlawful policies and practices, but Defendants, nevertheless, refuses to authorize  
4 premium pay for missed or interrupted meal and rest periods. Indeed, there is not even any  
5 method for reporting non-compliant meal or rest periods or seeking premium pay for same.  
6 Likewise, as alleged above, although Defendants knew, and continue to know, full well that  
7 Plaintiff and the Class performed required off-the-clock work before, during, and after their  
8 scheduled or paid shifts, Defendants still refuse to pay Plaintiff and the Class for the off-the-  
9 clock work performed.

10 106. Accordingly, Defendants willfully refused and continue to refuse to pay those  
11 members of the Class that left their employment with Defendants all the wages that were  
12 due and owing them upon the end of their employment. As a result of Defendants' actions,  
13 Plaintiff and the Putative Class Members have suffered and continue to suffer substantial  
14 losses, including lost earnings and interest.

15 107. Defendants' willful failure to pay the former employees the wages due and owing  
16 them constitutes a violation of Labor Code §§ 201-202. As a result, Defendants are liable to  
17 them for all penalties owing pursuant to Labor Code §§ 201-203.

18 108. In addition, Labor Code § 203 provides that an employee's wages will continue as a  
19 penalty up to thirty days from the time the wages were due. Therefore, the former  
20 employees are entitled to penalties pursuant to Labor Code § 203, plus interest.

21 109. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

22 **SIXTH CAUSE OF ACTION**  
23 **Violations of Labor Code § 226 – Itemized Wage Statements**  
24 **(By Plaintiff and the California Class)**

110. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set

1   forth herein.

2   111.   Labor Code § 226(a) provides:

3           Every employer shall, semimonthly or at the time of each payment of  
4           wages, furnish each of his or her employees, either as a detachable part  
5           of the check, draft, or voucher paying the employee's wages, or separately  
6           when wages are paid by personal check or cash, an accurate itemized  
7           statement in writing showing (1) gross wages earned, (2) total hours  
8           worked by the employee, except for any employee whose compensation is  
9           solely based on a salary and who is exempt from payment of overtime  
10          under subdivision (a) of Section 515 or any applicable order of the  
11          Industrial Welfare Commission, (3) the number of piece-rate units earned  
12          and any applicable piece rate if the employee is paid on a piece-rate  
13          basis, (4) all deductions, provided that all deductions made on written  
14          orders of the employee may be aggregated and shown as one item, (5)  
15          net wages earned, (6) the inclusive dates of the period for which the  
16          employee is paid, (7) the name of the employee and his or her social  
17          security number, (8) the name and address of the legal entity that is the  
18          employer, and (9) all applicable piece-rate rates in effect during the pay  
19          period and the corresponding number of hours worked at each piece-rate  
20          rate by the employee. The deductions made from payments of wages  
21          shall be recorded in ink or other indelible form, properly dated, showing  
22          the month, day, and year, and a copy of the statement or a record of the  
23          deductions shall be kept on file by the employer for at least four years at  
24          the place of employment or at a central location within the State of  
25          California.

15   112.   Labor Code § 226(e) provides:

16          An employee suffering injury as a result of a knowing and intentional  
17          failure by an employer to comply with subdivision (a) is entitled to recover  
18          the greater of all actual damages or fifty dollars (\$50) for the initial pay  
19          period in which a violation occurs and one hundred dollars (\$100) per  
20          employee for each violation in a subsequent pay period, not exceeding an  
21          aggregate penalty of four thousand dollars (\$4,000), and is entitled to an  
22          award of costs and reasonable attorney's fees.

20   Plaintiff seeks to recover actual damages, costs, and attorneys' fees under this section.

21   113.   Defendants have failed to provide timely, accurate, itemized wage statements to  
22   Plaintiff and the Class in accordance with Labor Code § 226(a) and the IWC Wage Orders.  
23   In particular, the wage statements the Defendants provides its employees, including to  
24   Plaintiff and the Class, do not accurately reflect the actual hours worked, actual gross

1 wages earned, or actual net wages earned. This is because, in part, Defendants  
2 manipulate the time records and delete any hours worked that would require overtime  
3 compensation, and because there are no premium wages for non-compliant/missed meal  
4 and rest periods, and because the hours and units are either missing or otherwise  
5 inaccurate.

