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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

LILIA GARCÍA-BROWER, in her official  
capacity as Labor Commissioner for the State  
of California,

Petitioner,

v.

MOBILE WASH, INC., a California  
corporation; ALFRED DAVTYAN, an  
individual; DOES 1-20, inclusive,

Defendants.

CASE NO. **20STCV24800**

**Unlimited Jurisdiction**

**COMPLAINT FOR INJUNCTIVE RELIEF,  
DAMAGES AND PENALTIES FOR  
(1) WILLFUL MISCLASSIFICATION OF  
EMPLOYEES AS INDEPENDENT  
CONTRACTORS, (2) FAILURE TO  
REGISTER AS A CAR WASH  
EMPLOYER, (3) FAILURE TO PAY  
MINIMUM WAGE, (4) FAILURE TO PAY  
WAGES FOR REST PERIODS,  
(5) FAILURE TO PAY REST PERIOD  
PREMIUM PAY, (6) FAILURE TO PAY  
OVERTIME, (7) FAILURE TO  
INDEMNIFY EMPLOYEES FOR  
BUSINESS EXPENSES, (8) UNLAWFUL  
TAKING OF GRATUITIES, (9) FAILURE  
TO PROVIDE ITEMIZED WAGE  
STATEMENTS, (10) FAILURE TO  
COMPLY WITH PAID SICK LEAVE  
REQUIREMENTS, (11) FAILURE TO  
TIMELY PAY EARNED WAGES UPON  
SEPARATION FROM EMPLOYMENT,  
(12) FAILURE TO TIMELY PAY EARNED  
WAGES DURING EMPLOYMENT**

(No fee per Labor Code §§ 101, 101.5 and  
Government Code §6103)

VERIFIED ANSWER REQUIRED  
PURSUANT TO CCP § 446

1 Plaintiff, LILIA GARCÍA-BROWER, in her official capacity as Labor Commissioner for the  
2 State of California, alleges as follows:

3 **THE PARTIES TO THIS ACTION**

4 1. Plaintiff is the Labor Commissioner for the State of California, and Chief of the  
5 Division of Labor Standards Enforcement (“DLSE”) of the Department of Industrial Relations for  
6 the State of California. (Labor Code §§ 21, 79.)

7 2. Plaintiff is authorized to enforce all provisions of the Labor Code and Industrial  
8 Welfare Commission (“IWC”) orders governing wages, hours and working conditions of California  
9 employees. (Labor Code §§61, 90.5(b), and 95(a)). As part of her enforcement powers, Plaintiff is  
10 authorized, pursuant to Labor Code §98.3(b), to prosecute actions for the collection of wages and  
11 other moneys payable to employees or to the State arising out of an employment relationship or  
12 order of the IWC. Labor Code § 217 expressly empowers the Labor Commissioner to enforce the  
13 provisions of Labor Code §§ 200-244, which include the Code section requiring payment of  
14 premium pay for failure to comply with IWC wage order rest period requirements, and Code  
15 sections authorizing penalties for an employer’s failure to timely pay wages due to employees during  
16 employment or upon separation of employment, or for an employer’s failure to comply with  
17 requirements pertaining to itemized wage statements. Plaintiff is expressly authorized, pursuant to  
18 Labor Code § 226.8, to enforce that Code section which prohibits the willful misclassification of  
19 employees as independent contractors. Labor Code § 248.5 expressly authorizes the Labor  
20 Commissioner to enforce the paid sick leave requirements set out in Labor Code §§ 245-249. Labor  
21 Code § 355 authorizes the Labor Commissioner to enforce the provisions of Labor Code §§ 350-356,  
22 which prohibit employers from taking tips given to employees by the employer’s customers. Labor  
23 Code § 1193.6 expressly authorizes the Labor Commissioner to file and prosecute a civil action to  
24 recover unpaid minimum wages or unpaid overtime compensation, owed to any employee under  
25 Labor Code §§ 1171-1206 or under any IWC order. Furthermore, Plaintiff is authorized, pursuant to  
26 Labor Code § 1194.5, to seek injunctive relief to prevent further violations of any of the laws,  
27 regulations or IWC orders governing wages, hours of work, and working conditions for employees.  
28 Plaintiff is also authorized, pursuant to Labor Code § 2053, to enforce the laws requiring the  
registration of employers engaged in the business of car washing. Labor Code § 2802 expressly



1 empowers the Labor Commissioner to file a court action to recover amounts due under that section,  
2 which requires employers to indemnify employees for business expenses.

3         3.         At all relevant times herein, Defendant Mobile Wash, Inc. (“Mobile Wash”) has been  
4 registered with the Secretary of State as a California corporation, engaged in the business of car  
5 washing, with its principal business office located in within the County of Los Angeles in the City of  
6 Bellflower. Mobile Wash provides car washing services throughout all counties in Southern  
7 California. It styles itself as the “Uber of car washing,” and functions as a part of the so-called “gig  
8 economy,” under which the persons employed by defendants to perform these car washing services  
9 are unlawfully classified, by defendants, as “independent contractors.” Mobile Wash makes use of  
10 an “on-demand car wash app” to engage the services of its car washers, to receive orders from  
11 customers, to assign and schedule its car washers to provide car washing services to those customers,  
12 to collect the amounts owed by those customers (based on prices set by defendants) for those car  
13 washing services, and to pay its car washers for the services they provided to these customers. The  
14 work performed by these car washers – car washing – constitutes the very core of Mobile Wash’s  
15 business. Moreover, Mobile Wash retains and/or exercises substantial control over its car washers,  
16 with restrictions on where the work may be performed and how it is to be performed.

17         4.         Defendant Alfred Davtyan (“Davtyan”) is and has been, at all times herein relevant,  
18 the president, chief executive officer, chief financial officer, and secretary of Mobile Wash. He is  
19 responsible for the adoption and implementation of Mobile Wash’s pay practices and employment  
20 policies, including the policy of misclassifying its car washers as independent contractors, and its  
21 policy of non-compliance with a host of California laws and IWC wage order requirements as  
22 alleged herein below, including the requirements specified at Labor Code § 558.1. As such, Davtyan  
23 is and has been a “person acting on behalf of an employer, who violates, or causes to be violated”  
24 requirements specified in section 558.1, and therefore, under that statute, he is “liable as the  
25 employer for such violation[s].”

