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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

PEDRO URBINA, CARLOS TORRES, and
REBECCA MEDRANO, as individuals and
on behalf of all other aggrieved employees,

Plaintiffs,

vs.

MOSSY AUTOMOTIVE GROUP, INC., a
California corporation; MOSSY
AUTOMOTIVE GROUP II, LLC, a
California limited liability company; MOSSY
NISSAN, INC., a California corporation;
MOSSY FORD, INC., a California
corporation; MOSSY AUTOMOTIVE
GROUP EL CAJON INC., a California
corporation; MOSSY AUTOMOTIVE
GROUP LEMON GROVE INC., a California
corporation; MOSSY NISSAN CHULA
VISTA, a California corporation; MOSSY

Lead Case No.: 37-2020-00022420-CU-OE-CTL

[Consolidated with
Case No. 37-2020-00042815-CU-OE-CTL]

[Assigned for all purposes to the Hon. Gregory
W. Pollack, Dept. C-71]

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFFS'
MOTION FOR APPROVAL OF
SETTLEMENT OF CLAIMS BROUGHT
UNDER THE PRIVATE ATTORNEYS'
GENERAL ACT AND REASONABLE
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT PAYMENT**

Date: March 10, 2023
Time: 9:30 a.m.
Dept.: C-71
Reservation ID: 2890610

NISSAN EL CAJON, a California corporation; MOSSY NISSAN ESCONDIDO, a California corporation; MOSSY NISSAN KEARNY MESA, a California corporation; MOSSY NISSAN NATIONAL CITY, a California corporation; MOSSY NISSAN OCEANSIDE, a California corporation; MOSSY NISSAN POWAY, a California corporation; MAG WEST MOSSY FORD II, LP, a California limited partnership; MAG WEST MOSSY HONDA II, LP, a California limited partnership; MAG WEST MOSSY NISSAN II, LP, a California limited partnership; MAG WEST MOSSY TOYOTA II, LP, a California limited partnership; MAG WEST MOSSY VOLKSWAGEN II, LP, a California limited partnership; and DOES 1 through 100,

Defendants.

Complaint Filed: June 29, 2020
Trial Date: None set.

1 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and co-counsel for
3 the named Plaintiffs Pedro Urbina, Carlos Torres, Rebecca Medrano, and Oscar Santos Barrera
4 (“Plaintiffs”) and the Aggrieved Employees in the above-captioned matter. I am a member in
5 good standing of the bar of the State of California and am admitted to practice in this Court. I
6 have personal knowledge of the facts stated in this declaration and could testify competently to
7 them if called upon to do so.

8 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
9 *cum laude*. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
10 located in Encino, California. I also spent a semester in law school working as an extern for the
11 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
12 District of California.

13 3. Since graduating from law school, my practice has focused almost exclusively on
14 employment litigation. In September 2007, I began working as an associate attorney at the
15 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
16 website is the “largest U.S.-based law firm exclusively devoted to representing management in
17 every aspect of labor and employment law.” While at Littler Mendelson, I was primarily staffed
18 on wage and hour class actions venued in both state and federal courts, and I also worked on a
19 number of single and multi-plaintiff wage and hour matters as well.

20 4. During my employment at Littler Mendelson, I played a significant role in the
21 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
22 particular, I received a wide-array of wage and hour class action experience performing the
23 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
24 from state court to federal court; drafting and responding to written discovery; drafting and
25 opposing discovery related motions; arguing discovery related motions; drafting motions to
26 consolidate related matters; interviewing putative class members and obtaining declarations in
27 connection with class certification; drafting oppositions to motions for class certification; drafting
28 motions for decertification following class certification; conducting exposure analyses to assess

1 the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification
2 and potential damages resulting from such claims; drafting mediation briefs; serving as the
3 primary contact to in-house counsel; deposing named plaintiffs and putative class members;
4 deposing retained expert witnesses; and defending the depositions of corporate witnesses. In
5 short, I played an integral role in all aspects of litigation from the inception of a matter through
6 and beyond class certification. I also supervised the work of several junior attorneys who were
7 staffed on the same wage and hour class actions.