6 114. Defendants' failure to comply with Labor Code § 226(a) was and continues to be  
7 knowing and intentional. Although, as alleged herein, Defendants were aware that Plaintiff  
8 and the Class performed work that entitled them to overtime pay, Defendants  
9 systematically fail to include this time worked and overtime pay in Plaintiff's wage  
10 statements.

11 115. Plaintiff and the Class have suffered injury as a result of Defendants' knowing and  
12 intentional failure to provide timely, accurate itemized wage statements to Plaintiff and the  
13 Class in accordance with Labor Code § 226(a). In particular, the injury stemming from  
14 Defendants' violations is evidenced by this live and active dispute regarding unpaid wages,  
15 including, overtime pay, between the Parties. As a result of Defendants' violations, Plaintiff  
16 and the Class are required to undertake the difficult and costly task of attempting to  
17 reconstruct Defendants' incomplete and inaccurate time and pay records to ensure that  
18 they are paid for all hours worked as required by California law.

19 116. Defendants are liable to Plaintiff and the Class alleged herein for the amounts  
20 described above in addition to the civil penalties set forth below, with interest thereon.  
21 Furthermore, Plaintiff and the Class are entitled to an award of attorneys' fees and costs as  
22 set forth below.

23 117. Wherefore, Plaintiff and the Class pray for relief as set forth below.

24 **SEVENTH CAUSE OF ACTION**

1                   **Violation of California Business and Professions Code §§ 17200, et seq.**  
2                   **(By Plaintiff and the California Class)**

3 118. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
4 forth herein.

5 119. California Business and Professions Code §§ 17200, *et seq.* prohibits unfair  
6 competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

7 120. California Business and Professions Code § 17204 allows a person injured by the  
8 unfair business acts or practices to prosecute a civil action for violation of the UCL.

9 121. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce  
10 minimum labor standards in order to ensure employees are not required to work under  
11 substandard and unlawful conditions, and to protect employers who comply with the law  
12 from those who attempt to gain competitive advantage at the expense of their workers by  
13 failing to comply with minimum labor standards.

14 122. Beginning at an exact date unknown to Plaintiff and the Class, but at least since the  
15 date four years prior to the filing of this suit, Defendants have committed acts of unfair  
16 competition as defined by the Unfair Business Practices Act by engaging in the unlawful,  
17 unfair, and fraudulent business acts and practices described in this Complaint, including,  
18 but not limited to:

- 19                   a. violations of Labor Code § 1194 and IWC Wage Orders pertaining to the  
20                   payment of wages;
- 21                   b. violations of Labor Code § 510 and applicable IWC Wage Orders  
22                   pertaining to overtime;
- 23                   c. violations of Labor Code §§ 226.7 and 512 and IWC Wage Orders  
24                   pertaining to meal and rest breaks

- d. violations of Labor Code §226 pertaining to wage statements; and
- e. violations of Labor Code §§ 201-203.

123. The violations of these laws and regulations, as well as of the fundamental California public policies protecting wages and discouraging overtime labor underlying them, serve as unlawful predicate acts and practices for purposes of Business and Professions Code §§ 17200, *et seq.*

124. The acts and practices described above constitute unfair, unlawful, and fraudulent business practices, and unfair competition, within the meaning of Business and Professions Code §§ 17200, *et seq.* Among other things, the acts and practices have taken from Plaintiff' and the Class's wages rightfully earned by them, while enabling the Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

125. Business and Professions Code § 17203 provides that the Court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition.

126. As a direct and proximate result of the aforementioned acts and practices, Plaintiff and the Class have suffered a loss of money and property, in the form of unpaid wages which are due and payable to them.