26         5.         The true names or capacities of Defendants sued as Doe Defendants 1 through 20 are  
27 unknown to Plaintiff. Plaintiff is informed and believes, and on that basis, alleges that each of the  
28 Doe Defendants, their agents, employees, officers, and others acting on their behalf, are legally

1 responsible for the conduct alleged herein. Plaintiff will amend her complaint to set forth the true  
2 names and capacities of the Doe Defendants and the allegations against them as soon as they are  
3 ascertained.

4 6. Each of the defendants was at all times mentioned herein an agent, partner, joint  
5 venturer, and/or representative of each of the other defendants and was at all times acting within the  
6 scope of such relationship.

7 7. Prior to filing this action, the Labor Commissioner made a written demand upon  
8 defendants for payment of amounts due for civil penalties under Labor Code §§ 210, 226.8, 558,  
9 1197.1, and 2064.

#### 10 **VENUE**

11 8. The Superior Court has personal jurisdiction over each Defendant named above  
12 because (1) each defendant is headquartered in or is a resident of the State of California, (2) each  
13 Defendant is authorized to and conducts business in and across the State of California, and (3) each  
14 Defendant otherwise has sufficient minimum contacts with and purposefully avails itself of the  
15 markets of this State, thus rendering the Superior Court's jurisdiction consistent with traditional  
16 notions of fair play and substantial justice.

17 9. Venue is proper under Code of Civil Procedure § 395.5, because the principal place  
18 of defendants' business is situated in the County of Los Angeles, and thousands of the illegal acts  
19 described below occurred in the County of Los Angeles.

#### 20 **BACKGROUND ALLEGATIONS**

21 10. From Mobile Wash's start-up in 2014 or 2015, defendants made a calculated business  
22 decision to misclassify their car washers as independent contractors rather than employees. At all  
23 times since the inception of its business, defendants have continued to misclassify their car washers  
24 as a means of unlawfully depriving these workers of a host of statutory protections applicable to  
25 employees, in direct contravention of California law.

26 11. Through this misclassification, defendants have engaged in a deliberate scheme to  
27 evade their obligations under California law – including, but not limited to the obligation to pay their  
28 car washers at no less than the applicable minimum wage for all hours worked, to pay overtime



1 compensation for overtime hours worked, to provide paid, duty-free rest periods during the workday,  
2 to reimburse the car washers for the cost of all equipment and supplies needed to perform their work  
3 and for work-related personal vehicle mileage, to refrain from taking tips that were paid by a  
4 customer for an employee, to provide paid sick leave, to provide accurate itemized wage deduction  
5 statements setting forth required information, to timely pay all wages owed during each car washer's  
6 period of employment and upon separation of employment, and the obligation to register with the  
7 Labor Commissioner as a prerequisite for employing workers and engaging in business in the car  
8 wash industry.

9         12. Recognizing the serious problem of misclassification and the harms it inflicts on  
10 workers, law-abiding businesses, taxpayers, and society as a whole, the California Legislature  
11 enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5, 2019-2020 Reg.  
12 Sess. ("A.B. 5").) A.B. 5 codified and extended the California Supreme Court's unanimous decision  
13 in *Dynamex Operations W., Inc. v. Superior Court* (2018) 4 Cal.4th 903 ("*Dynamex*"). California  
14 law is clear: for the full range of protections afforded by the Industrial Welfare Commission  
15 ("IWC") wage orders, the Labor Code, and the Unemployment Insurance Code, workers are  
16 generally presumed to be employees unless the hiring entity can overcome this presumption by  
17 establishing *each* of the three factors in the strict "ABC" test: (A) the worker is free from the control  
18 and direction of the hiring entity in connection with the performance of the work, both under the  
19 contract for the performance of the work and in fact; (B) the worker performs work that is outside  
20 the usual course of the hiring entity's business; and (C) the worker is customarily engaged in an  
21 independently established trade, occupation or business of the same nature as the work performed.  
22 (Lab. Code § 2750.3(a)(1); *Dynamex, supra*, 4 Cal.5th at 957.)

23         13. Because the hiring entity must establish each of the three factors in the ABC test in  
24 order to lawfully classify a worker as an independent contractor, the hiring entity's failure to  
25 establish any one part of the ABC test mandates classification of the worker as an employee rather  
26 than an independent contractor. (*Dynamex, supra*, 4 Cal. 5th at 963.)

27         14. Mobile Wash is a car wash company in the business of selling car washes to its  
28 customers, with the car washing performed at a location designated by the customer. The car

1 washers who perform this work are employees of Mobile Wash. They provide Mobile Wash's  
2 customers with the car washing services that Mobile Wash sells. The work that these car washers  
3 perform is central to the very purpose of Mobile Wash's business. The fact that Mobile Wash uses a  
4 cell phone or computer app as the instrumentality by which it hires its car washers, secures orders  
5 from customers, communicates with its car washers regarding customer orders, assigns work to its  
6 car washers, collects payments from customers, and pays its car washers, does not somehow  
7 transform Mobile Wash into anything other than a car washing business. Mobile Wash cannot  
8 overcome the presumption that all of its car washers are employees because it cannot establish that  
9 any of its car washers "perform work that is outside the usual course of [Mobile Wash's] business,"  
10 as required under the "B prong" of the ABC test.

11 15. At all times relevant herein, Mobile Wash requires its car washers, as a condition of  
12 employment, to enter into a written agreement which, *inter alia*, prohibits car washing at specified  
13 locations, and restricts the manner in which the car washers are to perform their work. For example,  
14 under this agreement, defendants' car washers are prohibited from taking possession of a customer's  
15 car keys or starting a customer's automobile. Further, Mobile Wash instructs its car washers on the  
16 techniques and methods to be used in washing cars at the customer's location, follows up with car  
17 washers and customers to ensure that these techniques and methods were followed, and in the event  
18 of noncompliance or customer complaints, may exercise its right to terminate the car washer's  
19 contract. Both under their contracts with Mobile Wash and in fact, none of Mobile Wash's car  
20 washers have ever been free from the control and direction of Mobile Wash in connection with the  
21 performance of their work for Mobile Wash, and as such, defendants cannot meet the requirements  
22 of the "A prong" of the ABC test, and therefore cannot overcome the presumption that all of their car  
23 washers are employees, not independent contractors.

