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DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

RODNEY MATEDNE, as an individual and
on behalf of all other aggrieved employees,

Plaintiff,

vs.

LITHIA MOTORS, INC., an Oregon
Corporation; LITHIA OF STOCKTON, INC.,
a California Corporation; and DOES 1
through 100,

Defendants.

Case No.

STK-CV-VOE-2020-4462

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

BY FAX

1 Plaintiff Rodney Matedne (“Plaintiff”), on behalf of himself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Defendants Lithia
3 Motors, Inc., an Oregon Corporation; Lithia of Stockton, Inc., a California Corporation; and
4 DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings
8 this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et*
9 *seq.*

10 2. This Court has jurisdiction over Defendants because, upon information and belief,
11 Defendants are citizens of California, Defendants have sufficient minimum contacts in California,
12 or otherwise intentionally avail themselves to the California market so as to render the exercise
13 of jurisdiction over them by the California courts consistent with the traditional notions of fair
14 play and substantial justice.

15 **VENUE**

16 3. Venue as to each Defendant is proper in this judicial district pursuant to California
17 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
18 complained of herein occurred in the County of San Joaquin. Further, at all times relevant herein
19 Plaintiff was employed by Defendants within the County of San Joaquin.

20 **PARTIES**

21 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident, residing in the County of San Joaquin.
23 During the one year immediately preceding Plaintiff’s giving of the required notice under the
24 PAGA, and within the statute of limitations periods applicable to the cause of action pled herein,
25 Plaintiff was employed by Defendants as an hourly non-exempt employee.

26 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
27 year preceding Plaintiff’s giving of the required notice under the PAGA and continuing to the
28 present, Defendants did (and do) business by operating several auto retailers in California, and

1 employed Plaintiff and other similarly-situated hourly non-exempt employees within the County
2 of San Joaquin and, therefore, were (and are) doing business in the County of San Joaquin and
3 the State of California.

4 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
5 herein, Defendants were licensed to do business in California and the County of San Joaquin, and
6 were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 18).

7 7. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Representative Action Complaint when such true names and capacities are discovered.
11 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,
12 whether individual, partners, or corporate, were responsible in some manner for the acts and
13 omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as
14 defined in Paragraph 18) to be subject to the unlawful employment practices, wrongs, injuries and
15 damages complained of herein.

16 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
18 defined in Paragraph 18).

19 9. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
21 Defendants, and each of them, were the agents, servants, and employees of each and every one of
22 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
23 were acting within the course and scope of said agency and employment. Defendants, and each
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
25 omissions complained of herein.

26 10. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
2 Aggrieved Employees (as defined in Paragraph 18).

3 **REPRESENTATIVE ACTION ALLEGATIONS**

4 11. Defendants own and operate several auto retailers in California including Nissan
5 of Stockton. Plaintiff worked for Defendants from about December 2016 to approximately May
6 2019. During Plaintiff's employment with Defendants, Plaintiff and other employees were paid
7 on a commission basis, whereby they were paid a commission per vehicle sold or leased. While
8 paid on a commission basis, Plaintiff and aggrieved employees were not separately compensated
9 for time spent working on tasks which were not compensated on a commission basis, including
10 for example, hours spent waiting for customers and attending sales meetings (i.e., non-productive
11 time). As a result, Plaintiff and aggrieved employees were not paid at least the minimum wage
12 for all hours worked.

13 12. Furthermore, while working on a commission-only basis, Plaintiff and aggrieved
14 employees worked shifts in excess of 3.5 hours, and were not provided with a paid rest period for
15 every 4-hour period worked, or major fraction thereof, because Defendants' commission
16 compensation plan failed to separately compensate Plaintiff and aggrieved employees for required
17 rest periods. *See Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017); *Bluford v.*
18 *Safeway Inc.*, 216 Cal.App.4th 864 (2013) ("There is no dispute that Safeway's activity-based
19 compensation system did not separately compensate drivers for their rest periods."). Upon
20 information and belief, for at least a portion of Plaintiff's employment with Defendants,
21 Defendants failed to properly pay Plaintiff for rest periods. As a result, Plaintiff and aggrieved
22 employees were not provided with compensated rest periods or rest periods compensated at the
23 correct rate of pay as required by Industrial Welfare Commission Wage Order 4, § 12(A).

24 13. In addition, Defendants routinely failed to provide Plaintiff and aggrieved
25 employees with timely, full 30-minute first meal periods commencing before the conclusion of
26 the fifth hour of work in violation of Labor Code § 512, and Wage Order 4, § 11(A). Plaintiff
27 and aggrieved employees were also not provided with all required meal periods due to
28 Defendants' meal period policies/practices which fail to provide a second meal period for shifts

1 over 10.0 hours.