127. Business and Professions Code § 17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of such unfair competition. Plaintiff and the Class are entitled to restitution pursuant to Business and Professions Code § 17203 for all wages and payments unlawfully withheld from employees during the four-year period prior to the filing of this Complaint.

128. Plaintiff's success in this action will enforce important rights affecting the public interest and, in that regard, Plaintiff sues on behalf of himself and others similarly situated.



1 Plaintiff and the Class seek and are entitled to unpaid wages, declaratory relief, and all  
2 other equitable remedies owing to them.

3 129. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.  
4 There is a financial burden involved in pursuing this action, the action is seeking to  
5 vindicate a public right, and it would be against the interests of justice to penalize Plaintiff  
6 by forcing them to pay attorneys' fees from the recovery in this action. Attorneys' fees are  
7 appropriate pursuant to Code of Civil Procedure § 1021.5 and otherwise.

8 130. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

9 **EIGHTH CAUSE OF ACTION**

10 Violation of Labor Code § 226.2 – Compensation for Non-Productive Time  
(By Plaintiff and the Class)

11 131. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
12 forth herein.

13 132. Cal. Labor Code § 226.2 provides that workers, like Plaintiff and those similarly  
14 situated, "shall be compensated for rest and recovery periods and other nonproductive time  
15 separate from any piece-rate compensation."

16 133. As described hereinabove, Defendants' wage and hour practices with respect to  
17 Plaintiffs and those similarly situated violated Cal. Labor Code § 226.2 by failing to  
18 compensate piece-rate employees for non-productive time, and all work performed  
19 providing services for which no piece-rate was provided, and for paid rest periods at the  
20 regular rate of pay.

21 134. Defendants are liable to Plaintiff and the Class alleged herein for the amounts  
22 described above in addition to the civil penalties set forth below, with interest thereon.  
23 Furthermore, Plaintiff and the Class are entitled to an award of attorneys' fees and costs as  
24 set forth below.

1 135. Wherefore, Plaintiff and the Class pray for relief as set forth below.

2 **NINTH CAUSE OF ACTION**  
3 **PAGA Penalties for Failure to Compensate for All Hours Worked**  
4 **(By Plaintiff and the Aggrieved Employes)**

5 136. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
6 forth herein.

7 137. California Labor Code § 1194(a) provides as follows:

8 Notwithstanding any agreement to work for a lesser wage, any employee  
9 receiving less than the legal minimum wage or the legal overtime  
10 compensation applicable to the employee is entitled to recover in a civil  
11 action the unpaid balance of the full amount of this minimum wage or  
12 overtime compensation, including interest thereon, reasonable attorneys'  
13 fees, and costs of suit.

14 138. California Labor Code § 200 defines wages as "all amounts for labor performed by  
15 employees of every description, whether the amount is fixed or ascertained by the standard  
16 of time, task, piece, commission basis or other method of calculation."

17 139. Defendants required Plaintiff and the Aggrieved Employees to work off-the-clock  
18 and/or without compensation for their work performed. In other words, Plaintiff and the  
19 Aggrieved Employees were forced to perform work for the benefit of Defendants without  
20 compensation.

21 140. Specifically, Defendants requires service technicians to perform work "off-the-clock"  
22 and without compensation. Plaintiff and the Aggrieved Employees' timesheets are edited to  
23 remove any overtime hours, and to insert meal periods that were not actually taken.  
24 Plaintiffs and the Aggrieved Employees are also required to perform various services and  
tasks that are not a part of services for which they are paid by piece. This results in these  
employees performing unpaid, off-the-clock work, which goes unrecorded and unpaid by  
Defendants.

1 141. In violation of California law, Defendants knowingly and willfully refuse to perform  
2 their obligations to provide Plaintiff and the Aggrieved Employees with compensation for all  
3 time worked. Specifically, Defendants require their service technicians to perform work that  
4 they then remove from their timekeeping records. Therefore, Defendants committed, and  
5 continue to commit, the acts alleged herein knowingly and willfully and in conscious  
6 disregard of the Plaintiff and the Aggrieved Employees' rights. Plaintiff and the Aggrieved  
7 Employees are thus entitled to recover nominal, actual, and compensatory damages and  
8 penalties in amounts according to proof at time of trial.

