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10  
11 **SUPERIOR COURT OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES**

12 **GABRIEL CARRILLO PINTO and ) Case No.: BC656977**  
13 **ELISEO LOMELI CENTENO, )**  
14 individually and on behalf of all other ) **CLASS ACTION**  
15 similarly situated, )  
16 Plaintiffs, ) **PLAINTIFFS' FIRST AMENDED COMPLAINT**  
17 vs. ) **FOR DAMAGES**  
18 ) **1. FAILURE TO PAY OVERTIME WAGES**  
19 **AG AUTOBODY, ) 2. FAILURE TO PAY MINIMUM WAGE**  
20 **INCORPORATED, ALI REZA ) 3. FAILURE TO PROVIDE MANDATORY**  
21 **GHAUFORI, HORACIO ) MEAL PERIODS**  
22 **HERNANDEZ and DOES 1 through ) 4. FAILURE TO PROVIDE MANDATORY**  
23 10 inclusive, ) **REST PERIODS**  
24 Defendants ) **5. FAILURE TO PROVIDE TIMELY AND**  
25 ) **ACCURATE ITEMIZED WAGE**  
26 ) **STATEMENTS**  
27 ) **6. FAILURE TO PAY ALL COMPENSATION**  
28 ) **DUE AND PAYABLE UPON CONCLUSION**  
**OF EMPLOYMENT (UPON DISCHARGE OR**  
**RESIGNATION)**  
**7. UNLAWFUL DEDUCTIONS FROM WAGES**  
**8. UNLAWFUL AND/OR UNFAIR BUSINESS**  
**PRACTICES**  
**9. PRIVATE ATTORNEYS GENERAL ACT**  
**CLAIM FOR CIVIL PENALTIES**  
**10. FAILURE TO PAY ALL HOURS WORKED**  
**IN VIOLATION OF THE FAIR LABOR**  
**STANDARDS ACT**  
*Assigned to the Honorable Ann I. Jones in Dept 308*  
**JURY TRIAL DEMANDED**

1 Plaintiffs Gabriel Carrillo Pinto and Eliseo Lomeli Centeno, individuals acting on behalf  
2 of themselves and all others similarly situated (hereinafter collectively referred to as  
3 “Plaintiffs”), hereby file this First Amended Complaint against Defendants AG Autobody, Inc.  
4 (doing business as Paulee Body Shop), Ali Reza Ghaufori, Horacio Hernandez and DOES 1  
5 through 10 (hereafter collectively referred to as “Defendants”) as a result of the Court’s ruling  
6 on Defendants’ Demurrer to the Complaint which provided for leave to amend as to (1) the  
7 class allegations and (2) the claims against Defendant Ali Reza Ghaufori. Plaintiffs, on behalf of  
8 themselves and all others similarly situated allege as follows:  
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### 11 I. INTRODUCTION

12 1. This is a proposed class action lawsuit seeking recovery for  
13 Defendants’ violations of California Labor Code (“Labor Code”), California Business and  
14 Professions Code (“BPC”), the applicable Wage Order(s) issued by the California Industrial  
15 Welfare Commission (“IWC Wage Order(s)”), related common law principles and the Fair  
16 Labor Standards Act (“FSLA”). The essential factual and legal allegation(s) are that  
17 Defendants, systematically engaged in wage abuse and misclassification of their employees in  
18 violation of California law, regulation and related IWC Orders by failing to pay overtime  
19 wages at the requisite rate of pay for hours worked in excess of eight (8) hour per day and/or  
20 forty (40) hours per week, failed to pay a minimum wage for all hours worked, failed to provide  
21 meal and rest periods, failed to pay all earned wages upon termination of employment, failure to  
22 provide accurate wage statements, including failure to show the total hours worked for each pay  
23 period, and required unlawful deductions from wages.  
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26 2. These allegations coupled with others lead Plaintiffs to allege that Defendants  
27 have violated the California Labor Code which also constitutes unlawful and unfair business  
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1 practices in violation of California’s unfair competition laws. The acts complained of herein  
2 occurred, continue to occur and will continue to occur, at least in part, within the time period  
3 from four (4) years preceding the filing of the original Complaint, which was filed on April 10,  
4 2017, up to and through the time of the commencement of trial for this matter. Hereinafter, this  
5 time period will be referred to as the “Relevant Time Period” or the proposed “Class Period”,  
6 interchangeably, unless otherwise delimited by applicable statute of limitation.  
7

8 **SUMMARY OF CLAIMS AND FACTUAL ALLEGATIONS**

9 3. Plaintiffs, at all relevant time periods stated herein, or part thereof, provided  
10 services to and/or worked for Defendants, providing mechanical repair and/or body restoration  
11 to automobiles and/or other motor vehicles.  
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13 4. At all relevant time periods alleged herein, or part thereof, Defendants  
14 required Plaintiffs to perform manual work, without exercise of discretion or independent  
15 judgment in the performance of duties, and had no minimum requirement that their repairmen  
16 positions obtain certifications, professional licenses and/or any specialized training to perform  
17 work or any other requirements under California law and the IWC Wage Order to satisfy  
18 exemption requirements. Yet, Defendants deemed Plaintiffs and others performing substantially  
19 similar work, all or part of them as ineligible for overtime pay for eligible overtime hours  
20 worked.  
21

22 5. The obligations and responsibilities of Plaintiffs and others performing  
23 substantially similar work, were virtually identical from one to another. Plaintiffs are informed  
24 and reasonably believe that any differences in job activities of the individuals performing  
25 mechanical repair and/or body restoration were and are legally insignificant to the issues  
26 presented by this action.  
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1           6.           As a matter of course during all or substantial portion of the proposed class  
2 period, each Plaintiff and each member of the proposed Class[es], were regularly, uniformly and  
3 systematically required by Defendants to work in excess of eight (8) hours per day and/or  
4 required to work in excess of forty (40) hours per week during the proposed class period  
5 without being paid the requisite overtime wage required by California Labor Code Section §510  
6 and the IWC Wage Order [as alleged herein with definition of the proposed class or subclass to  
7 follow].  
8

9           7.           As a matter of course during all or substantial portion of the proposed class  
10 period, each Plaintiff and each member of the proposed Class[es], were regularly, uniformly and  
11 systematically prohibited by Defendants from earning at least the minimum wage for all hours  
12 worked as required by California Labor Code [as alleged herein with definition of the proposed  
13 class or subclass to follow].  
14

15           8.           As a matter of course during all or substantial portion of the proposed class  
16 period, each Plaintiff and each member of the proposed Class[es], were regularly, uniformly and  
17 systematically prohibited by Defendants from taking timely, compliant, uninterrupted unpaid  
18 30-minute meal periods for periods of approximately every five (5) hours worked as required by  
19 California Labor Code §226.7(b), §512 and the IWC Wage Order; nor were Plaintiffs or  
20 members of the proposed Class[es] paid a one-hour premium wage at their regular rate of  
21 hourly pay for each missed, late or interrupted meal period [as alleged herein with definition of  
22 the proposed class or subclass to follow].  
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25           9.           As a matter of course during all or substantial portion of the proposed class  
26 period, each Plaintiff and each member of the proposed Class[es], were regularly, uniformly and  
27 systematically prohibited by Defendants from taking a timely, compliant, uninterrupted unpaid  
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1 30-minute, second meal period when work exceeded ten (10) hours in a workday (except that if  
2 the total hours worked is no more than twelve (12) hours, the second meal period may be  
3 waived by mutual consent of the employer and the employee only if the first meal period was  
4 not waived) as required by California Labor Code §226.7(b), §512 and the IWC Wage Order;  
5 nor were Plaintiffs or members of the proposed Class[es] paid a one-hour premium wage at  
6 their regular rate of hourly pay for each missed, late or interrupted second meal period [as  
7 alleged herein with definition of the proposed class or subclass to follow].  
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10 10. As a matter of course during all or substantial portion of the proposed class  
11 period, each Plaintiff and each member of the proposed Class[es], were regularly, uniformly and  
12 systematically prohibited by Defendants from taking timely, compliant, uninterrupted paid 10-  
13 minute meal periods for periods of approximately four (4) hours worked, or a major fraction  
14 thereof, as required by California Labor Code §226.7(b), §512 and the IWC Wage Order; nor  
15 were Plaintiffs or members of the proposed Class[es] paid a one-hour premium wage at their  
16 regular rate of hourly pay for each missed, late or interrupted rest period [as alleged herein with  
17 definition of the proposed class or subclass to follow].  
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19  
20 11. As a matter of course during all or substantial portion of the proposed class  
21 period, each Plaintiff and each member of the proposed Class[es], were not provided true,  
22 accurate, and properly itemized wage statements or pay statements setting forth all hours  
23 actually caused or suffered to work and the corresponding correct amounts of pay at the  
24 requisite agreed and legal rate as required by California Labor Code §226 et seq. Because  
25 Defendants did not record or track all hours worked, Plaintiffs and members of the proposed  
26 Class[es] can reasonably estimate the amount worked as admissible evidence at trial. Also,  
27 since Defendants had no reasonable basis to believe that it was in compliance with applicable  
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1 law in claiming a defense of exempt classification, Plaintiffs are informed and believe and based  
2 thereon allege that Defendants acted willfully and with direct knowledge that their actions were  
3 unlawful and violated California labor standards [as alleged herein with definition of the  
4 proposed class or subclass to follow].  
5