24 16. Mobile Wash is subject to IWC Wage Order 9-2001, which applies to the  
25 "transportation industry" including any business "operated for the purpose of ... cleaning of  
26 vehicles." IWC Wage Order 9-2001 has been in effect since January 1, 2001, and provides various  
27 substantive employee protections, including requirements for payment of no less than the minimum  
28 wage for all hours worked, payment of overtime compensation for overtime hours worked, paid rest



1 periods, premium pay for failure to provide required paid rest periods, and a provision that  
2 employers must provide employees with employer-required uniforms, and with tools or equipment  
3 required by the employer or necessary for the performance of the job. These IWC wage order  
4 requirements are valid, operative and enforceable as state law. (Labor Code §§ 1185, 1197, 1198,  
5 1200.)

6 17. The California Supreme Court issued its decision in *Dynamex* on April 30, 2018,  
7 construing the very IWC wage order at issue here, IWC Order 9-2001, holding that all of the  
8 protections of that wage order are available to employees employed by employers covered by the  
9 wage order, and that the hiring entity must establish all three factors of the ABC test in order to  
10 overcome the presumption of employee status. As this decision merely construed existing  
11 provisions of the IWC wage order, it applies retroactively with respect to the enforcement of  
12 requirements under the IWC orders and Labor Code provisions related to IWC wage order  
13 requirements.

14 18. Labor Code requirements that are wholly unrelated to IWC wage order requirements  
15 did not become subject to the ABC test until the effective date of AB 5, on January 1, 2020. Prior to  
16 January 1, 2020, the determination of whether a worker was an employee or an independent  
17 contractor, for the purpose of those Labor Code requirements wholly unrelated to IWC orders, was  
18 governed by *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341  
19 ("*Borello*"), under which there is a rebuttable presumption of employee status, which may be  
20 challenged by the hiring entity through a multi-factor test under which no one factor is necessarily  
21 determinative, though certain factors are considered more significant than others. Though more  
22 cumbersome to apply than the ABC test, even under *Borello*, defendants' car washers were  
23 employees of Mobile Wash, rather than independent contractors.

24 19. Emergency Rule 9 of the California Rules of Court, as revised on May 29, 2020,  
25 provides that notwithstanding any other law, the statutes of limitation for civil causes of action that  
26 exceed 180 days are tolled from April 6, 2020, until October 1, 2020. The limitation periods for the  
27 following causes of action are governed by this Emergency Rule.

28 //

1                   **FIRST CAUSE OF ACTION: WILLFUL MISCLASSIFICATION OF EMPLOYEES**  
2                   **AS INDEPENDENT CONTRACTORS (Labor Code § 226.8)**

3           20.     Plaintiff incorporates by reference all of the allegations set forth hereinabove.

4           21.     Under Labor Code § 226.8, it is unlawful for any person or employer to willfully  
5 misclassify an employee as an independent contractor. The statute provides that a person or  
6 employer found to have engaged in such willful misclassification shall be subject to a civil penalty  
7 of not less than \$5,000 for each such violation, in addition to other penalties or fines permitted by  
8 law.

9           22.     At all times relevant herein, Defendants willfully misclassified and continue to  
10 misclassify as an independent contractor each and every car washer who performed or performs  
11 work for Mobile Wash, Inc. or for a customer of Mobile Wash, Inc., notwithstanding that under  
12 California law, all of their car washers have been and are employees of Mobile Wash, Inc., thereby  
13 violating Labor Code § 226.8.

14           23.     Defendants are liable for civil penalties under Labor Code § 226.8 in the amount of  
15 \$5,000 for each Mobile Wash car washer misclassified as an independent contractor who performed  
16 work for Mobile Wash or Mobile Wash's customers at any time from April 6, 2019 going forward.

17           24.     Unless enjoined by this Court from misclassifying its car washers as independent  
18 contractors, and from thereby denying these car washers' the protections available to employees  
19 under the Labor Code and IWC Wage Order 9-2001, defendants will continue to misclassify their  
20 car washers as independent contractors and thereby continue to deny them the protections available  
21 to employees under the Labor Code and IWC Wage Order 9-2001.

22                   **SECOND CAUSE OF ACTION: FAILURE TO REGISTER AS A CAR**  
23                   **WASH EMPLOYER (Labor Code §§ 2050-2064)**

24           25.     Plaintiff incorporates by reference all of the allegations set forth hereinabove.

25           26.     In 2003, in order to protect workers in the car wash industry, the California  
26 Legislature enacted a statutory scheme, at Labor Code §§ 2050, et seq., requiring employers engaged  
27 in the business of car washing, cleaning, polishing, detailing, or otherwise providing cosmetic care to  
28 vehicles to register with the State Labor Commissioner and to comply with certain conditions as a  
prerequisite for registration, including the filing of a surety bond with the Labor Commissioner in an



1 amount not less than \$150,000 for the benefit of any employee damaged by his or her employer's  
2 failure to pay wages or by the commission of specified Labor Code violations. Labor Code § 2060  
3 expressly states: "No employer may conduct any business without complying with the registration  
4 and bond requirements of this chapter." Labor Code § 2062 prohibits registration of an employer  
5 that has failed to remit the proper amount of payroll taxes required by the Unemployment Insurance  
6 Code. Labor Code § 2064 provides that an employer who fails to register as required under Section  
7 2054 is subject to a civil fine of \$100 for each calendar day, in an amount not to exceed \$10,000, for  
8 each day the employer conducts car washing and polishing while unregistered.

9 27. Though engaged in the business of car washing and polishing at all times relevant  
10 herein, Defendants have never filed an application for registration with the Labor Commissioner,  
11 have never filed a surety bond with the Labor Commissioner, and have never been registered by the  
12 Labor Commissioner.