9 142. As a proximate result of the aforementioned violations, Plaintiff and the Aggrieved  
10 Employees have been damaged in an amount according to proof at time of trial.

11 143. Wherefore, Plaintiff and the Aggrieved Employees request relief as hereinafter  
12 provided.

13 **TENTH CAUSE OF ACTION**  
14 **PAGA Penalties Failure to Pay Overtime Wages**  
**(By Plaintiff and the Aggrieved Employees)**

15 144. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
16 forth herein.

17 145. California Labor Code § 510(a) provides as follows:

18 Eight hours of labor constitutes a day's work. Any work in excess of eight  
19 hours in one workday and any work in excess of 40 hours in any one  
20 workweek and the first eight hours worked on the seventh day of work in  
21 any one workweek shall be compensated at the rate of no less than one  
22 and one-half times the regular rate of pay for an employee. Any work in  
23 excess of 12 hours in one day shall be compensated at the rate of no less  
24 than twice the regular rate of pay for an employee. In addition, any work in  
excess of eight hours on any seventh day of a workweek shall be  
compensated at the rate of no less than twice the regular rate of pay of an  
employee. Nothing in this section requires an employer to combine more  
than one rate of overtime compensation in order to calculate the amount  
to be paid to an employee for any hour of overtime work.

1 146. California Labor Code § 1194(a) provides as follows:

2 Notwithstanding any agreement to work for a lesser wage, any employee  
3 receiving less than the legal minimum wage or the legal overtime  
4 compensation applicable to the employee is entitled to recover in a civil  
5 action the unpaid balance of the full amount of this minimum wage or  
6 overtime compensation, including interest thereon, reasonable attorney's  
7 fees, and costs of suit.

8 147. California Labor Code § 200 defines wages as "all amounts for labor performed by  
9 employees of every description, whether the amount is fixed or ascertained by the standard  
10 of time, task, piece, commission basis or other method of calculation." All such wages are  
11 subject to California's overtime requirements, including those set forth above.

12 148. Defendants' policy and practice of refusing to pay Plaintiff and the Aggrieved  
13 Employees overtime compensation when they work in excess of eight hours in a day and/or  
14 forty hours in a week is unlawful. Plaintiff and the Aggrieved Employees have worked  
15 overtime hours for Defendants without being paid overtime premiums in violation of the  
16 California Labor Code, applicable IWC Wage Orders, and other applicable law.

17 149. As alleged above, Defendants require their service technicians to perform off-the-  
18 clock work, including unpaid overtime work, knowing full well that such work is being  
19 performed before and after their scheduled or paid shift. Defendants have, therefore,  
20 knowingly and willfully refused to perform its obligations to compensate Plaintiff and the  
21 Aggrieved Employees for all premium wages for overtime work. As a proximate result of the  
22 aforementioned violations, Defendants have damaged Plaintiff and the Aggrieved  
23 Employees in amounts to be determined according to proof at time of trial, but in an amount  
24 in excess of the jurisdictional requirements of this Court.

150. As described above, Defendants implemented an invalid Alternative Work Schedule  
by failing to report the results of any asserted secret ballot to the Department of Labor

1 Standards Enforcement as required by Labor Code § 511 and the applicable Wage Order,  
2 entitling all Aggrieved Employees who worked under the invalid AWS to overtime  
3 compensation for hours worked in excess of eight per day.

4 151. Defendants are liable to Plaintiff and the Aggrieved Employees for the unpaid  
5 overtime and civil penalties, with interest thereon. Furthermore, they are entitled to an  
6 award of attorneys' fees and costs as set forth below.

7 152. Wherefore, Plaintiff and the Aggrieved Employees request relief as hereinafter  
8 provided.