6 12. As a matter of course during all or substantial portion of the proposed class  
7 period, each Plaintiff and each member of the proposed Class[es], who were terminated or  
8 separated from their employment from Defendants were not timely paid all wages due as  
9 required by California Labor Code §203. Also, since Defendants had no reasonable basis to  
10 believe that it was in compliance with applicable law in claiming a defense of exempt  
11 classification, Plaintiffs are informed and believe and based thereon allege that Defendants  
12 acted willfully and with direct knowledge that their actions were unlawful and violated  
13 California labor standards [as alleged herein with definition of the proposed class or subclass to  
14 follow].  
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17 13. As a matter of course during all or substantial portion of the proposed class  
18 period, each Plaintiff and each member of the proposed Class[es], were not provided  
19 compensation for all hours worked due to impermissible deductions from wages for employee  
20 loan repayments (as indicated by Defendants) without the expressed written consent of  
21 Plaintiffs in violation of California Labor Code §300. Also, since Defendants had no reasonable  
22 basis to believe that it was in compliance with applicable law in making such impermissible and  
23 unauthorized deductions, Plaintiffs are informed and believe and based thereon allege that  
24 Defendants acted willfully and with direct knowledge that their actions were unlawful and  
25 violated California labor standards [as alleged herein with definition of the proposed class or  
26 subclass to follow].  
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1 **PLAINTIFFS**

2 14. Plaintiffs Gabriel Carrillo Pinto and Eliseo Lomeli Centeno are individuals  
3 over the age of eighteen (18) and are now, and at all times mentioned in this Complaint,  
4 residents of the State of California. Plaintiffs, both of them, have suffered harm and/or injury in  
5 fact from Defendants' conduct in subjecting them to systematic wage abuse under California  
6 Labor Code and/or treating one, or both of them, as an exempt employee under the California  
7 Labor Code and applicable regulations, when in fact Plaintiffs and proposed Class[es] do not  
8 fall into any recognized exemption.  
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11 15. Plaintiff Gabriel Carrillo Pinto provided services to and/or worked for all  
12 Defendants, between approximately May 22, 2015 through August 26, 2016, in California as a  
13 mechanical repair technician and/or body restoration employee. Mr. Carrillo Pinto provided  
14 services to and/or worked for Defendants at AG Autobody, Inc.'s (doing business as Paulee  
15 Body Shop) automotive repair and/or body restoration facility located at 1115 South La Cienga  
16 Boulevard in Los Angeles, at all relevant times within four years prior to the filing of the  
17 original complaint, as alleged herein..  
18

19 16. Plaintiff Eliseo Lomeli Centeno provided services to and/or worked for all  
20 Defendants, between approximately November 20, 2007 through November 2015 as a  
21 mechanical repair technician and/or body restoration employee. Mr. Lomeli Centeno provided  
22 services to and/or worked for Defendants at AG Autobody, Inc.'s (doing business as Paulee  
23 Body Shop) automotive repair and/or body restoration facility located at 1115 South La Cienga  
24 Boulevard in Los Angeles, at all relevant times within four years prior to the filing of the  
25 original complaint, as alleged herein.  
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1           21.           It is contended that all acts complained of herein occurred at Defendants'  
2 place of business in the County of Los Angeles. Based upon the geographic location of AG and  
3 with consideration of all the facts and circumstances determinative of Defendants' operations  
4 and business[es], it is alleged that Defendants are subject to the applicable Industrial Welfare  
5 Commission Wage Orders, California Labor Code §§201, 202, 203, 204(a), 226 *et seq.*, 300,  
6 351, 432, 500 *et seq.*, 1194 *et seq.*, 1198.5, 2810.5, California Code of Civil Procedure §1021.5,  
7 California Business and Professions Code §17200 *et seq.*, the Fair Labor Standards Act of 1938,  
8 as amended 29 U.S.C. 201, *et seq.*, and California common law. Defendants being subject to the  
9 above-listed laws have caused Plaintiffs, as adequate representatives of all proposed Class[es],  
10 to seek damages for unpaid overtime compensation, unpaid minimum wage, wages for missed  
11 meal and rest periods, statutory penalties, restitution, declaratory and injunctive relief,  
12 attorneys' fees and costs, prejudgment interest, and other relief as allowed by California Law.  
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16           22.           Ali Reza Ghaufori (hereinafter referred to as "Ghaufori") is an employee,  
17 officer and/or director of Defendant AG Autobody, Inc. according to filing[s] with the  
18 California Secretary of State on May 6, 2005 and February 8, 2017, and at all times mentioned  
19 in this Complaint. Plaintiffs are informed and have reason to believe that Defendant Ghaufori as  
20 an employee, officer and/or director of AG, was permitted by Defendant AG Autobody, Inc. to  
21 directly and indirectly control the work and working conditions and made hiring, firing and  
22 other human resources decisions, such as regulating the wages and benefits of Plaintiffs and  
23 proposed Class[es] exemplified by his communication of work assignments to Plaintiffs and direct  
24 payment of cash wages to Plaintiffs, as alleged herein.  
25

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27           23.           Defendant Ghaufori distributed work assignments to Plaintiffs and proposed  
28 Class[es] and made direct payment of cash wages to Plaintiffs and proposed Class[es], to

1 include assignments for his individual benefit to his personal property. Such work transpired  
2 off-the-clock from production for AG and did not generate wages to be paid by Defendant AG  
3 Autobody, Inc. to Plaintiffs. Ghaufori's assignment of work for himself, as an individual, was  
4 assigned with a promise to pay Plaintiffs and proposed Class[es] from his personal funds and/or  
5 actually paid cash to Plaintiffs and proposed Class[es] from his personal funds.  
6

7         24.         Horacio Hernandez (hereinafter referred to as "Hernandez") was held out by  
8 Defendants AG Autobody, Inc. and Ali Reza Ghaufori to be a supervisor over Plaintiffs and  
9 proposed Class[es], at all times mentioned in this Complaint. Defendants AG Autobody, Inc.  
10 and Ali Reza Ghaufori allowed for Hernandez's direct and indirect control of the work and  
11 working conditions and made hiring, firing and other human resources decisions, such as  
12 regulating the wages, meal and rest periods, or lack thereof, and benefits of Plaintiffs and  
13 proposed Class[es] exemplified by his daily communication of work assignments to Plaintiffs and  
14 direct payment or distribution of cash or check wages to Plaintiffs, as alleged herein.  
15  
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17         25.         Defendant Hernandez distributed work assignments to Plaintiffs and proposed  
18 Class[es] and made direct payment of cash wages to Plaintiffs and proposed Class[es], to  
19 include assignments for his individual benefit to his personal property. Such work transpired  
20 off-the-clock from production for Defendant AG Autobody, Inc. and did not generate wages to  
21 be paid by Defendant AG Autobody, Inc. to Plaintiffs and proposed Class[es]. Hernandez's  
22 assignment of work for himself, as an individual, was assigned with a promise to pay Plaintiffs  
23 and proposed Class[es] from his personal funds and/or actually paid cash to Plaintiffs and  
24 proposed Class[es] from his personal funds.  
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1           26.       Plaintiffs are informed and reasonably believe that Defendants and each of  
2 them are now and/or at all times mentioned in this Complaint, were in some manner legally  
3 responsible for the events, happenings and circumstances alleged in this Complaint.  
4

5           27.       Plaintiffs are informed and reasonably believe that Defendants, and each of  
6 them, at all times mentioned in this Complaint were members of and/or engaged in a joint  
7 venture, partnership and common enterprise and were acting within the course and scope of, and  
8 in pursuance of said joint venture, partnership or common enterprise.  
9

10          28.       Plaintiffs are informed and reasonably believe that Defendants, and each of  
11 them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified  
12 each and every one of the acts and/or omissions alleged in this Complaint.  
13

14          29.       Plaintiffs are informed and reasonably believe that Defendants, and each of  
15 them, at all times mentioned in this Complaint aided and abetted the acts and/or omissions of  
16 each and every one of the other Defendants thereby proximately causing the damages alleged in  
17 this Complaint.  
18

19          30.       Plaintiffs are informed and reasonably believe, and based thereon allege, that  
20 each Defendant acted in all respects pertinent to this action as the agent of the other Defendants,  
21 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts  
22 of each Defendant are legally attributable to the other Defendants.  
23

24          31.       Plaintiffs do not know the true names and capacities, whether individual,  
25 corporate, associate, partner, or otherwise of Defendants sued herein as DOES 1 through 10,  
26 inclusive, and for that reason, Plaintiffs therefore sue Defendants under such fictitious names.  
27 Plaintiffs are informed and believe and therefore allege that each of said fictitious Defendants  
28 are legally responsible in some manner for the unlawful acts referred to herein and directly or

1 proximately cause Plaintiffs and proposed Class[es] to be subject to the illegal employment  
2 practices and injuries complained of. Plaintiffs will seek leave of court to amend this Complaint  
3 to reflect the true names and capacities of the Defendants designated herein as DOES when such  
4 identities become know.  
5