8 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
9 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
10 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
11 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
12 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
13 performed the same job duties as described in the immediately preceding paragraph. In addition
14 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
15 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
16 Standards Act (“FLSA”), as well as California-specific claims under Rule 23 of the Rules of Civil
17 Procedure.

18 6. In July 2012, I transitioned into litigating wage and hour class actions from the
19 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
20 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
21 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class and
22 representative actions, and my law firm is currently responsible for prosecuting over fifty (50)
23 wage and hour class and representative actions filed in both State and Federal courts throughout
24 California. A few examples of the matters in which I have been appointed as Class Counsel, all
25 of which have been granted final approval, include the following: *Sanchez v. Res-Care, Inc.*, Case
26 No. BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley,
27 presiding; *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United
28 States District Court, Central District of California, Honorable Judge John F. Walter, presiding;

1 *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court, Santa Clara
2 County, Judge Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG,
3 United States District Court, Northern District of California, Honorable Judge Haywood S.
4 Gilliam, Jr. presiding; *Longstreth v. PAQ, Inc., dba Food 4 Less*, Case No. 15CV-0206, California
5 Superior Court, County of San Luis Obispo, Honorable Judge Charles S. Crandall, presiding;
6 *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, County of
7 Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding; *Mansilla v. Haeco Americas*
8 *Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los
9 Angeles, Honorable Judge Elihu M. Berle presiding. *Morales v. Caremeridian, LLC, et al.*, Case
10 No. BC593191, California Superior Court, County of Los Angeles, Judge William F. Highberger
11 presiding; *Rodrigues v. CP Kelco U.S., Inc.*, Case No. 37-2017-00004339-CU-OE-CTL,
12 California Superior Court, County of San Diego, Honorable Judge Joel R. Wohlfeil, presiding;
13 *Sandoval v. Rotational Molding, Inc.*, Case No. BC640678, Superior Court of California, County
14 of Los Angeles, Honorable Judge William F. Highberger presiding; *Gooding v. Vita-Mix Corp.,*
15 *et al*, Case No. 2:16-cv-03898-ODW (JEMx), United States District Court for the Central District
16 of California, Honorable Judge Otis D. Wright II presiding.

17 7. I have also moved to certify and have received an order certifying a class action
18 and/or conditionally certifying a collective action, in the following cases: *Medeiros v. Vortex*
19 *Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior
20 Court, County of Orange, Honorable Judge Gail A. Andler, presiding (certifying a class of
21 employees who were misclassified as independent contractors); *Javine v. San Luis Ambulance*
22 *Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District of
23 California, Honorable Judge Beverly Reid O'Connell, presiding (conditionally certifying an
24 unpaid FLSA overtime wage class); *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-
25 3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John
26 F. Walter, presiding (certifying a rest period violation class and conditionally certifying an FLSA
27 unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United
28 States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr.,

presiding (conditionally certifying an unpaid FLSA overtime wage class); *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying an unpaid FLSA overtime wage class); *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster, presiding (certifying unpaid overtime wage class and waiting time penalty class); *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Glenda Sanders, presiding (certifying piece rate pay plan classes, expense reimbursement class, wage statement class, and waiting time penalties class); *Ontiveros v. Safelite Fulfillment, Inc.*, et al, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations); *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United States District Court, Southern District of California, Honorable William Q. Hayes presiding (certifying six classes of employees for unpaid wages, meal period violations, wage statement violations, and waiting time penalties); *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United States District Court, Northern District of California, Honorable William H. Alsup presiding (certifying three classes of employees for unlawful wage deductions, wage statement violations, and waiting time violations); *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying class of employees for wage statement violations); *Staublein v. Wells Fargo Bank, N.A.*, Case No. CIV DS1712267, San Bernardino Superior Court, Hon. David S. Cohn presiding (certifying wage statement class); and *Bowlin-Burdick, et al v. Life Care Centers of America, Inc.*, Case No. BC657139, Los Angeles County Superior Court, Honorable Maren E. Nelson presiding (certifying four classes for meal period violations, rest period violations, wage statement violations, and waiting time penalties).