9 **ELEVENTH CAUSE OF ACTION**  
10 **PAGA Penalties for Failure to Authorize, Permit, and/or Make Available Meal and**  
11 **Rest Periods**  
12 **(By Plaintiff and the Aggrieved Employees)**

13 153. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
14 forth herein.

15 154. California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Orders  
16 require Defendants to authorize, permit, and/or make available timely and compliant meal  
17 and rest periods to its employees. Labor Code §§ 226.7 and 512 and the IWC Wage  
18 Orders prohibit employers from employing an employee for more than five hours without an  
19 off-duty meal period of not less than thirty minutes, and from employing an employee more  
20 than ten hours per day without providing the employee with a second off-duty meal period  
21 of not less than thirty minutes. Section 226.7 and the applicable Wage Orders also require  
22 employers to authorize and permit employees to take ten minutes of net rest time per four  
23 hours, or major fraction thereof of work, and to pay employees their full wages during those  
24 rest periods. Unless the employee is relieved of all duty during the thirty-minute meal period  
and ten-minute rest period, the employee is considered "on duty" and the meal or rest

1 period is counted as time worked under the applicable wage orders.

2 155. Under Labor Code § 226.7(b) and the applicable Wage Orders, an employer who  
3 fails to authorize and permit a required meal period must, as compensation, pay the  
4 employee one hour of pay at the employee's regular rate of compensation for each  
5 workday that the meal period was not authorized and permitted. Similarly, an employer  
6 must pay an employee denied a required rest period one hour of pay at the employee's  
7 regular rate of compensation for each workday that the rest period was not authorized and  
8 permitted.

9 156. Despite these requirements, Defendants have knowingly and willfully refused to  
10 perform their obligations to authorize and permit Plaintiff and the Aggrieved Employees to  
11 take the timely and compliant off-duty meal and rest periods to which they are entitled.  
12 Plaintiff and the Aggrieved Employees are routinely denied rest periods and work through  
13 their meal periods. Furthermore, Defendants knowingly compel Plaintiff and the Aggrieved  
14 Employees to falsely sign timesheets that include breaks that were never taken, or simply  
15 falsely inserts (untaken) meal periods into the timekeeping records without even informing  
16 the employees of the unilateral, improper and inaccurate manipulations.

17 157. Defendants have also failed to pay Plaintiff and the Aggrieved Employees one hour  
18 of pay for each untimely, non-compliant meal and/or rest period that they are denied.

19 158. Defendants' conduct described herein violates California Labor Code §§ 226.7 and  
20 512 and the applicable Wage Orders. Therefore, pursuant to PAGA and Labor Code §  
21 226.7(b), Plaintiff and the Aggrieved Employees are entitled to compensation for the failure  
22 to authorize and permit meal and rest periods, plus interest, attorneys' fees, expenses, and  
23 costs of suit.

24 159. Wherefore, Plaintiff and the Aggrieved Employees request relief as hereinafter

1 provided.

2 **TWELFTH CAUSE OF ACTION**  
3 **PAGA Penalties for Waiting Time Penalties Pursuant to Labor Code §§ 201-203**  
4 **(By Plaintiff and the Aggrieved Employees)**

5 160. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
6 forth herein.

7 161. Labor Code § 201 provides:

8 If an employer discharges an employee, the wages earned and unpaid at  
9 the time of discharge are due and payable immediately.

10 162. Labor Code § 202 provides:

11 If an employee not having a written contract for a definite period quits his  
12 or her employment, his or her wages shall become due and payable not  
13 later than 72 hours thereafter, unless the employee has given 72 hours  
14 previous notice of his or her intention to quit, in which case the employee  
15 is entitled to his or her wages at the time of quitting.

16 163. Labor Code § 203 provides, in relevant part:

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

23 164. Plaintiff and some of the Aggrieved Employees have left their employment with  
24 Defendants during the statutory period, at which time Defendants owed them unpaid  
wages. These earned, but unpaid, wages derive from uncompensated overtime, time spent  
working through their meal and rest breaks, and from other uncompensated time spent  
performing other work-related activities.