## 6 **II. JURISDICTION**

7 32. Plaintiffs incorporate by reference and re-allege each and every paragraph of  
8 this Complaint as though fully set forth, that the Court has jurisdiction over the Plaintiffs' and  
9 proposed Class[es]' claims based on the nature of the claims and violations of the applicable  
10 California common and statutory laws. In particularity, this Court has jurisdiction in this matter  
11 due to Defendants' violations of Labor Code §§203, §226 et seq., 300 510, 1194, 1198.5, I.W.C  
12 Wage Order No. 4-2001 and Plaintiffs' and proposed Class[es]' claims for injunctive relief and  
13 restitution of unpaid wages and other injuries arising from Defendants' unlawful and/or unfair  
14 business practices under Business and Professions Code §17200 *et seq.* and California Labor  
15 Code §1199 and 2699.5.  
16  
17

## 18 **III. VENUE**

19 33. Plaintiffs incorporate by reference and re-allege each and every paragraph of  
20 this Complaint as though fully set forth, that venue is proper because Defendants reside in, are  
21 located in and/or are domiciled in the County of Los Angeles, California and maintain office[s]  
22 and transact business in this County, and work was performed by Plaintiffs and proposed  
23 Class[es] which made the subject of this action in the County of Los Angeles, California.  
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1 **IV. CLASS ALLEGATIONS**

2 34. Plaintiffs bring this suit as a class action pursuant to Code of Civil Procedure  
3 (“CCP) §382, and other similarly situated individuals (the “proposed Plaintiff Class” or  
4 “proposed Class[es]”) because there are questions of common or general interest, of many  
5 persons, or when the parties are numerous, and it is impracticable to bring them all before the  
6 court.  
7

8 35. The putative or proposed Plaintiff Class[es] and appropriate subclasses for  
9 which Plaintiffs seek to represent and to certify are currently composed of and defined as  
10 follows:  
11

12 a. **PLAINTIFF EXEMPT CLASS:** all California based individuals in  
13 positions, job titles, job codes or job descriptions of laborers, mechanics, painters, bodymen,  
14 repairmen, technicians, associates, paint manager, paint supervisor, shop personnel, shop  
15 foreperson, assistant production manager, production manager and other similar nomenclature  
16 performing substantially identical functions and/or duties (hereinafter described collectively as  
17 “exempt repairmen” or “ exempt repairperson,” each being used interchangeably with the other)  
18 who Defendants classified as salaried exempt based on company records; who currently or were  
19 formerly employed by Defendants; who worked or works on mechanical repair and/or body  
20 restoration of vehicles for Defendants AG Autobody, Inc., Ali Reza Ghaufori and Horacio  
21 Hernandez within the time period from four (4) years preceding the filing of the original  
22 Complaint, up to and through the time of commencement of trial for this matter .  
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25 1. **EXEMPT OVERTIME SUBCLASS:** All members of the Plaintiff  
26 Exempt Class who (1) were classified as salaried “exempt” during the proposed class  
27 period and did not satisfy the legal requirements for exempt classification (2) who  
28

1 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and (3) who  
2 Defendants did not pay wages at the requisite overtime rates of pay for hours worked in  
3 excess of eight (8) hours per day and/or hours worked in excess of forty (40) hours per  
4 week.  
5

6 2. EXEMPT MINIMUM WAGE SUBCLASS: All members of the Plaintiff  
7 Exempt Class who (1) were classified as salaried “exempt” during the proposed class  
8 period and did not satisfy the legal requirements for exempt classification, and (2) for  
9 whom Defendants regularly, uniformly and systematically prohibited from earning at  
10 least the minimum wage for all hours worked.  
11

12 3. EXEMPT MEAL PERIOD SUBCLASS: All members of the Plaintiff  
13 Exempt Class who (1) were classified as salaried “exempt” during the proposed class  
14 period and did not satisfy the legal requirements for exempt classification (2) for whom  
15 Defendants did not provide 30-minute, uninterrupted and duty-free meal periods for  
16 approximately every five (5) hours worked, and (3) for whom Defendant failed to provide  
17 one hour of pay at the exempt repairperson’s regular rate of pay for each missed, late,  
18 interrupted or non-duty free meal period in lieu thereof.  
19

20 4. EXEMPT SECOND MEAL PERIOD SUBCLASS: All members of the  
21 Plaintiff Exempt Class who (1) were classified as salaried “exempt” during the proposed  
22 class period and did not satisfy the legal requirements for exempt classification (2) for  
23 whom Defendants did not provide 30-minute, uninterrupted and duty-free second meal  
24 periods when work exceeded ten (10) hours in a workday (except that if the total hours  
25 worked is no more than twelve (12) hours, the second meal period may be waived by  
26 mutual consent of the employer and the employee only if the first meal period was not  
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1 waived), and (3 ) for whom Defendant failed to provide one hour of pay at the exempt  
2 repairperson’s regular rate of pay for each missed, late, interrupted or non-duty free meal  
3 period in lieu thereof.  
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5 5. EXEMPT REST PERIOD SUBCLASS: All members of the Plaintiff  
6 Exempt Class who (1) were classified as salaried “exempt” during the proposed class  
7 period and did not satisfy the legal requirements for exempt classification, (2) for whom  
8 Defendants did not authorize or permit 10-minute paid rest periods for approximately  
9 every four (4) hours worked, or a major fraction thereof, and (3) for whom Defendant  
10 failed to provide one hour of pay at the exempt repairperson’s regular rate of pay for each  
11 missed, late, interrupted or non-duty free rest period in lieu thereof.  
12

13 6. EXEMPT WAGE STATEMENT SUBCLASS: All members of the  
14 Plaintiff Exempt Class for whom Defendants did not provide accurate itemized wage  
15 statements showing all hours actually caused or suffered to work and the applicable rates  
16 of pay.  
17

18 7. EXEMPT WAITING TIME SUBCLASS: All members of the Plaintiff  
19 Exempt Class for who (1) from three-years prior to the filing of the original Complaint  
20 separated from Defendants’ employment and (2) for whom Defendants willfully failed to  
21 pay any and all wages due, including unpaid overtime wages, within seventy-two (72)  
22 hours of the time the employee voluntarily ended their employment with Defendants or  
23 immediately upon involuntarily separation of their employment with Defendants.  
24

25 8. EXEMPT WAGE DEDUCTION SUBCLASS: All members of the  
26 Plaintiff Exempt Class and for whom Defendants made impermissible and unauthorized  
27 deduction from wages.  
28

1                   b. **PLAINTIFF NON EXEMPT CLASS:** all California based individuals  
2 in positions, job titles, job codes or job descriptions of laborers, mechanics, painters, bodymen,  
3 repairmen, technicians, associates, paint manager, paint supervisor, shop personnel, shop  
4 foreperson, assistant production manager, production manager and other similar nomenclature  
5 performing substantially identical functions and/or duties (hereinafter described collectively as  
6 “non exempt repairmen” or “ non exempt repairperson,” each being used interchangeably with  
7 the other) who Defendants classified as non exempt based on company records; who currently  
8 or were formerly employed by Defendants; who worked or works on mechanical repair and/or  
9 body restoration of vehicles for Defendants AG Autobody, Inc., Ali Reza Ghaufori and Horacio  
10 Hernandez within the time period from four (4) years preceding the filing of the original  
11 Complaint, up to and through the time of commencement of trial for this matter .

12                   1. **NON EXEMPT OVERTIME SUBCLASS:** All members of the Plaintiff  
13 Non Exempt Class who (1) who worked in excess of eight (8) hours per day and/or forty  
14 (40) hours per week, and (2) who Defendants did not pay wages at the requisite overtime  
15 rates of pay for hours worked in excess of eight (8) hours per day and/or hours worked in  
16 excess of forty (40) hours per week.

17                   2. **NON EXEMPT MINIMUM WAGE SUBCLASS:** All members of the  
18 Plaintiff Non Exempt Class for whom Defendants regularly, uniformly and  
19 systematically prohibited from earning at least the minimum wage for all hours worked.

20                   3. **NON EXEMPT MEAL PERIOD SUBCLASS:** All members of the  
21 Plaintiff Non Exempt Class for whom (1) Defendants did not provide 30-minute,  
22 uninterrupted and duty-free meal periods for approximately every five (5) hours worked,  
23 and (2) for whom Defendant failed to provide one hour of pay at the non exempt  
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1 repairperson's regular rate of pay for each missed, late, interrupted or non-duty free meal  
2 period in lieu thereof.