13 28. As a consequence of defendants' failure to register with the Labor Commissioner as  
14 an employer in the car wash industry, defendants are subject to a civil penalty pursuant to Labor  
15 Code § 2064, in the amount of \$10,000.

16 29. Unless enjoined by the Court from operating as an employer in the car washing  
17 business without first applying for and obtaining registration from the Labor Commissioner,  
18 defendants will continue to unlawfully operate their business without registration, to the detriment of  
19 their employees, their law-abiding business competitors, and the public at large.

20 **THIRD CAUSE OF ACTION: FAILURE TO PAY NOT LESS THAN THE MINIMUM**  
21 **WAGE FOR ALL HOURS WORKED (Labor Code § 1197; IWC Order 9-2001, § 4)**

22 30. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

23 31. Labor Code § 1197 and IWC Order 9-2001, § 4 require employers to pay their  
24 employees not less than the applicable minimum wage for all "hours worked," which includes all  
25 time the employee is suffered or permitted to work, whether or not required to do so, and all time the  
26 employee is subject to the employer's control. (IWC Order 9-2001, § 2(H).) This compensable time  
27 includes time spent transporting necessary tools and equipment from the car washer's home to the  
28 first job of the day and back to the car washer's home following the last job of the day, time spent

1 traveling from one job location to another during the course of a workday, time spent obtaining the  
2 required tools, equipment and supplies necessary to perform work, and on-call time during which the  
3 car washer has signed in as “active” or “available” on the Mobile Wash app during which the car  
4 washer is required to accept available car wash jobs, or is subject to adverse employment  
5 consequences for declining to accept an available job. The applicable minimum wage is the  
6 minimum wage required under state law, or the minimum wage required under an applicable local  
7 ordinance, whichever is higher.

8         32. At all times relevant herein, Mobile Wash employed 26 or more employees, and thus,  
9 was subject to minimum wage requirements based on that number of employees. The lowest  
10 allowable minimum wage, set by state law, required payment of not less than \$10.50 per hour for all  
11 hours worked in 2017, not less than \$11.00 per hour for all hours worked in 2018, not less than  
12 \$12.00 per hour for all hours worked in 2019, and not less than \$13.00 per hour for all hours worked  
13 in 2020. (Labor Code § 1182.12, IWC Order 9-2001, § 4.) However, work performed in the  
14 following cities or other locations was subject to a higher minimum wage as follows: (a) for work  
15 performed in the City of Los Angeles: \$12 per hour from July 1, 2017 to June 30, 2018, and (b) for  
16 work performed in the cities of Los Angeles, Santa Monica, Pasadena, Malibu or unincorporated  
17 areas of Los Angeles County: \$13.35 an hour starting July 1, 2018, increased to \$14.25 an hour  
18 starting on July 1, 2019, with a scheduled increase to \$15 an hour on July 1, 2020.

19         33. Labor Code § 226.2 applies to employees who are paid on a piece-rate basis for any  
20 work performed during a pay period, and requires that payment be made to such employees for  
21 “non-productive time” on an hourly basis separate from the compensation derived through piece-rate  
22 earnings, at an hourly rate that is not less than the applicable minimum wage. The statute defines  
23 “non-productive time” as “time under the employer’s control, exclusive of rest and recovery periods,  
24 that is not directly related to the activity being compensated on a piece-rate basis.”

25         34. At all times relevant herein, defendants have compensated their car washers for their  
26 services on a piece-rate basis, with defendants paying the car washers a specified amount per car  
27 wash, based on a percentage of the amount paid to defendants by the customer. Defendants have not  
28 paid their car washers for those activities that constitute “non-productive time” within the meaning



1 of section 226.2, including time spent transporting equipment and supplies from the location where  
2 they are kept before the start of the workday to the location of the first car wash job of the workday  
3 and from the location of the last car wash job of the workday back to the location where such  
4 equipment and supplies are kept until the next workday, travel time driving from one customer's  
5 location to another, time spent procuring tools, equipment or supplies in order to perform car  
6 washing services, and on-call time during which the car washer has signed in as "active" or  
7 "available" on the Mobile Wash app during which the car washer is required to accept available car  
8 wash jobs, or is subject to adverse employment consequences for declining to accept an available  
9 job.

10 35. Defendants' failure to pay for the above-described non-productive time constitutes a  
11 violation of Labor Code § 226.2, and a violation of the obligation to pay no less than the applicable  
12 minimum wage for all hours worked, as specified at Labor Code § 1197, and IWC Order 9-2001, §  
13 4(A). Under these provisions, defendants' car washers are entitled to payment of the applicable  
14 minimum wage for all such uncompensated time, from April 6, 2017 going forward.

15 36. Labor Code § 1194.2 provides that in any action filed by the Labor Commissioner  
16 pursuant to Labor Code § 1193.6 to recover unpaid minimum wages owed to any employees, the  
17 employees shall be entitled to recover, in addition to the unpaid minimum wages, liquidated  
18 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

19 37. Defendants' car washers who are owed unpaid minimum wages stemming from  
20 defendants' failure to pay wages for "non-productive time" within the meaning of Labor Code §  
21 226.2, are therefore entitled to recover, in addition to the unpaid minimum wages, liquidated  
22 damages from defendants pursuant to Labor Code § 1194.2, from April 6, 2017 going forward.

23 38. Labor Code § 1197.1(a) provides for the imposition of civil penalties against an  
24 employer or other person acting as an officer or agent of the employer, for paying less than the  
25 applicable minimum wage for any hours worked by an employee, with the penalty for any initial  
26 intentional violation set at \$100 per underpaid employee for each pay period for which the employee  
27 is underpaid, and for any subsequent violation (whether intentional or not) set at \$250 per underpaid  
28 employee for each pay period for which the employee is underpaid. Likewise, IWC Order 9, § 20

1 authorizes civil penalties for any violation of the wage order which results in an underpayment of an  
2 employee's wages.