2 14. Plaintiff and other aggrieved employees also routinely worked in excess of 8 hours
3 per workday and/or 40 hours per workweek, but did not receive overtime compensation equal to
4 one and one-half times their regular rate of pay for working overtime hours. Specifically,
5 Defendants paid Plaintiff and other aggrieved employees commission earnings, non-discretionary
6 bonuses, and other forms of non-discretionary pay that are not excludable from the regular rate
7 of pay (hereinafter the aforementioned forms of pay are referred to as "Incentive Pay"). Despite
8 Defendants' payment of Incentive Pay to Plaintiff and other aggrieved employees, Defendants
9 failed to properly calculate the regular rate of pay, thereby causing Plaintiff and aggrieved
10 employees to be underpaid all required overtime wages. Furthermore, Plaintiff and other
11 aggrieved employees were not paid all overtime wages owed because Defendants failed to include
12 the value of non-productive time when calculating the regular rate of pay for overtime purposes.

13 15. Defendants also failed to reimburse Plaintiff and aggrieved employees for use of
14 their personal cellular phones for a variety of work activities, including, but not limited to,
15 communicating with customers. Plaintiff and aggrieved employees were required to use their
16 personal cellular phones for such work activities; however, Plaintiff and aggrieved employees
17 were never reimbursed for their cellular phone expenses.

18 16. As a result of Defendants' failure to pay all minimum wages, rest period premium
19 wages, meal period premium wages, and overtime wages, Defendants maintained inaccurate
20 payroll records and issued inaccurate wage statements to Plaintiff and aggrieved employees.
21 Furthermore, Defendants issued facially non-compliant wage statements to Plaintiff and
22 aggrieved employees that fail to accurately list all hourly rates and corresponding hours worked
23 at each rate in violation of Labor Code § 226(a)(9). Specifically, the wage statements issued by
24 Defendants to Plaintiff and aggrieved employees fail to list the hourly rates and corresponding
25 hours for "Regular," "O/T Earn," "Doubletime," and "PremiumPay," among other forms of pay.

26 17. As a further result of Defendants' failure to pay all minimum wages, rest period
27 premium wages, meal period premium wages, and overtime wages, Defendants failed to pay all
28 wages owed to Plaintiff and aggrieved employees upon their separation of employment.

1 18. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved
2 employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code
3 violations discussed herein.

4 **FIRST CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

7 19. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
8 fully set forth herein.

9 20. Defendants have committed several Labor Code violations against Plaintiff and
10 other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor
11 Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
12 representative action against Defendants to recover the civil penalties due to Plaintiff, other
13 aggrieved employees, and the State of California according to proof, including, but not limited
14 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
15 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
16 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
17 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
18 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
19 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
20 initial violation; and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
21 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
22 subsequent violation per employee per pay period for those violations of the Labor Code for
23 which no civil penalty is specifically provided, based on the following Labor Code violations:

24 a. Failing to pay minimum wages for all hours worked to Plaintiff and other
25 aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2,
26 and 1197;

27 b. Failing to authorize and permit all legally required rest periods, or to pay premium
28 pay in lieu thereof, to Plaintiff and other aggrieved employees at the regular rate

of pay in violation of Labor Code §§ 226.7, 516, 558, and 1198;

c. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to Plaintiff and other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512, 558, and 1198;

d. Failing to pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

e. Failing to reimburse Plaintiff and other aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;

f. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;

g. Failing to timely pay all final wages due, including, but not limited to, minimum wages, rest period premium wages, meal period premium wages, and overtime wages, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201, 202, and 203;

h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and

i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

21. On or about March 25, 2020, Plaintiff notified Defendants Lithia Motors, Inc., and Lithia of Stockton, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 20 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

22. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the

1 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
2 he is entitled to receive under California Labor Code § 2699.

3 **PRAYER**

4 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
5 this suit is brought against Defendants, jointly and severally, as follows:

6 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
7 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
8 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
9 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
10 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
11 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
12 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
13 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
14 pay period; (4) \$250.00 for each initial violation, and \$1,000.00 for each subsequent violation
15 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
16 violation and \$200 for each subsequent violation per employee per pay period for those violations
17 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code
18 violations identified in Paragraph 20 (a)-(i);

19 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
20 2699(g) and Code of Civil Procedure § 1021.5; and

21 3. For such other and further relief the Court may deem just and proper.

22
23 Dated: June 1, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

24
25 By:



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Attorneys for Plaintiff