3 4. NON EXEMPT SECOND MEAL PERIOD SUBCLASS: All members  
4 of the Plaintiff Non Exempt Class for whom (1) Defendants did not provide 30-minute,  
5 uninterrupted and duty-free second meal periods when work exceeded ten (10) hours in a  
6 workday (except that if the total hours worked is no more than twelve (12) hours, the  
7 second meal period may be waived by mutual consent of the employer and the employee  
8 only if the first meal period was not waived), and (2) for whom Defendant failed to  
9 provide one hour of pay at the non exempt repairperson's regular rate of pay for each  
10 missed, late, interrupted or non-duty free meal period in lieu thereof.  
11  
12

13 5. NON EXEMPT REST PERIOD SUBCLASS: All members of the  
14 Plaintiff Non Exempt Class for whom (1) Defendants did not authorize or permit 10-  
15 minute paid rest periods for approximately every four (4) hours worked, or a major  
16 fraction thereof, and (2) for whom Defendant failed to provide one hour of pay at the non  
17 exempt repairperson's regular rate of pay for each missed, late, interrupted or non-duty  
18 free rest period in lieu thereof.  
19

20 6. NON EXEMPT WAGE STATEMENT SUBCLASS: All members of the  
21 Plaintiff Non Exempt Class for whom Defendants did not provide accurate itemized wage  
22 statements showing all hours actually caused or suffered to work and the applicable rates  
23 of pay.  
24

25 7. NON EXEMPT WAITING TIME SUBCLASS: All members of the  
26 Plaintiff Non Exempt Class for who (1) from three-years prior to the filing of the original  
27 Complaint separated from Defendants' employment and (2) for whom Defendants  
28

1 willfully failed to pay any and all wages due, including unpaid overtime wages, within  
2 seventy-two (72) hours of the time the employee voluntarily ended their employment  
3 with Defendants or immediately upon involuntarily separation of their employment with  
4 Defendants.  
5

6 8. NON EXEMPT WAGE DEDUCTION SUBCLASS: All members of the  
7 Plaintiff Non Exempt Class and for whom Defendants made impermissible and  
8 unauthorized deduction from wages.  
9

10 36. The EXEMPT OVERTIME SUBCLASS, EXEMPT MINIMUM WAGE  
11 SUBCLASS, EXEMPT MEAL PERIOD SUBCLASS, EXEMPT SECOND MEAL PERIOD  
12 SUBCLASS, EXEMPT REST PERIOD SUBCLASS, EXEMPT WAGE STATEMENT  
13 SUBCLASS, EXEMPT WAITING TIME SUBCLASS, and EXEMPT WAGE DEDUCTION  
14 SUBCLASS, are hereinafter referred to as the “Exempt Classes” and/or “ Exempt Subclasses.”  
15

16 37. The NON EXEMPT OVERTIME SUBCLASS, NON EXEMPT MINIMUM  
17 WAGE SUBCLASS, NON EXEMPT MEAL PERIOD SUBCLASS, NON EXEMPT  
18 SECOND MEAL PERIOD SUBCLASS, NON EXEMPT REST PERIOD SUBCLASS, NON  
19 EXEMPT WAGE STATEMENT SUBCLASS, NON EXEMPT WAITING TIME SUBCLASS,  
20 and NON EXEMPT WAGE DEDUCTION SUBCLASS, are hereinafter referred to as the “Non  
21 Exempt Classes” and/or “ Non Exempt Subclasses.”  
22

23 38. Pursuant to Rule of Court 3.765(b), Plaintiffs reserve the right to amend or  
24 modify the class definition[s] with greater specificity, by further division into additional  
25 subclasses, and/or by limitation to particular issues. Plaintiffs also reserve the right to pursue the  
26 cause of action for civil penalties under the Labor Code Private Attorneys General Act of 2004  
27 in a representative capacity without regard to CCP §382 requirements.  
28

1           39.     The proposed Plaintiff Class and all Classes are so numerous that the individual  
2 joinder of each individual in the Plaintiff Class and all Classes is impractical. While Plaintiffs  
3 do not currently know the exact number of class members, Plaintiffs estimate the number to  
4 exceed 100 individuals. Plaintiffs believe that the quantity and identity of such members is  
5 readily ascertainable upon inspection of Defendants' records.  
6

7           40.     A class action is vastly superior to other available means for fair and efficient  
8 adjudication of the Plaintiffs' and all Classes' claims and would be beneficial to both the parties  
9 and this Court. A class action will allow a substantial number of similarly situated individuals to  
10 simultaneously and efficiently prosecute their common claims in a single forum without the  
11 unnecessary duplication of effort and expense that numerous individual actions would entail. In  
12 addition, a class action will serve an important public interest by permitting Plaintiffs and all  
13 Classes to effectively pursue the recovery of moneys owed to them and affording them an  
14 opportunity to vindicate their rights to timely wage payments at legal rates under the Labor  
15 Code. Finally, a class action will also eliminate the potential for inconsistent or contradictory  
16 judgments that is inherent in individual litigation.  
17  
18

19           41.     The subject matter of this First Amended Complaint both as to factual matters  
20 and as to matters of law, are such that there are questions of law and fact common to the  
21 Plaintiffs and the Classes which predominate over questions affecting only individual members  
22 of the Classes that include but are not limited to:  
23

24           a.     Whether the Plaintiff Exempt Class was uniformly and improperly  
25 classified as exempt?

26           b.     Whether Defendants' purportedly exempt position[s] required Plaintiff  
27 Exempt Class to be actually and primarily engaged in non-exempt work?  
28

1           c.       Whether the Exempt Overtime Subclass was uniformly and improperly  
2 classified as exempt in violation of the Labor Code and the IWC Wage Orders?

3           d.       Whether the Exempt Minimum Wage Subclass was uniformly and  
4 improperly classified as exempt in violation of the Labor Code and the IWC Wage  
5 Orders?  
6

7           e.       Whether the Exempt Meal Period Subclass was uniformly and  
8 improperly classified as exempt in violation of the Labor Code and the IWC Wage  
9 Orders?  
10

11           f.       Whether the Exempt Second Meal Period Subclass was uniformly and  
12 improperly classified as exempt in violation of the Labor Code and the IWC Wage  
13 Orders?  
14

15           g.       Whether the Exempt Rest Period Subclass was uniformly and improperly  
16 classified as exempt in violation of the Labor Code and the IWC Wage Orders?  
17

18           h.       Whether the Exempt Wage Statements Subclass was uniformly and  
19 improperly classified as exempt in violation of the Labor Code and the IWC Wage  
20 Orders?  
21

22           i.       Whether the Exempt Waiting Time Subclass was uniformly and  
23 improperly classified as exempt in violation of the Labor Code and the IWC Wage  
24 Orders?  
25

26           j.       Whether the work tasks performed by the Exempt Classes constitutes  
27 exempt or nonexempt work pursuant to California law.  
28

          k.       Whether the Exempt Overtime Subclass regularly worked in excess of  
eight (8) hours per day and/or forty (40) hours per week?

1           l.       Whether the Exempt Overtime Subclass regularly worked in excess of  
2 eight (8) hours per day and/or forty (40) hours per week and was not paid overtime pay  
3 and/or double time pay for the excess hours?  
4

5           m.       Whether Defendants failed to pay overtime compensation to the Exempt  
6 Overtime Subclass by virtue of Defendants uniform and improper designation of the  
7 Exempt Overtime Subclass as exempt in violation of the Labor Code and the IWC Wage  
8 Orders?  
9

10          n.       Whether the Defendants failed and continue to fail to provide legal meal  
11 periods and as such impeded, discouraged and/or dissuaded the Exempt Meal Period  
12 Subclass from taking compliant meal periods in violation of the Labor Code and the  
13 applicable IWC Wage Orders?  
14

15          o.       Whether the Defendants failed and continue to fail to provide legal meal  
16 periods and as such impeded, discouraged and/or dissuaded the Exempt Second Meal  
17 Period Subclass from taking compliant meal periods in violation of the Labor Code and  
18 the applicable IWC Wage Orders?  
19

20          p.       Whether the Defendants failed and continue to fail to provide legal rest  
21 periods and as such impeded, discouraged and/or dissuaded the Exempt Rest Period  
22 Subclass from taking compliant meal periods in violation of the Labor Code and the  
23 applicable IWC Wage Orders?  
24

25          q.       Whether the Exempt Minimum Wage Subclass was routinely prohibited  
26 from earning at least the minimum wage in violation of the Labor Code?  
27

28          r.       Whether Defendants failed and continue to fail to provide accurate  
itemized wage statements to the Exempt Wage Statement Subclass?

1           s.       Whether the Plaintiff Exempt Class performs substantially similar and is  
2 primarily engaged in substantially similar work to the Plaintiff Non Exempt Class?

3           t.       Whether the Non Exempt Overtime Subclass regularly worked in excess  
4 of eight (8) hours per day and/or forty (40) hours per week?

5           u.       Whether the Non Exempt Overtime Subclass regularly worked in excess  
6 of eight (8) hours per day and/or forty (40) hours per week and was not paid overtime  
7 pay and/or double time pay for the excess hours?

8           v.       Whether the Defendants failed and continue to fail to provide legal meal  
9 periods and as such impeded, discouraged and/or dissuaded the Non Exempt Meal  
10 Period Subclass from taking compliant meal periods in violation of the Labor Code and  
11 the applicable IWC Wage Orders?

12           w.       Whether the Defendants failed and continue to fail to provide legal meal  
13 periods and as such impeded, discouraged and/or dissuaded the Non Exempt Second  
14 Meal Period Subclass from taking compliant meal periods in violation of the Labor  
15 Code and the applicable IWC Wage Orders?

16           x.       Whether the Defendants failed and continue to fail to provide legal rest  
17 periods and as such impeded, discouraged and/or dissuaded the Non Exempt Rest Period  
18 Subclass from taking compliant meal periods in violation of the Labor Code and the  
19 applicable IWC Wage Orders?

20           y.       Whether the Non Exempt Minimum Wage Subclass was routinely  
21 prohibited from earning at least the minimum wage in violation of the Labor Code?