3 39. Defendants' failure to pay at least the applicable minimum wage to their car washers  
4 for "non-productive" hours worked was intentional, within the meaning of Labor Code § 1197.1(a),  
5 and subjects defendants to civil penalties at the "initial violation" rate as provided by that statute for  
6 all violations committed from April 6, 2019 until the date of service of this lawsuit. Any additional  
7 violations subsequent to the date of service of this lawsuit, going forward, will subject defendants to  
8 civil penalties for any "subsequent violation" as provided by Labor Code § 1197.1(a).

9 **FOURTH CAUSE OF ACTION: FAILURE TO PAY WAGES FOR REST PERIODS**  
10 **(Labor Code § 226.2; IWC Order 9-2001, § 12(A))**

11 40. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

12 41. IWC Order 9-2001, § 12(A) requires every employer to authorize and permit  
13 employees to take *paid* rest periods, with such rest periods expressly deemed to constitute "hours  
14 worked." Under Section 12(A) of this IWC order, such "authorized rest period time shall be based  
15 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or  
16 major fraction thereof," with no duty to provide a rest period to an employee whose daily work time  
17 is less than three and one-half hours. Thus, one paid rest period must be made available to the  
18 employee if the employee works at least three and one-half hours but not more than six hours in a  
19 day, a second paid rest period must be provided to the employee if the employee works more than  
20 six hours and up to 10 hours in a day, and a third paid rest period must be provided to the employee  
21 if the employee works more than 10 hours and up to 14 hours in a day, etc. Section 12(A) of the  
22 IWC Order expressly provides that these required rest periods "shall be counted as hours worked  
23 from which there shall be no deduction from wages." Because such rest periods are "counted as  
24 hours worked," they must be paid at not less than the minimum wage, in accordance with § 4(A) of  
25 the Wage Order.

26 42. Labor Code § 226.2 requires employers to provide their employees who are  
27 compensated on a piece-rate basis with separate hourly compensation for required rest periods, in an  
28 amount not less than the higher of (a) the average hourly rate for each workweek under a formula set



1 out in the statute, or (b) the applicable minimum wage. This statute makes clear that piece-rate  
2 compensation does not serve to provide any compensation for required rest periods.

3 43. At all times relevant herein, defendants have failed to provide any separate, hourly  
4 compensation to their car washers for required rest periods. These required rest periods have been  
5 completely uncompensated by defendants. As such, defendants violated the requirements set forth  
6 in IWC Order 9-2001 and Labor Code § 226.2 that *paid* rest periods be made available to  
7 employees.

8 44. As a consequence of defendants' failure to pay their car washers for required rest  
9 periods, each car washer is entitled to payment of unpaid wages for each such required rest period,  
10 from April 6, 2017 going forward, in an amount not less than the higher of the applicable minimum  
11 wage, or the car washer's average hourly wage rate under the formula set at Labor Code § 226.2.

12 45. As a further consequence of defendants' failure to pay their car washers any wages  
13 for their required rest periods, thereby violating the requirement set out in the Labor Code and IWC  
14 Order for payment of not less than the minimum wage for all hours worked, defendants' car washers  
15 are entitled to liquidated damages under Labor Code § 1194.2 in an amount equal to the unpaid  
16 minimum wages plus interest.

17 46. Defendants' failure to pay their car washers at least the applicable minimum wage for  
18 their required rest periods was intentional, within the meaning of Labor Code § 1197.1, and subjects  
19 defendants to civil penalties at the "initial violation" rate as provided by that statute for all violations  
20 committed from April 6, 2019 until the date of service of this lawsuit. Any additional violations  
21 subsequent to the date of service of this lawsuit, going forward, will subject defendants to civil  
22 penalties for any "subsequent violation" as provided by Labor Code § 1197.1.

23 **FIFTH CAUSE OF ACTION: FAILURE TO PAY REST PERIOD PREMIUM PAY**  
24 **(Labor Code § 226.7(c); IWC Order 9-2001, § 12(B))**

25 47. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

26 48. Labor Code § 226.7(c) provides that if an employer fails to provide an employee with  
27 a rest period "in accordance with a state law, including ... an applicable ... order of the Industrial  
28 Welfare Commission," the employer shall pay the employee one additional hour of pay at the

1 employee's regular rate of compensation for each workday that the rest period is not provided. A  
2 similar requirement is set out at IWC Order 9-2001, § 12(B).

3 49. By failing to provide any compensation to their car washers for required rest periods,  
4 defendants failed to provide rest periods "in accordance with ... [the] applicable ... order of the  
5 Industrial Welfare Commission," as specified at IWC Order 9-2001, § 12(A).

6 50. As a consequence of defendants' failure to provide legally mandated, paid rest  
7 periods to their car washers, defendants are subject to the premium pay provisions of Labor Code §  
8 227.7(c) and IWC Order 9-200, § 12(B), under which defendants' car washers are entitled to  
9 payment of one hour of rest period premium pay for each workday that a required paid rest period  
10 was not provided, from April 6, 2017 going forward.

11 51. Labor Code § 558 provides that any employer, or other person acting on behalf of an  
12 employer, who violates or causes to be violated, a section of this chapter (Labor Code § 500, *et seq.*)  
13 or any provision regarding hours and days of work in any order of the IWC shall be subject to a civil  
14 penalty, in addition to the underpaid wages which must be paid to the affected employees, in the  
15 amount of \$50 for each underpaid employee for each pay period for which the employee was  
16 underpaid as to any "initial violation," and in the amount of \$100 for each underpaid employee for  
17 each pay period for which the employee was underpaid as to each "subsequent violation." Similar  
18 authorization for these civil penalties is found at IWC Order 9-2001, § 20.

19 52. The failure to pay employees required rest period premium pay subjects an employer  
20 to civil penalties under Labor Code § 558 and IWC Order 9-2001, § 20.

21 53. Defendants' failure to pay their car washers required rest period premium pay  
22 subjects defendants to civil penalties at the "initial violation" rate as provided by that statute for all  
23 violations committed from April 6, 2019 until the date of service of this lawsuit. Any additional  
24 violations subsequent to the date of service of this lawsuit, going forward, will subject defendants to  
25 civil penalties for any "subsequent violation" as provided by Labor Code § 1197.1(a).