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1 8. Of particular relevance to this case, I served as lead or co-lead counsel for the
2 plaintiff and aggrieved employees in several PAGA-only settlements, including but not limited
3 to:

- 4 • *Pentinio v. Southern Wine and Spirits of America, Inc.*, Case No. BC570234,
5 California Superior Court, County of Los Angeles, Honorable Judge Maureen
6 Duffy-Lewis, presiding, approved by the Court on January 19, 2016;
- 7 • *Resendez v. Bridgestone Retail Operations, LLC*, Case No. BC596892, California
8 Superior Court, County of Los Angeles, Honorable Judge Marc Marmaro
9 presiding, approved by the Court on June 13, 2016;
- 10 • *Canul v. Basmat, Inc.*, Case No. BC674940, California Superior Court, County of
11 Los Angeles, Honorable Judge Teresa A. Beaudet presiding, approved by the
12 Court on August 22, 2018;
- 13 • *Silva v. CitiStaff Solutions, Inc.*, Case No. BC620115, California Superior Court,
14 County of Los Angeles, Honorable Judge David S. Cunningham III presiding,
15 approved by the Court on November 19, 2018;
- 16 • *Cruz v. Fleetwash, Inc.*, Case No. 19STCV03033, California Superior Court,
17 County of Los Angeles, Honorable Judge Stuart M. Rice presiding, approved by
18 the Court on October 7, 2019; and
- 19 • *Ibarra v. Baker Commodities, Inc.*, Case No. 19STCV06148, California Superior
20 Court, County of Los Angeles, Honorable Yolanda Orozco presiding, approved
21 by the Court on September 30, 2020.

22 9. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young
23 Attorney in Southern California in the annual Rising Star Edition of Super Lawyer. This is an
24 honor awarded to no more than two and a half percent of attorneys under the age of forty in
25 Southern California each year. In 2018, 2019, and 2020, Thomson Reuters recognized me as a
26 “Super Lawyer,” an honor awarded to no more than five percent of attorneys in Southern
27 California each year.

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1 10. As counsel for Plaintiffs and Aggrieved Employees in this case, I have been
2 intimately involved in every aspect of this case from its inception through the present, and I
3 believe the proposed Settlement is fair, reasonable and adequate for the Aggrieved Employees
4 and the State of California.

5 11. Defendants own and operate several car dealerships in Southern California
6 including, but not limited to, Mossy Honda Lemon Grove, Mossy Infiniti, Mossy Mitsubishi
7 Escondido, Mossy Nissan Chula Vista, Mossy Nissan El Cajon, Mossy Nissan Escondido, Mossy
8 Nissan Kearny Mesa, Mossy Nissan National City, Mossy Nissan Poway, Mossy Nissan
9 Oceanside, Mossy Toyota San Diego, Mossy Volkswagen Escondido, and Mossy Ford San
10 Diego. Plaintiffs worked for Defendants in California as non-exempt employees during the PAGA
11 Period.

12 12. On April 22, 2020, Plaintiffs Torres, Urbina, and Medrano, submitted their
13 notification letter to the LWDA giving notice of their intent to pursue a PAGA representative
14 action for alleged Labor Code violations, as required by Labor Code § 2699.3. A true and correct
15 copy of Plaintiffs Torres, Urbina, and Medrano’s letter is attached hereto as **Exhibit 2**. On June
16 29, 2020, after the 65-day waiting period under Labor Code § 2699.3(a)(2)(A), Plaintiffs Pedro
17 Urbina, Carlos Torres, Rebecca Medrano filed a representative action complaint titled *Urbina, et*
18 *al. v. Mossy Automotive Group, Inc. et al.*, San Diego County Superior Court Case No. 37-2020-
19 00022420-CU-OE-CTL (“*Urbina Action*”).