22           z.       Whether Defendants failed and continue to fail to provide accurate  
23 itemized wage statements to the Non Exempt Wage Statement Subclass?  
24  
25  
26  
27  
28



1           45. Any and all decisions made by the Exempt Overtime Subclass and Non Exempt  
2 Overtime Subclass in the performance of their duties are based upon the guidelines and  
3 mandates as set forth by Defendants through verbal and written/typed instruction or direction,  
4 none of which were created or proposed by Plaintiffs, the Exempt Overtime Subclass and Non  
5 Exempt Overtime Subclass.  
6

7           46. IWC Wage Order 4-2001 requires satisfaction of exemption requirements which  
8 require the performance of duties and responsibilities involving either (1) the performance of  
9 office or non-manual work directly related to management policies or general business  
10 operations of the employer or the employer's customers, (2) the customary and regular exercise  
11 of discretion and independent judgment, (3) the regular or direct assistance to a proprietor or  
12 employer in a bona fide executive or administrative capacity, (4) performance of work only  
13 under general supervision along specialized or technical lines requiring special training,  
14 experience or knowledge, and/or primarily engaged in duties which meet the test of the  
15 Administrative Exemption.  
16  
17

18           47. The Exempt Overtime Subclass did not perform duties or responsibilities  
19 involving either (1) the performance of office or non-manual work directly related to  
20 management policies or general business operations of the employer or the employer's  
21 customers, (2) the customary and regular exercise of discretion and independent judgment, (3)  
22 the regular or direct assistance to a proprietor or employer in a bona fide executive or  
23 administrative capacity, or (4) performance of work only under general supervision along  
24 specialized or technical lines requiring special training, experience or knowledge, and/or  
25 primarily engaged in duties which meet the test of the Administrative Exemption.  
26  
27  
28



1           48. Plaintiffs and the Exempt Overtime Subclass are informed and reasonably  
2 believe that they did not meet the legal requirements for exemption classification, and were  
3 required to work in excess of eight (8) hours in a workday and/or in excess of 40 hours in any  
4 work week without being paid straight time or overtime compensation for such excess of hours.  
5

6           49. Defendants did not train Plaintiffs and the Exempt Overtime Subclass on the  
7 difference between exempt and nonexempt work.  
8

9           50. Defendants required that Plaintiffs and the Exempt Overtime Subclass spend  
10 more than fifty (50) percent of their time performing manual work which they are informed and  
11 reasonably believe to be nonexempt tasks.

12           51. Defendants failed to maintain, distribute or train any policy regarding the  
13 calculation or payment of overtime hours to Plaintiffs, the Exempt Overtime Subclass and the  
14 Non Exempt Subclass.  
15

16           52. Pursuant to California Labor Code § 510, any work in excess of eight (8) hours  
17 in one workday and any work in excess of forty (40) hours in any work week, affords the  
18 Exempt Overtime Subclass and Non Exempt Overtime Subclass to be compensated at the rate  
19 of no less than one and one half times the regular rate of pay. This same provision is outlined in  
20 I.W.C Wage Order 4-2001.  
21

22           53. Defendants. mandated a work schedule that required attendance of no less than  
23 twelve (12) hours per workday, Monday through Friday and no less than six (6) hours per  
24 workday on Saturday. Plaintiffs, the Exempt Overtime Subclass and the Non Exempt Overtime  
25 Subclass worked six (6) days per week, accumulating a minimum of sixty-six (66) hours per  
26 workweek.  
27  
28

1           54.     Plaintiffs and the Non Exempt Overtime Subclass were required to work in  
2 excess of eight (8) hours in a workday and/or in excess of 40 hours in any work week without  
3 being paid straight time or overtime compensation for such excess of hours.  
4

5           55.     Plaintiffs are informed and reasonably believe that Defendants' misclassification  
6 of the Exempt Overtime Subclass as exempt was routine and systematic based on Defendants  
7 patterns or practices in administration of employee compensation as described herein.  
8

9           56.     The Exempt Overtime Subclass were required to work in excess of eight (8)  
10 hours in a workday and/or in excess of 40 hours in any work week without being paid straight  
11 time or overtime compensation for such excess of hours  
12

13           57.     Plaintiffs, the Exempt Overtime Subclass and Non Exempt Overtime Subclass  
14 have been denied lawfully due overtime compensation in an amount to be determined at trial,  
15 and will seek recovery of such amounts plus allowable and statutory interest, attorneys' fees and  
16 costs.  
17

18                           **SECOND CAUSE OF ACTION**  
19                           **FAILURE TO PAY MINIMUM WAGE**  
20                           **(ON BEHALF OF PLAINTIFFS, EXEMPT MINIMUM WAGE SUBCLASS AND**  
21                           **NON EXEMPT MINIMUM WAGE SUBCLASS)**  
22                           **(AGAINST ALL DEFENDANTS)**

23           58.     Plaintiffs on behalf of themselves, the Exempt Minimum Wage Subclass and  
24 Non Exempt Minimum Wage Subclass, allege this second cause of action, and incorporate by  
25 reference and re-allege each and every paragraph of this Complaint as though fully set forth:  
26

27           59.     The California Labor Code and I.W.C Wage Order No. 4-2001, in relevant part  
28 require that non-exempt employees be paid an amount no less than the minimum wage for all  
hours worked. All hours must be paid at no less than the statutory rate or at the noticed rate  
pursuant to California Labor Code §2810.5 and must meet the minimum wage requirement.

1           60.     Plaintiffs and the Exempt Minimum Wage Subclass are informed and reasonably  
2 believe that they did not meet the legal requirements for exemption classification, and were  
3 entitled to be paid an amount no less than the minimum wage for all hours worked,  
4

5           61.     Defendants regularly failed to pay the Plaintiffs, Exempt Minimum Wage  
6 Subclass and Non Exempt Minimum Wage Subclass for all hours worked, either at a straight  
7 time rate or at an overtime rate. Defendants routinely instructed for Plaintiffs, Exempt  
8 Minimum Wage Subclass and Non Exempt Minimum Wage Subclass to clock-out and continue  
9 to work without proper recording of time and/or would pay hours in excess of eight (8) hours in  
10 a workday, at a straight time rate. Plaintiffs, Exempt Minimum Wage Subclass and Non Exempt  
11 Minimum Wage Subclass were either not compensated for certain hours worked during the  
12 workday or based on cumulative hours worked in the workweek divided by the number of hours  
13 worked per day, were paid a rate that was less than the statutory minimum wage.  
14

15           62.     Plaintiffs, Exempt Minimum Wage Subclass and Non Exempt Minimum Wage  
16 Subclass have been denied compensation of a minimum wage and are entitled to civil penalties  
17 pursuant to California Labor Code §§558, 1197.1, 2698 *et seq.* and other applicable laws.  
18

19   **THIRD CAUSE OF ACTION**  
20   **FAILURE TO PROVIDE MEAL PERIODS**  
21   **(ON BEHALF OF PLAINTIFFS, EXEMPT MEAL PERIOD SUBCLASS, EXEMPT**  
22   **SECOND MEAL PERIOD SUBCLASS, NON EXEMPT MEAL PERIOD SUBCLASS**  
23   **AND NON EXEMPT SECOND MEAL PERIOD SUBCLASS)**  
24   **(AGAINST ALL DEFENDANTS)**

25           63.     Plaintiffs on behalf of themselves, the Exempt Meal Period Subclass, the Exempt  
26 Second Meal Period Subclass, the Non Exempt Meal Period Subclass and the Non Exempt  
27 Second Meal Period Subclass (hereinafter for this third cause of action referenced as  
28

1 “Subclasses”) allege this third cause of action, and incorporate by reference each and every  
2 paragraph of this Complaint as though fully set forth:

3 64. California Labor Code §226.7(b) requires that no employee be made to work  
4 during a meal period mandated by an applicable I.W.C. Wage Order.  
5

6 65. California Labor Code §512 and I.W.C Wage Order No. 4-2001 in relevant part  
7 indicate that no employer shall employ any person for a work period of more than five (5) hours  
8 without a meal period of not less than 30 minutes, except when a work period of not more than  
9 six (6) hours will complete the day’s work the meal period may be waived by mutual consent of  
10 the employer and the employee.  
11

12 66. Plaintiffs, the Exempt Meal Period Subclass and the Exempt Second Meal Period  
13 Subclass are informed and reasonably believe that they did not meet the legal requirements for  
14 exemption classification and were entitled to compliant meal periods.  
15

16 67. Defendant AG Autobody, Inc. maintains a Rest Period and Lunch Break Policy,  
17 which was not, and is not provided to, and is not trained to Plaintiffs and the Subclasses.  
18

19 68. Defendant AG Autobody, Inc. disregarded its Rest Period and Lunch Break  
20 Policy by regularly interrupting or failing to permit and/or authorize Plaintiffs and the  
21 Subclasses, at least one (1) mandated meal period, during their usual and customary (minimum  
22 of) twelve (12) hour shifts Monday through Friday, and no meal period during their (minimum  
23 of) six (6) hour shift on Saturday.  
24

25 69. Defendant AG Autobody, Inc. disregarded its Rest Period and Lunch Break  
26 Policy by regularly interrupting or failing to permit and/or authorize the Exempt Second Meal  
27 Period Subclass and Non Exempt Second Meal Period Subclass, a second mandated meal  
28

1 period, when their work exceeded ten (10) hours in a workday, during their usual and customary  
2 (minimum of) twelve (12) hour shifts Monday through Friday.

3 70. Defendants Ali Reza Ghaufori and Horacio Hernandez failed to maintain,  
4 distribute or train any policy regarding meal periods to members of the Subclasses pertaining to  
5 the Plaintiffs and Subclass' time worked on behalf of each Defendant, when requiring work to  
6 be performed for themselves as individuals, separate from work assigned by Defendant AG  
7 Autobody, Inc.; nor were meal periods provided to Plaintiffs and the Subclasses when work was  
8 performed at the direction of Ghaufori and/or Hernandez, for their individual or collective  
9 benefit, to their personal property.  
10  
11

12 71. Defendants failed to secure valid meal waiver consents.