26 **SIXTH CAUSE OF ACTION: FAILURE TO PAY OVERTIME COMPENSATION FOR**  
27 **OVERTIME HOURS WORKED (Labor Code § 510; IWC Order § 3(A))**

28 54. Plaintiff incorporates by reference all of the allegations set forth hereinabove.



1           55.     Labor Code § 510 and IWC Order 9-2001, § 3(A) require payment of overtime  
2 compensation, at not less than one and one-half times the employee’s regular rate of compensation,  
3 for all hours worked in excess of 8 hours and up to 12 hours in any workday, and for all hours  
4 worked in excess of 40 hours in any workweek, and payment of overtime compensation at not less  
5 than twice the employee’s regular rate of compensation for all hours worked in excess of 12 hours in  
6 any workday.

7           56.     At all relevant times herein, defendants have failed to pay overtime compensation to  
8 their car washers who work more than 8 hours in a workday or 40 hours in a workweek, thereby  
9 violating Labor Code § 510 and IWC Order 9-2001, §3(A).

10          57.     Defendants owe overtime compensation to their car washers who have performed  
11 overtime work at any time from April 6, 2017 going forward, as provided by Labor Code § 510 and  
12 IWC Order 9-2001, §3(A).

13          58.     As a consequence of defendants’ failure to pay required overtime compensation to  
14 their car washers, defendants are subject to civil penalties as provided by Labor Code § 558 and  
15 IWC Order 9-2001, § 20, at the “initial violation” rate as provided by that statute for all violations  
16 committed from April 6, 2019 until the date of service of this lawsuit. Any additional violations  
17 subsequent to the date of service of this lawsuit, going forward, will subject defendants to civil  
18 penalties at the rate for any “subsequent violation.”

19                   **SEVENTH CAUSE OF ACTION: FAILURE TO INDEMNIFY EMPLOYEES FOR**  
20                   **NECESSARY BUSINESS EXPENSES (Labor Code § 2802; IWC Order 9-2001, § 9)**

21          59.     Plaintiff incorporates by reference all of the allegations set forth hereinabove.

22          60.     Labor Code § 2802 requires every employer to indemnify each of its employees for  
23 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
24 of the employee’s duties, or of his or her obedience to the directions of the employer. In accord,  
25 IWC Order 9-2001, § 9 requires employers to pay for, or indemnify employees for required  
26 uniforms, and tools or equipment required or necessary for the performance of the job. Pursuant to  
27 Labor Code § 2804, any contract or agreement, express or implied, made by any employee to waive  
28 the benefits of these protections is null and void.

1           61. At all relevant times herein, in following the directions issued by defendants or in  
2 order to carry out their job duties, defendants' car washers have been required to purchase various  
3 items including but not limited to: (a) uniforms consisting of hats and shirts with the Mobile Wash  
4 logo, (b) car washing equipment, tools and supplies, (c) commercial general liability insurance to  
5 insure the activities of the car washer while performing services for Mobile Wash, a garage keeper's  
6 insurance policy to cover damages to any customer's automobile while the car washer is performing  
7 services for Mobile Wash, workers' compensation insurance to cover any injuries arising in the  
8 course and scope of employment for Mobile Wash, and commercial automobile liability insurance to  
9 cover any automobile accidents occurring while the car washer is driving while working for Mobile  
10 Wash, and (d) cell phone service in order to remain connected to the Mobile Wash app through  
11 which the car washers receive job assignments. Furthermore, defendants' car washers have been  
12 required to use their own vehicles to transport their tools, equipment and supplies and to drive from  
13 assignment to assignment during the workday, thus incurring expenses for the mileage driven for  
14 these purposes, including but not limited to the cost of gasoline, vehicle maintenance and  
15 depreciation.

16           62. Defendants have failed to indemnify their car washers for any of the above-listed  
17 incurred necessary business expenses, thereby violating Labor Code § 2802 and IWC Order 9, § 9.  
18 Defendants' car washers are entitled to indemnification from defendants for these expenses in  
19 accordance with Labor Code § 2802 and IWC Order 9, § 9, from April 6, 2017 going forward.

20                           **EIGHTH CAUSE OF ACTION: UNLAWFUL TAKING OF GRATUITIES**  
21   **(Labor Code § 351)**

22           63. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

23           64. Labor Code § 351 prohibits an employer or agent of an employer from collecting,  
24 taking or receiving any gratuity that is paid, given to or left for an employee by a customer of the  
25 employer. Section 351 further provides that every gratuity is the sole property of the employee or  
26 employees to whom it was paid, given or left for. Section 351 also states: "An employer that permits  
27 patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that  
28 the patron indicated on the credit card slip, without deductions for any credit card payment



1 processing fees or costs that may be charged to the employer by the credit card company.”

2 65. At relevant times herein, defendants followed a policy and engaged in a practice of  
3 charging their car washers a “transaction fee” whenever a customer made a credit card payment to  
4 Mobile Wash, through its app, for a gratuity for the car washer who performed the work for the  
5 customer. These “transaction fees,” purportedly to cover fees or costs imposed by credit card  
6 companies for processing credit card payments from customers to Mobile Wash, were deducted by  
7 defendants from the customer gratuities that Mobile Wash subsequently paid to their car washers,  
8 and were kept by defendants.

9 66. By taking or collecting the above-described “transaction fees,” defendants unlawfully  
10 took or collected customer gratuities from their car washers, and thereby violated Labor Code § 351.

11 67. Defendants have a legal duty to reimburse their car washers for all “transaction fees”  
12 or other amounts deducted by or taken by defendants from any car washer’s gratuities, at any time  
13 from April 6, 2017 going forward.