165. Defendants willfully refused, and continue to refuse, to provide Plaintiff and the  
Aggrieved Employees with overtime pay, meal and rest period premium pay, and with  
payment for unrecorded work performed. In particular, as alleged above, Defendants are

1 aware Plaintiff and the Aggrieved Employees regularly work in excess of eight hours per  
2 day and/or forty hours per week yet affirmatively refuse to provide overtime compensation;  
3 they are aware that Plaintiff and the Aggrieved Employees miss or have interrupted their  
4 meal and unpaid rest breaks as a result of Defendants' unlawful policies and practices, but  
5 Defendants nevertheless refuse to authorize premium pay for missed or interrupted meal  
6 and rest periods. Indeed, there is not even any method for reporting non-compliant meal or  
7 rest periods or seeking premium pay for same. Likewise, as alleged above, although  
8 Defendants knew, and continue to know, full well that Plaintiff and the Aggrieved  
9 Employees performed required off-the-clock work before, during, and after their scheduled  
10 or paid shifts, Defendants still refuse to pay Plaintiff and the Aggrieved Employees for the  
11 off-the-clock work performed.

12 166. Accordingly, Defendants willfully refused and continue to refuse to pay those  
13 Aggrieved Employees that left their employment with Defendants all the wages that were  
14 due and owing them upon the end of their employment. As a result of Defendants' actions,  
15 Plaintiff and the aggrieved former employees have suffered and continue to suffer  
16 substantial losses, including lost earnings and interest.

17 167. Defendants' willful failure to pay the former employees the wages due and owing  
18 them constitutes a violation of Labor Code §§ 201-202. As a result, Defendants are liable to  
19 them under the PAGA for all penalties owing pursuant to Labor Code §§ 201-203.

20 168. In addition, Labor Code § 203 provides that an employee's wages will continue as a  
21 penalty up to thirty days from the time the wages were due. Therefore, the former  
22 employees are entitled to penalties via PAGA pursuant to Labor Code § 203, plus interest.

23 169. Wherefore, Plaintiff and the Aggrieved Employees request relief as hereinafter  
24 provided.



1 **THIRTEENTH CAUSE OF ACTION**  
2 **PAGA Penalties for Violations of Labor Code §§ 226 and 226.3 – Itemized Wage**  
3 **Statements**  
4 **(By Plaintiff and the Aggrieved Employees)**

5 170. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
6 forth herein.

7 171. Labor Code § 226(a) provides:

8 Every employer shall, semimonthly or at the time of each payment of  
9 wages, furnish each of his or her employees, either as a detachable part  
10 of the check, draft, or voucher paying the employee's wages, or separately  
11 when wages are paid by personal check or cash, an accurate itemized  
12 statement in writing showing (1) gross wages earned, (2) total hours  
13 worked by the employee, except for any employee whose compensation is  
14 solely based on a salary and who is exempt from payment of overtime  
15 under subdivision (a) of Section 515 or any applicable order of the  
16 Industrial Welfare Commission, (3) the number of piece-rate units earned  
17 and any applicable piece rate if the employee is paid on a piece-rate  
18 basis, (4) all deductions, provided that all deductions made on written  
19 orders of the employee may be aggregated and shown as one item, (5)  
20 net wages earned, (6) the inclusive dates of the period for which the  
21 employee is paid, (7) the name of the employee and his or her social  
22 security number, (8) the name and address of the legal entity that is the  
23 employer, and (9) all applicable piece-rate rates in effect during the pay  
24 period and the corresponding number of hours worked at each piece-rate  
rate by the employee. The deductions made from payments of wages  
shall be recorded in ink or other indelible form, properly dated, showing  
the month, day, and year, and a copy of the statement or a record of the  
deductions shall be kept on file by the employer for at least four years at  
the place of employment or at a central location within the State of  
California.

172. Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional  
failure by an employer to comply with subdivision (a) is entitled to recover  
the greater of all actual damages or fifty dollars (\$50) for the initial pay  
period in which a violation occurs and one hundred dollars (\$100) per  
employee for each violation in a subsequent pay period, not exceeding an  
aggregate penalty of four thousand dollars (\$4,000), and is entitled to an  
award of costs and reasonable attorney's fees.

Plaintiff seeks to recover actual damages, costs, and attorneys' fees under this section.

173. Labor Code § 226.3 provides that:

1 Any employer who violates subdivision (a) of Section 226 shall be subject  
2 to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
3 employee per violation in an initial citation and one thousand dollars  
4 (\$1,000) per employee for each violation in a subsequent citation, for  
5 which the employer fails to provide the employee a wage deduction  
6 statement or fails to keep the records required in subdivision (a) of Section  
7 226. The civil penalties provided for in this section are in addition to any  
8 other penalty provided by law. In enforcing this section, the Labor  
9 Commissioner shall take into consideration whether the violation was  
10 inadvertent, and in his or her discretion, may decide not to penalize an  
11 employer for a first violation when that violation was due to a clerical error  
12 or inadvertent mistake.

13 Plaintiff seeks to recover those penalties via PAGA on behalf of the state under this section.

14 174. Defendants have failed to provide timely, accurate, itemized wage statements to  
15 Plaintiff and the Aggrieved Employees in accordance with Labor Code § 226(a) and the  
16 IWC Wage Orders. In particular, the wage statements the Defendants provides their  
17 employees, including to Plaintiff and the Aggrieved Employees, do not accurately reflect the  
18 actual hours worked, actual gross wages earned, actual net wages earned, or accurate  
19 piece rates or any rates actually paid. This is because, in part, Defendants manipulate the  
20 time records and deletes any hours worked that would require overtime compensation,  
21 because there are no premium wages for non-compliant/missed meal and rest periods, and  
22 because there were at times no compensation paid for non-piece work.

23 175. Defendants' failure to comply with Labor Code § 226(a) was and continues to be  
24 knowing and intentional. Although, as alleged herein, Defendants were aware that Plaintiff  
and the Aggrieved Employees performed work that entitled them to overtime pay,  
Defendants systematically failed to include this time worked and overtime pay in Plaintiff's  
wage statements.

176. Plaintiff and the Aggrieved Employees have suffered injury as a result of Defendants'  
knowing and intentional failure to provide timely, accurate itemized wage statements to

1 Plaintiff and the Aggrieved Employees in accordance with Labor Code § 226(a). In  
2 particular, the injury stemming from Defendants' violations is evidenced by this live and  
3 active dispute regarding unpaid wages, including, overtime pay, between the Parties. As a  
4 result of Defendants' violations, Plaintiff and the Aggrieved Employees are required to  
5 undertake the difficult and costly task of attempting to reconstruct Defendants' incomplete  
6 and inaccurate time and pay records to ensure that they are paid for all hours worked as  
7 required by California law.

8 177. Defendants are liable to Plaintiff and the Aggrieved Employees alleged herein for the  
9 amounts described above in addition to the civil penalties set forth below, with interest  
10 thereon. Furthermore, Plaintiff and the Aggrieved Employees are entitled to an award of  
11 attorneys' fees and costs as set forth below.

12 178. Wherefore, Plaintiff and the Aggrieved Employees pray for relief as set forth below.

13 **FOURTEENTH CAUSE OF ACTION**  
14 **PAGA Penalties for Violations of Labor Code §§ 226.2 – Compensation for Non-**  
15 **Productive Time**  
16 **(By Plaintiff and the Aggrieved Employees)**

17 179. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
18 forth herein.

19 180. Labor Code § 226.2 provides workers, like Plaintiff and those similarly situated,  
20 "shall be compensated for rest and recovery periods and other nonproductive time separate  
21 from any piece-rate compensation." Plaintiff seeks to recover civil penalties via PAGA on  
22 behalf of the state under this section, along with the compensation that Defendants have  
23 failed to pay to Plaintiff and the Aggrieved Employees.