13 72. Defendants routinely discouraged, impeded and/or prevented Plaintiffs and the  
14 Subclasses, and in fact, knew or should have reasonably known that Plaintiffs and the  
15 Subclasses were prohibited from taking compliant meal periods; however, Defendants did not  
16 take steps to address the situation.  
17

18 73. As a result of Defendants' failure to provide meal periods, Plaintiffs and the  
19 Subclasses are entitled to recover one additional hour of pay at the Plaintiff or member's regular  
20 rate of pay for each work day that a meal period was not provided, as well as statutory interest,  
21 attorneys' fees and costs.  
22

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**FOURTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE REST PERIODS**  
**(ON BEHALF OF PLAINTIFFS, EXEMPT REST PERIOD SUBCLASS AND**  
**NON EXEMPT REST PERIOD SUBCLASS)**  
**(AGAINST ALL DEFENDANTS)**

74. Plaintiffs on behalf of themselves, Exempt Rest Period Subclass and Non Exempt Rest Period Subclass, allege this fourth cause of action, and incorporate by reference and re-allege each and every paragraph of this Complaint as though fully set forth:

75. California Labor Code 226.7(b) requires that no employee be made to work during a rest or recovery period mandated by an applicable I.W.C. Wage Order.

76. California Labor Code and I.W.C Wage Order No. 4-2001 in relevant part indicate that an employer must authorize and permit rest periods for all non-exempt employees whose total daily work time is at least 3.5 hours. Thus, offering a “rest period at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

77. Plaintiffs and the Exempt Rest Period Subclass are informed and reasonably believe that they did not meet the legal requirements for exemption classification and were entitled to complaint rest periods.

78. Defendant AG Autobody, Inc. maintains a Rest Period and Lunch Break Policy, which was not, and is not provided to, and is not trained to Plaintiffs, the Exempt Rest Period Subclass and the Non Exempt Rest Period Subclass.

79. Defendant AG Autobody, Inc. disregarded its Rest Period and Lunch Break Policy by regularly interrupting or failing to permit and/or authorize Plaintiffs, the Exempt Rest Period Subclass and the Non Exempt Rest Period Subclass, a mandated rest period, during their usual and customary (minimum of) twelve-hour (12) shifts Monday through Friday, and no rest period during their (minimum of) six (6) hour shift on Saturday.

1           80. Defendants Ali Reza Ghaufori and Horacio Hernandez failed to maintain,  
2 distribute or train any policy regarding rest periods to Plaintiffs, the Exempt Rest Period  
3 Subclass and the Non Exempt Rest Period Subclass, pertaining to the Plaintiffs and Subclass'  
4 time worked on behalf of each Defendant, when requiring work to be performed for themselves  
5 as individuals, separate from work assigned by Defendant AG Autobody, Inc.; nor were rest  
6 periods provided to Plaintiffs, the Exempt Rest Period Subclass and the Non Exempt Rest  
7 Period Subclass when work was performed at the direction of Ghaufori and/or Hernandez, for  
8 their individual or collective benefit, to their personal property.  
9  
10

11           81. Defendants regularly failed to provide for an uninterrupted 10-minute rest period  
12 to Plaintiffs, the Exempt Rest Period Subclass and Nonexempt Rest Period Subclass. As alleged  
13 in this Complaint, Defendants regularly interrupted or failed to permit and/or authorize  
14 Plaintiffs, the Exempt Rest Period Subclass and the Non Exempt Rest Period Subclass a  
15 mandated rest period in accordance with the law.  
16

17           82. Defendants routinely discouraged, impeded and/or prevented Plaintiffs, the  
18 Exempt Rest Period Subclass and Non Exempt Rest Period Subclass, and in fact, knew or  
19 should have reasonably known that Plaintiffs, the Exempt Rest Period Subclass and the Non  
20 Exempt Rest Period Subclass were working during their rest periods; however, Defendants did  
21 not take steps to address the situation.  
22

23           83. As a result of Defendants' failure to provide rest periods, Plaintiffs, the Exempt  
24 Rest Period Subclass and the Non Exempt Rest Period Subclass are entitled to recover one  
25 additional hour of pay at the Plaintiffs' or member's regular rate of pay for each work day that a  
26 rest period was not provided, as well as statutory interest, attorneys' fees and costs.  
27

28 \\\

1 **FIFTH CAUSE OF ACTION**  
2 **FAILURE TO PROVIDE TIMELY AND ACCURATE ITEMIZED WAGE**  
3 **STATEMENTS**  
4 **(ON BEHALF OF PLAINTIFFS, EXEMPT WAGE STATEMENT SUBCLASS AND**  
5 **NON EXEMPT WAGE STATEMENT SUBCLASS)**  
6 **(AGAINST ALL DEFENDANTS)**

7 84. Plaintiffs on behalf of themselves, Exempt Wage Statement Subclass and Non  
8 Exempt Wage Statement Subclass, allege this fifth cause of action, and incorporate by  
9 reference and re-allege each and every paragraph of this Complaint as though fully set forth:

10 85. California Labor Code §226(a) reads as follows:

11 (a) An employer, semimonthly or at the time of each payment of wages, shall  
12 furnish to his or her employee, either as a detachable part of the check, draft, or  
13 voucher paying the employee's wages, or separately if wages are paid by personal  
14 check or cash, an accurate itemized statement in writing showing (1) gross wages  
15 earned, (2) total hours worked by the employee (3) the number of piece-rate units  
16 earned and any applicable piece rate if the employee is paid on a piece-rate basis,  
17 (4) all deductions, provided that all deductions made on written orders of the  
18 employee may be aggregated and shown as one item, (5) net wages earned, (6) the  
19 inclusive dates of the period for which the employee is paid, (7) the name of the  
20 employee and only the last four digits of his or her social security number or an  
21 employee identification number other than a social security number, (8) the name  
22 and address of the legal entity that is the employer.

23 86. Plaintiffs, on behalf of the Exempt Wage Statement Subclass and the Non  
24 Exempt Wage Statement Subclass, re-allege that Defendants made it common practice to  
25 provide for wages in the form of cash, check or a combination of both forms of payment.  
26 Defendants at no time provided for timely and accurate wage statements to provide detail for  
27 cash [portion of] payments.

28 87. Plaintiffs and the Exempt Wage Statement Subclass are informed and reasonably  
believe that they did not meet the legal requirements for exemption classification and should  
have been paid straight time and/or overtime compensation at an applicable hourly rate or at  
time and a half.



1           88.     Plaintiffs, the Exempt Wage Statement Subclass and the Non Exempt Wage  
2 Statement Subclass were routinely required to work off the clock with no recording of those  
3 hours worked for Defendants and/or were paid straight time pay for hours worked in excess of  
4 eight (8) hours in a day and/or over forty (40) hours in a week.  
5

6           89.     Defendants’ failure to pay straight time and/or overtime compensation when due  
7 and failure to record hours worked, led to Plaintiffs, the Exempt Wage Statement Subclass and  
8 the Non Exempt Wage Statement Subclass to receive inaccurate wage statements each payroll  
9 cycle.  
10

11           90.     These cumulative violations equate to Defendants not providing Plaintiffs and  
12 the Exempt Wage Statement Subclass and the Non Exempt Wage Statement Subclass with  
13 accurate and itemized wage statements in writing showing (1) all applicable hourly rates in  
14 effect during each respective pay period, (2) the number of hours worked, (3) gross wages  
15 earned, (4) net wages earned, (5) all deductions, (6) inclusive dates of the period for which the  
16 employee was paid, (7) the employee identification number, and (8) the legal entity of the  
17 employer.  
18

19           91.     Plaintiffs, the Exempt Wage Statement Subclass and the Non Exempt Wage  
20 Statement Subclass allege to and have suffered actual harm as a result of Defendants’ knowing  
21 and intentional violation of the California Labor Code as it pertains to provision of timely and  
22 accurate wage statements. As such, they will seek to recover the “greater of all actual damages  
23 or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred  
24 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an  
25 aggregate penalty of four thousand dollars (\$4,000)” and, reasonable attorneys’ fees and costs.  
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**SIXTH CAUSE OF ACTION**  
**FAILURE TO PAY ALL COMPENSATION DUE AND PAYABLE UPON**  
**CONCLUSION OF EMPLOYMENT**  
**(ON BEHALF OF PLAINTIFFS AND EXEMPT WAITING TIME SUBCLASS AND**  
**NON EXEMPT WAITING TIME SUBCLASS)**  
**(AGAINST ALL DEFENDANTS)**

92. Plaintiffs on behalf of themselves, the Exempt Waiting Time Subclass and the Non Exempt Waiting Time Subclass allege this sixth cause of action, and incorporate by reference and re-allege each and every paragraph of this Complaint as though fully set forth:

93. Labor Code §201 and §202 requires that all employees receive all earned and unpaid wages at the time of termination of employment, either immediately upon discharge or within the required time frame upon resignation.

94. Plaintiffs and the Exempt Waiting Time Subclass are informed and reasonably believe that they did not meet the legal requirements for exemption classification and should have been paid overtime compensation for all hours worked in excess of eight (8) hours in a day and/or over forty (40) hours in a week.