14 **NINTH CAUSE OF ACTION: FAILURE TO PROVIDE ITEMIZED**  
15 **WAGE STATEMENTS (Labor Code § 226)**

16 68. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

17 69. Labor Code § 226(a) requires employers provide their employees, semi-monthly or at  
18 the time of payment of wages, an accurate, written itemized wage statement showing: (1) gross  
19 wages earned, (2) total hours worked, (3) the number of piece rate units earned and any applicable  
20 piece rate if the employee is paid on a piece rate basis, (4) all deductions, (5) net wages earned, (6)  
21 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and  
22 the last four digits of the employee’s social security number or some other employee identification  
23 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable  
24 hourly rates in effect during the pay period, and the corresponding number of hours worked at each  
25 hourly rate.

26 70. Labor Code § 226(e) provides that an employee suffering injury as a result of a  
27 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover  
28 the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and

1 \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000 per  
2 employee. Subdivision (e) further provides that an employee is deemed to suffer an injury for  
3 purposes of this statute if the employer fails to provide a wage statement, or if the employer fails to  
4 provide accurate and complete information as required by one or more of the nine items specified in  
5 subdivision (a) and the employee cannot promptly and easily determine, from the provided wage  
6 statement alone, gross or net wages paid during the pay period, or total hours worked by the  
7 employee during the pay period, or the number of piece rate units earned and all applicable piece  
8 rates, or all hourly rates in effect during the pay period and the number of hours worked at each  
9 hourly rate.

10 71. At all relevant times herein, defendants failed to provide their car washers with any  
11 written itemized wage deduction statements, or the wage deduction statements that were provided  
12 failed to provide accurate and complete information as to one or more of the nine items specified in  
13 Labor Code § 226(a), such that the car washers could not promptly and easily determine, from any  
14 such provided wage statements, their total hours worked during the pay period, or the number of  
15 piece rate units earned and all applicable piece rates, or all of the hourly rates that were in effect  
16 during the pay period and the number of hours worked at each hourly rate.

17 72. Defendants' failure to comply with Labor Code § 226(a) has been knowing and  
18 intentional, and as a consequence of said failure, all of defendants' car washers have suffered injury  
19 within the meaning of Labor Code § 226(e), such that each of defendants' car washers employed at  
20 any time since April 6, 2017 are entitled to liquidated damages in the amount of \$50 for the initial  
21 pay period of non-compliance, and \$100 for each subsequent pay period of non-compliance, in an  
22 amount not to exceed \$4,000 per car washer.

23 **TENTH CAUSE OF ACTION: FAILURE TO COMPLY WITH PAID**  
24 **SICK LEAVE REQUIREMENTS (Labor Code §§ 245-249)**

25 73. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

26 74. In 2014, the State Legislature enacted the Healthy Workplaces, Healthy Families Act  
27 of 2014 ("HWHF Act"), under which any employee who, on or after July 1, 2015, works in  
28 California for the same employer for 30 or more days within a year of commencement of



1 employment is entitled to paid sick days as specified at Labor Code §§ 246-246.5. The HWHF Act  
2 further requires, at Labor Code § 247.5, that every employer maintain records of hours worked and  
3 paid sick leave accrued and used by its employees, and to provide such information to its employees  
4 on itemized wage statements each time wages are paid, and not less than twice per month.

5 75. Defendants have never provided for the accrual of paid sick time to their car washers,  
6 have never provided paid sick days to their car washers, and have never provided their car washers  
7 with the information required by Labor Code § 247.5, thereby violating requirements of the HWHF  
8 Act.

9 76. Labor Code § 248.5(e) provides that in any action brought by the Labor  
10 Commissioner against an employer or other person violating the HWHF Act, available relief shall  
11 include the payment of liquidated damages for each employee in the amount of \$50 for each day that  
12 the employee's rights under the HWHF Act were violated, up to a maximum of \$4,000 per  
13 employee.

14 77. As a consequence of defendants' violations of the HWHF Act, defendants are liable  
15 for liquidated damages payable to their car washers, in the amounts specified in Labor Code §  
16 248.5(e), from April 6, 2017 going forward.

17 **ELEVENTH CAUSE OF ACTION: FAILURE TO TIMELY PAY EARNED WAGES**  
18 **UPON SEPARATION OF EMPLOYMENT (Labor Code §§ 201, 202, 203)**

19 78. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

20 79. Labor Code § 201 requires an employer that discharges an employee to pay all earned  
21 and unpaid wages to such employee immediately upon discharge. Labor Code § 202 requires an  
22 employer to pay all earned and unpaid wages to an employee who quits within 72 hours of quitting,  
23 unless the employee provided 72 hours prior notice of intention to quit, in which case the earned and  
24 unpaid wages must be paid to the employee at the time of quitting.

25 80. Labor Code § 203(a) provides that an employer that willfully fails to pay a separated  
26 employee all earned and unpaid wages in accordance with Sections 201 or 202 shall be required to  
27 pay a penalty to such employee in an amount equal to the employee's per diem wage rate multiplied  
28 by 30 days, unless all required wages were paid within 30 days of the date of the wages were due

1 under Sections 201 or 202 (in which case the Section 203 penalties only run from the date the wages  
2 were due until the date they were paid), or unless the action to recover the wages is filed within 30  
3 days of the date the wages were due under Sections 201 or 202 (in which case the Section 203  
4 penalties only run from the date the wages were due until the date the lawsuit was filed). Under  
5 Labor Code § 203(b), suit may be filed for penalties due under the statute at any time before  
6 expiration of the statute of limitations on an action for wages on which the penalties arose.

7 81. Defendants' failure to timely pay their car washers their earned wages, including  
8 minimum wages, rest period wages, rest period premium wages, and/or overtime wages required  
9 under IWC Wage Order 9-2001, in a timely manner upon separation from employment as required  
10 by Labor Code §§ 201 and 202, was willful within the meaning of Labor Code § 203. Defendants  
11 are therefore subject to statutory penalties pursuant to Labor Code § 203, as to all car washers who  
12 separated from employment with Mobile Wash at any time from April 6, 2017 going forward.