24 181. As described hereinabove, Defendants' wage and hour practices with respect to  
Plaintiffs and those similarly situated violated Labor Code § 226.2 by failing to compensate

1 piece-rate employees for non-productive time, all work performed providing services for  
2 which no piece-rate was provided, and for failing to compensate service technicians for  
3 paid rest periods actually provided at their regular rate of pay.

4 182. Defendants are liable to Plaintiff and the Class alleged herein for the amounts  
5 described above in addition to the civil penalties set forth below, with interest thereon.  
6 Furthermore, Plaintiff and the Class are entitled to an award of attorneys' fees and costs as  
7 set forth below.

8 183. Wherefore, Plaintiff and the Class pray for relief as set forth below.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees prays for  
11 relief as follows:

- 12 1. Damages and restitution according to proof at trial for all unpaid wages and  
13 other injuries, as provided by the California Labor Code;
- 14 2. For a declaratory judgment that Defendants have violated the California  
15 Labor Code and public policy as alleged herein;
- 16 3. For a declaratory judgment that Defendants have violated Business and  
17 Professions Code §§ 17200, *et seq.*, as a result of the aforementioned  
18 violations of the Labor Code and of California public policy protecting  
19 wages;
- 20 4. For a declaratory judgment that Defendants have violated the Fair Labor  
21 Standards Act as alleged herein;
- 22 5. For an equitable accounting to identify, locate, and restore to all current and  
23 former Plaintiff the wages they are due, with interest thereon;
- 24 6. For an order awarding Plaintiff, the Collective, and the Class liquidated and

1 compensatory damages, including lost wages, earnings, and other  
2 employee benefits, restitution, and all other sums of money owed to Plaintiff,  
3 the Collective, and the Class, together with interest on these amounts,  
4 according to proof;

5 7. For an order awarding Plaintiff and the Class civil penalties pursuant to the  
6 Labor Code provisions cited herein, with interest thereon;

7 8. For an award of reasonable attorneys' fees as provided by the California  
8 Labor Code, California Code of Civil Procedure § 1021.5, and/or other  
9 applicable law;

10 9. For all costs of suit;

11 10. For interest on any damages and/or penalties awarded, as provided by  
12 applicable law;

13 11. Penalties, including damages and restitution according to proof at trial for all  
14 unpaid wages and other injuries, as provided by the California Labor Code  
15 via PAGA;

16 12. For an award of reasonable attorneys' fees as provided by the California  
17 Labor Code including PAGA; and

18 13. For such other and further relief as this Court deems just and proper.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff on behalf of himself and the Class, Collective, and/or Aggrieved Employees are entitled to a jury.

Respectfully submitted,

Date: May 22, 2018

HOYER & HICKS



---

Richard A. Hoyer  
Ryan L. Hicks  
*Attorneys for Plaintiff*  
WYATT COPPERNOLL

1 **PROOF OF SERVICE BY EMAIL**

2 I declare that I am employed in the City and County of San Francisco, State of  
3 California. I am over eighteen years of age and not a party to the within entitled cause. My  
4 business address is 4 Embarcadero Center, Suite 1400, San Francisco, California 94111.

5 On the date below, I served:

6 **SECOND AMENDED COMPLAINT**

7 to:

8 Joshua Cliffe  
9 Perry Miska  
10 Littler Mendelson  
11 333 Bush Street, 34<sup>th</sup> Floor  
12 San Francisco, CA 94104  
13 jCliffe@littler.com  
14 PMiska@littler.com  
15 Bpalomo@littler.com

16 on:

17 **JUNE 11, 2018**

18 **BY EMAIL:** I served the document(s) on the person(s) listed above by emailing them  
19 pursuant to the parties' written e-service agreement. I declare under penalty of perjury that  
20 the foregoing is true and correct, and that this declaration was executed at San Francisco,  
21 California, on the date above.

22   
23 Ryan L. Hicks  
24