95. Defendants have made it a common practice to willfully deny Plaintiffs, the Exempt Waiting Time Subclass and the Non Exempt Waiting Time Subclass final pay upon termination or resignation and have indefinitely precluded the receipt of all earned and due wages, including unpaid overtime wages, by Defendants maintaining policies and/or practices that violate the requirements of the Labor Code and the IWC Wage Order, even though, at all relevant times, Defendants have had the ability to comply with those legal requirements.

96. As a result of Defendants' failure to pay all earned and unpaid wages at the time of termination of and/or resignation from employment, Plaintiffs, the Exempt Waiting Time

1 Subclass and the Non Exempt Waiting Time Subclass are entitled to waiting time penalties  
2 pursuant to California Labor Code §203, as well attorneys' fees and costs.

3  
4 **SEVENTH CAUSE OF ACTION**  
5 **UNLAWFUL DEDUCTIONS FROM WAGES**  
6 **(ON BEHALF OF PLAINTIFFS, EXEMPT WAGE DEDUCTION SUBCLASS AND**  
7 **NON EXEMPT WAGE DEDUCTION SUBCLASS)**  
8 **(AGAINST ALL DEFENDANTS)**

9 97. Plaintiffs on behalf of themselves, the Exempt Wage Deduction Subclass and the  
10 Non Exempt Wage Deduction Subclass, allege this seventh cause of action, and incorporate by  
11 reference and re-allege each and every paragraph of this Complaint as though fully set forth:

12 98. California Labor Code §300 prohibits the assignment of future wages unless the  
13 wages are assigned for the necessities of life, such as food, clothing or housing. As such, it is  
14 unlawful for an employer to deduct from an employee's final paycheck any amount representing  
15 the unpaid balance of a debt owed by the employee.

16 99. Plaintiffs, the Exempt Wage Deduction Subclass and the Non Exempt Wage  
17 Deduction Subclass endured adjustments and deductions to their paychecks and/or cash  
18 payments (of wages) for employee loan repayments without their expressed written consent.

19 100. Plaintiffs, the Exempt Wage Deduction Subclass and the Non Exempt Wage  
20 Deduction Subclass are informed and reasonably believe that Defendants' acts of taking  
21 unauthorized deductions from their earned compensation, including failure to compensate for all  
22 earned and payable wages upon termination constituted an unlawful self-help remedy in  
23 violation of the California Labor Code.

24 101. As a result of Defendants' willful and unlawful deduction of wages from  
25 Plaintiffs', the Exempt Wage Deduction Subclass' and the Non Exempt Wage Deduction  
26 Subclass' paychecks and cash payments (of wages), they are entitled to reimbursement of  
27  
28

1 deducted wages plus waiting time penalties pursuant to California Labor Code §203, as well  
2 attorneys' fees and costs.

3  
4 **EIGHTH CAUSE OF ACTION**  
5 **UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES UNDER BUSINESS AND**  
6 **PROFESSIONS CODE§ 17200 ET SEQ**  
7 **(BY PLAINTIFFS, ALL EXEMPT CLASSES AND ALL NON EXEMPT CLASSES**  
8 **(AGAINST ALL DEFENDANTS)**

9  
10 102. Plaintiffs, all Exempt Classes and all Non Exempt Classes allege this eighth  
11 cause of action, and incorporate by reference each and every paragraph of this Complaint as  
12 though fully set forth, except those paragraphs which are inconsistent with this cause of action:

13  
14 103. Plaintiffs, all Exempt Classes and all Non Exempt Classes are informed and  
15 reasonably believe that Defendants, individually and/or all of them, have engaged in unfair  
16 business practices in California by adopting employment practices in direct violation of  
17 California common and statutory law.

18  
19 104. Plaintiffs, all Exempt Classes and all Non Exempt Classes are informed and  
20 reasonably believe that Defendants have committed deceptive, unlawful, unfair and fraudulent  
21 business practices which have deprived Plaintiffs, all Exempt Classes and all Non Exempt  
22 Classes of money or property in violation of California Business and Professions Code § 17200  
23 et seq. Violations have occurred by Defendants' failure to pay overtime wages, failure to  
24 provide meal and rest periods, failure to pay all earned and payable wages upon termination of  
25 employment, failure to provide timely and accurate wage statements, unlawful deductions from  
26 wages and failure to provide for timely inspection of records.

27  
28 105. Plaintiffs, all Exempt Classes and all Non Exempt Classes are informed and  
reasonably believe that they are entitled to and do seek a declaration that the aforementioned

1 business practices are deceptive, unlawful, unfair and/or fraudulent and injunctive relief  
2 restraining Defendants from engaging in any such future business practices.

3 106. As a result of Defendants' unlawful and unfair business practices, Plaintiffs, all  
4 Exempt Classes and all Non Exempt Classes seek disgorgement of monies and full restitution,  
5 as necessary and allowable, to restore any and all monies withheld, acquired and/or converted  
6 by the Defendants, all of them or individually, by means of the unfair practices outlined herein.  
7 This includes seeking statutory interest, as well as attorneys' fees and costs.  
8

9  
10 **NINTH CAUSE OF ACTION**  
11 **PRIVATE ATTORNEYS GENERAL ACT, CLAIM FOR CIVIL PENALTIES**  
12 **(BY PLAINTIFFS ON BEHALF OF ALL EXEMPT CLASSES AND**  
13 **NON EXEMPT CLASSES)**  
14 **(AGAINST DEFENDANT AG AUTOBODY, INC.)**

15 107. Plaintiffs on behalf of themselves, all Exempt Classes and all Non Exempt  
16 Classes allege this ninth cause of action, and incorporate by reference and re-allege each and  
17 every paragraph of this Complaint as though fully set forth:

18 108. California Labor Code §§2698 *et seq.*, allows for the Labor Workforce  
19 Development Agency to act on behalf of aggrieved employees and to recover civil penalties on  
20 behalf of the aggrieved employees, other employees and the State of California for Labor Code  
21 violations.

22 109. Plaintiffs, Exempt Classes and Non Exempt Classes have been and are subject to  
23 Defendant AG Autobody, Inc.'s numerous violations of California statutory and common laws,  
24 including but not limited to violation of California Labor Code §§201-204, 226 *et seq.*, 300,  
25 432, 510, 1194, 1197, 1197.1, 1198.5 and I.W.C. Wage Order No. 4-2001, thus Plaintiffs are  
26 informed and reasonably believe themselves to qualify as aggrieved employees.  
27  
28

1           110. Plaintiffs as aggrieved employees perform[ed] work for Defendant violator and  
2 had one or more alleged violations committed against them, and therefore are adequately placed  
3 to represent the interest of all other aggrieved employees, such as Exempt Class members and  
4 Non Exempt Class members.  
5

6           111. Plaintiffs seek to recover the PAGA civil penalties through a representative  
7 action permitted under the California Labor Code §§2699(a), 2699.3 and 2699.5, in addition to  
8 other remedies for violations of Labor Code §226 and other Labor Code violations which have  
9 been outlined in this Complaint.  
10

11           112. California Labor Code §2698 *et seq.*, imposes a civil penalty upon violators of  
12 one hundred dollars (\$100) per pay period, for each aggrieved employee for each initial  
13 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each  
14 subsequent violations.  
15

16           113. Plaintiffs' PAGA claims do not require class certification; however, Plaintiffs  
17 may choose to seek certification of the PAGA claims.  
18

19           114. On January 27, 2017, Plaintiffs provided the Labor Workforce and Development  
20 Agency ("LWDA") written notice of the alleged claims through the Agency's online claim  
21 notice; duplicate notice was sent to Defendant by certified mail with return receipt.  
22

23           115. At the time of filing this First Amended Complaint, the LWDA has not  
24 responded to Plaintiffs and/or has chosen not to investigate the claims; thereby allowing for this  
25 action to commence pursuant to California Labor Code §2699 *et seq.*  
26

27 \\  
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\\  
30

1 **TENTH CAUSE OF ACTION**  
2 **FAILURE TO PAY ALL HOURS WORKED IN VIOLATION OF THE FAIR LABOR**  
3 **STANDARDS ACT (FLSA)**  
4 **(ON BEHALF OF PLAINTIFFS, EXEMPT OVERTIME SUBCLASS, EXEMPT**  
5 **MINIMUM WAGE SUBCLASS, EXEMPT WAGE DEDUCTION SUBCLASS,**  
6 **EXEMPT WAITING TIME SUBCLASS, NON EXEMPT OVERTIME**  
7 **SUBCLASS, NON EXEMPT MINIMUM WAGE SUBCLASS, NON EXEMPT**  
8 **WAGE DEDUCTION SUBCLASS AND NON EXEMPT WAITING TIME**  
9 **SUBCLASS)**  
10 **(AGAINST DEFENDANT ALI REZA GHAUFORI)**

11 116. Plaintiffs, on behalf of themselves, the Exempt Overtime Subclass, the Exempt  
12 Minimum Wage Subclass, the Exempt Wage Deduction Subclass, the Exempt Waiting Time  
13 Subclass, Non Exempt Overtime Subclass, the Non Exempt Minimum Wage Subclass, the Non  
14 Exempt Wage Deduction Subclass and the Non Exempt Waiting Time Subclass (hereinafter for  
15 this tenth cause of action referenced as “Subclasses”) allege this tenth cause of action, and  
16 incorporate by reference and re-allege each and every paragraph of this Complaint as though  
17 fully set forth:

18 117. This tenth cause of action was not plead in the original Complaint filed on April  
19 10, 2017, yet is added to this First Amended Complaint as Plaintiffs and the Subclasses are  
20 informed and have reason to believe that it directly responds to the Court’s reason for sustaining  
21 Defendants’ demurrer as it pertained to Ali Reza Ghaufori.