13 **TWELFTH CAUSE OF ACTION: FAILURE TO TIMELY PAY EARNED WAGES**  
14 **DURING EMPLOYMENT (Labor Code §§ 204, 210)**

15 82. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

16 83. Labor Code § 204 requires that during the course of an employee's employment, all  
17 wages earned are due and payable on the regularly scheduled payday, and no less frequently than  
18 twice per month, with labor performed between the 1<sup>st</sup> and 15<sup>th</sup> days of any month to be paid not  
19 later than the 26<sup>th</sup> of the month, and labor performed between the 16<sup>th</sup> and last day of the month to be  
20 paid not later than the 10<sup>th</sup> day of the following month.

21 84. Pursuant to Labor Code § 210, the failure to pay wages to employees as required by  
22 Labor Code § 204 subjects the person or entity that failed to pay such wages to a civil penalty of  
23 \$100 for each failure to pay each employee for any initial non-willful and non-intentional violation,  
24 and a civil penalty for any subsequent violation or any willful or intentional violation of \$200 for  
25 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld from each  
26 employee.

27 85. Defendants' failure to pay required minimum wages, rest period wages, rest period  
28 premium pay, and overtime wages to their car washers on the pay days for which such wages were



1 due under Labor Code § 204 violated the requirements of that statute, and these violations were  
2 willful or intentional, thereby subjecting defendants to civil penalties under Labor Code § 210 from  
3 April 6, 2019 going forward, in the amount of \$200 for each failure to pay each car washer said  
4 wages on the required pay day, plus 25% of the amount unlawfully withheld from each car washer.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff Lilia García-Brower, in her official capacity as Labor  
7 Commissioner for the State of California, prays for the following relief:

8 1. Entry of an order, pursuant to Labor Code §§ 226.8 and 1194.5, enjoining defendants  
9 from misclassifying their car washers as independent contractors, and from failing to provide them  
10 with the protections available to employees under the Labor Code and IWC Order 9-2001, and  
11 requiring defendants to post, on its Internet Web site and on its app a notice that sets forth that: (a)  
12 the court has found that defendants have committed serious violations of the law by engaging in the  
13 willful misclassification of employees, (b) defendants have changed their business practices in order  
14 to avoid committing further violations of the law prohibiting the misclassification of employees as  
15 independent contractors, (c) that any employee who believes that he or she is being misclassified as  
16 an independent contractor may contact the Office of the State Labor Commissioner at a specified  
17 mailing address, email address, and telephone number, and (d) that this notice is being posted  
18 pursuant to a court order;

19 2. Entry of an order, pursuant to Labor Code §§ 1194.5 and 2060, enjoining defendants  
20 from conducting any business, including but not limited to Mobile Wash, for which employees  
21 wash, clean, dry, polish, detail, or otherwise provide cosmetic care to vehicles, and requiring  
22 defendants and to cease operating any such business, without first complying with the registration  
23 and bond requirements of Labor Code §§ 2050-2065, and prohibiting defendants from operating any  
24 such business without a valid registration issued by the Labor Commissioner;

25 3. Entry of judgment, in favor of Plaintiff in the amounts set forth below, or according  
26 to proof:

27 (a) Unpaid wages owed to defendants' car washers, and interest thereon pursuant to Labor  
28 Code § 218.6, as follows:

1 (i) Minimum wages pursuant to Labor Code § 1197 and IWC Order 9-2001 § 4, in  
2 the amount of not less than \$6,000,000;

3 (ii) Rest period wages pursuant to Labor Code § 226.2 and IWC Order 9-2001 §  
4 12(A), and rest period premium wages pursuant to Labor Code § 226.7 and IWC Order 9-2001 §  
5 12(B), in the amount of not less than \$6,000,000; and

6 (iii) Overtime wages pursuant to Labor Code § 510 and IWC Order 9-2001 § 3(A), in  
7 the amount of not less than \$6,000,000;

8 (b) Liquidated damages owed to defendants' car washers pursuant to Labor Code § 1194.2,  
9 in an amount of not less than \$6,000,000;

10 (c) Unreimbursed business expenses incurred by defendants' car washers and interest  
11 thereon, pursuant to Labor Code § 2802 and IWC Order 9-2001 § 9, in an amount of not less than  
12 \$9,000,000;

13 (d) Recovery of unlawfully taken employee gratuities and interest thereon, pursuant to Labor  
14 Code § 351 and CCP §§ 3287 and 3289, in an amount of not less than \$1,000,000;

15 (e) Liquidated damages for defendants' failure to provide their car washers with accurate  
16 itemized wage statements, pursuant to Labor Code § 226(e), in an amount of not less than  
17 \$1,000,000;

18 (f) Liquidated damages for defendants' failure to comply with paid sick leave law  
19 requirements, pursuant to Labor Code § 248.5(e), in an amount of not less than \$1,000,000;

20 (g) Statutory penalties owed to defendants' car washers for failure to timely pay wages upon  
21 separation from employment, pursuant to Labor Code § 203, in an amount of not less than  
22 \$2,000,000; and

23 (h) Civil penalties payable to the State, for the following violations:

24 (i) Pursuant to Labor Code § 226.8, for defendants' willful misclassification of  
25 employees as independent contractors, in an amount of not less than \$1,000,000;

26 (ii) Pursuant to Labor Code § 2064, for defendants' operation of a car washing  
27 business using employee labor without applying for and obtaining registration from the Labor  
28 Commissioner, in the amount of \$10,000;



1 (iii) Pursuant to Labor Code § 1197.1, for defendants' minimum wage violations, in  
2 an amount not less than \$3,000,000;


3 (iv) Pursuant to Labor Code §558 and §20 of IWC Order 9-2001, for defendants'  
4 overtime and rest period violations, in an amount not less than \$1,500,000; and

5 (v) Pursuant to Labor Code § 210, for defendants' failure to pay all wages due each  
6 pay period in accordance with the requirements of Labor Code § 204, in an amount not less than  
7 \$1,500,000.

8 4. An order granting Plaintiff her costs, and reasonable attorneys' fees in accordance  
9 with Labor Code §§ 226(e), 248.5(e), 1193.6, 2802; and

10 5. Such other and further relief as the Court deems just and proper.  
11

12 Dated: June 30, 2020

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14 \_\_\_\_\_  
15 Miles E. Locker  
16 Attorney for the State Labor Commissioner  
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