22 118. The Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 *et seq.*, defines an  
23 employer in pertinent part as any person acting directly or indirectly in the interest of any  
24 employer in relation to an employee.

25 119. The FLSA applies to and covers employees in industries engaged in interstate  
26 commerce.

1           120. Defendant AG Autobody, Inc., according to its website pauleebodyshop.com, is  
2 a certified collision repair and painting center for BMW, Ferrari, Aston Martin, Bentley,  
3 Mercedes-Benz, Porsche and other motor vehicle brands, which Plaintiffs are informed and  
4 reasonably believe, to be consumer products which affect and/or are part of interstate commerce  
5 or by virtue of their production are goods which are transported through interstate commerce.  
6

7           121. Plaintiffs and the Subclasses, at all relevant time periods, reasonably believe  
8 Defendant AG Autobody, Inc. to be an enterprise by means of its operational activities that is  
9 engaged in interstate commerce or in the production of goods for commerce in that “it has  
10 employees engaged in commerce or in the production of goods for commerce, or that has  
11 employees handling, selling, or otherwise working on goods or materials that have been moved  
12 in or produced for commerce by any person.”  
13

14           122. Plaintiffs and the Subclasses, at all relevant time periods, worked or work for  
15 Defendant AG Autobody, Inc. and are informed and reasonably believe that their mechanical  
16 repair and/or body restoration of vehicles constitutes working on and/or handling of consumer  
17 products which affects and/or is part of interstate commerce.  
18

19           123. Under the FLSA, an individual who exercises control over the nature and  
20 structure of the employment relationship or economic control over the relationship is an  
21 employer within the meaning of the Act, and thus is subject to liability for violations under the  
22 act.  
23

24           124. The FLSA authorizes Plaintiffs to bring this action on behalf of themselves and  
25 the Subclasses on the grounds the members of the aforementioned subclasses are similarly  
26 situated, who worked or work for Defendant AG Autobody, Inc. and were or are subject to the  
27 same polices or practices that allegedly violate the FLSA.  
28



1           125. Defendant Ali Reza Ghaufori (“Ghaufori”) is the Chief Executive Officer  
2 (“CEO”), Secretary, Chief Financial Officer (“CFO”) and a Director of Defendant AG  
3 Autobody, Inc. as documented on the Statement of Information filed with the State of  
4 California, Secretary of State on May 12, 2005 and February 8, 2017.  
5

6           126. Defendant Ghaufori, as indicated above, is a managing corporate officer of  
7 Defendant AG Autobody, Inc. and was held out by Defendant AG Autobody, Inc., to be a  
8 manager to Plaintiffs and the Subclasses at all times mentioned in this Complaint, as a result of  
9 his direct and indirect control of the work and working conditions and hiring, firing and other  
10 human resources decisions, such as regulating the wages and benefits for or of Plaintiffs and  
11 members of the Subclasses. On behalf of Defendant AG Autobody, Inc., Ghaufori distributed  
12 work assignments to Plaintiffs and the Subclasses and distributed payment of cash wages to  
13 Plaintiffs and the Subclasses.  
14

15           127. Defendant Ghaufori distributed work assignments to Plaintiffs and the  
16 Subclasses, for his individual benefit to his personal property, in that such work transpired off-  
17 the-clock from production for Defendant AG Autobody, Inc. and did not generate wages to be  
18 paid by Defendant AG Autobody to them. Ghaufori’s assignment of work for himself, as an  
19 individual, was controlled by him and assigned with a promise to pay Plaintiffs and the  
20 Subclasses from his personal funds.  
21

22           128. Plaintiffs and the Subclasses are informed and reasonably believe that the  
23 aforementioned actions, and others, by Defendant Ghaufori on behalf of himself and on behalf  
24 of Defendant AG Autobody, Inc., attach liability to himself, as an individual, for violations  
25 under the FLSA, as alleged herein.  
26  
27  
28



1 substantially identical functions and/or duties who Defendants classified as salaried exempt  
2 based on company records, and/or who Defendants classified as non exempt based on  
3 company records; who currently or were formerly employed by Defendants; who worked or  
4 works on mechanical repair and/or body restoration of vehicles for Defendants AG  
5 Autobody, Inc., Ali Reza Ghaufori and Horacio Hernandez within the time period from four  
6 (4) years preceding the filing of the original Complaint, up to and through the time of  
7 commencement of trial for this matter;  
8

9 c. A declaratory judgment that Defendants' policies and/or practices violated the  
10 California Labor Code and/or applicable I.W.C. Wage Order[s] for causes of action one  
11 through seven.  
12

13 d. A declaratory judgment that Defendants' policies and/or business practices as  
14 outlined in causes of action one through seven, constituted deceptive, unlawful, unfair  
15 and/or fraudulent business practices in violation of California's unfair competition laws.  
16

17 e. Injunctive relief, albeit preliminary or permanent enjoining Defendants' from  
18 engaging in the aforementioned and alleged unlawful practices.

19 f. Injunctive relief to obtain Defendants' compliance with California Labor Code  
20 §1198.5.  
21

22 g. An award to Plaintiffs, the Exempt Overtime Subclass and Non Exempt  
23 Overtime Subclass of damages for the amount of unpaid overtime compensation, including  
24 interest thereon and penalties subject to proof at trial;

25 h. An award to Plaintiffs , the Exempt Minimum Wage Subclass and the Non  
26 Exempt Minimum Wage Subclass of damages for the amount of unpaid minimum wage  
27 compensation, including interest thereon and penalties subject to proof at trial;  
28

1 i. An award to Plaintiffs, the Exempt Meal Period Subclass, the Exempt Second  
2 Meal Period Subclass, the Non Exempt Meal Period Subclass, the Non Exempt Second  
3 Meal Period Subclass of damages for the amount of one additional hour of pay at the regular  
4 rate of compensation for each workday that mandatory meal periods were not provided,  
5 including interest thereon;  
6

7 j. An award to Plaintiffs, the Exempt Rest Period Subclass and the Non Exempt  
8 Rest Period Subclass of damages for the amount of one additional hour of pay at the regular  
9 rate of compensation for each workday that mandatory rest periods were not provided,  
10 including interest thereon;  
11

12 k. An award to Plaintiffs, the Exempt Wage Statement Subclass and the Non  
13 Exempt Wage Statement Subclass of damages for failure to provide timely and accurate  
14 itemized wages statements;  
15

16 l. An award to Plaintiffs, the Exempt Waiting Time Subclass and the Non Exempt  
17 Waiting Time Subclass for waiting time penalties for any and all failure to timely remit  
18 compensation of all earned and payable wages upon termination of employment, either by  
19 discharge or resignation;  
20

21 m. An award to Plaintiffs , Exempt Classes and Non Exempt Classes for all civil  
22 penalties permitted by the PAGA, subject to the Court's discretion;

23 n. Interest accrued and due pursuant to the California Labor Code;

24 o. Restitution to the Plaintiffs, Exempt Classes and Non Exempt Classes pursuant  
25 to the applicable I.W.C Wage Order[s];  
26  
27  
28

1 p. Restitution to the Plaintiffs, Exempt Classes and Non Exempt Classes pursuant  
2 to the California Labor Code, the California Business and Professions Code and all other  
3 applicable laws;

4  
5 q. An award to Plaintiff, Exempt Classes and Non Exempt Classes for their  
6 attorneys' fees and costs of suit to the extent permitted by law;

7 r. All other relief as the Court may deem proper.  
8  
9  
10

11 DATED THIS 27TH OF October 2017  
12

13   
14

15 \_\_\_\_\_  
16 Law Office of Thomas P. Hogan  
17 Thomas P. Hogan  
18 Shawnte Priest

19 Law Offices of Scott A. Miller, APC  
20 Scott A. Miller  
21 Bonnie Fong  
22 Attorneys for Plaintiffs and proposed Class Members  
23  
24  
25  
26  
27  
28

## **PROOF OF SERVICE**

Court: Superior Court of California, for the County of Los Angeles  
Case No.: BC 656977  
Case Name: Pinto, et al., v. AG Autobody, Inc., et al.

I am over the age of eighteen and not a party to the within action; my business address is 1207 13<sup>th</sup> Street, Suite 1, Modesto, California 95354 in the County of Stanislaus.

On October 27, 2017, I served the following document(s) described as **PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DAMAGES** on attorney[s] for the Defendants in this action by uploading the documents to Case Anywhere as follows:

Sarah H. Scheinhorn (sscheinhorn@metallawgroup.com)  
W. Dan Lee (dlee@metallawgroup.com)  
M.E.T.A.L. LAW GROUP, LLP  
5757 Wilshire Boulevard, Penthouse 3  
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T: (323) 289-2260  
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*Attorneys for Defendants AG Autobody, Inc., Ali Reza Ghaufori and Horacio Hernandez*

**BY EMAIL/ELECTRONIC DELIVERY:** I caused such documents to be transmitted by electronic mail transmission to the appropriate electronic mail address(es) set forth above using Case Anywhere, I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this day the 27<sup>th</sup> of October, 2017.



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Shawnté V. Priest