20 13. On September 14, 2020, Plaintiff Barrera, submitted his notification letter to the
21 LWDA giving notice of his intent to pursue a PAGA representative action for alleged Labor Code
22 violations, as required by Labor Code section § 2699.3. A true and correct copy of Plaintiff
23 Barrera’s letter is attached hereto as **Exhibit 3**. On November 20, 2020, after the 65-day waiting
24 period under Labor Code § 2699.3(a)(2)(A), Plaintiff Oscar Barrera filed a representative action
25 complaint titled *Barrera v. Mossy Automotive Group Lemon Grove, Inc. et al.*, San Diego County
26 Superior Court Case No. 37-2020-00042815-CU-OE-CTL (“*Barrera Action*”).

27 14. On September 2, 2022, the Court consolidated the *Barrera* and *Urbina* Actions,
28 and designated the *Urbina Action* as the lead case.

1 15. As part of the Settlement, the Parties stipulated to amend the operative Complaint
2 to name MAG Infiniti OCN, LLC, MAG Infiniti KM, LLC, MAG Infiniti ESC LLC as additional
3 named Defendants. On October 3, 2022, Plaintiffs amended the operative Complaint to add MAG
4 Infiniti OCN, LLC, MAG Infiniti KM, LLC, MAG Infiniti ESC LLC as named Defendants.

5 16. In connection with mediation, Defendants informally produced information and
6 documents pertaining to Plaintiffs and other Aggrieved Employees, including, but not limited to,
7 Defendants' commission and piece-rate pay plans, a sample of time and payroll records for
8 Aggrieved Employees, and a list of aggrieved employees' hire dates and termination dates in
9 order for Plaintiffs' counsel to investigate Plaintiffs' allegations and value the claims prior to
10 mediation. Plaintiffs also retained an expert economist to assist them in analyzing and
11 extrapolating the timekeeping and other data produced by Defendants, and to assist Plaintiffs in
12 creating a comprehensive damages model.

13 17. On April 12, 2022, the Parties attended a full-day mediation with experienced and
14 highly regarded mediator Tripper Ortman, Esq., in an effort to resolve Plaintiffs' PAGA claim.
15 During mediation, the parties vigorously debated the legal basis for Plaintiffs' claims and
16 Defendants' defenses, the impact of *Viking River* on this case, the manageability of the case as a
17 representative action, the potential amount of penalties, and the Parties' data analyses and
18 conclusions based thereon. With the assistance of Mr. Ortman, the Parties agreed to fully and
19 finally resolve Plaintiffs' PAGA claim at mediation. Over the following months, the parties
20 subsequently negotiated and finalized the Settlement now before the Court.

21 18. A true and correct copy of the fully-executed Settlement Agreement is attached
22 hereto as **Exhibit 1**. The proposed Explanatory Letter to be mailed to Aggrieved Employees with
23 their settlement payments is attached as **Exhibit A** to the Settlement Agreement. The Settlement
24 provides for Defendants to pay a Gross Settlement Amount ("GSA") of \$380,592.00. After
25 deducting amounts for requested attorneys' fees, attorneys' costs, Plaintiffs' enhancement
26 payments, and settlement administration costs, the Settlement provides for the Net Settlement
27 Amount ("NSA") to be distributed 75% to the LWDA and 25% to Aggrieved Employees,
28 pursuant to Lab. Code § 2699(i). The 25% portion to Aggrieved Employees shall be distributed

1 based on each Aggrieved Employee's proportional number of pay periods worked for Defendants
2 in California during the PAGA Period. The settlement is non-reversionary, and does not require
3 Aggrieved Employees to submit claim forms to reap financial benefit from the Settlement. Based
4 on a GSA of \$380,592.00, the total amount paid to Aggrieved Employees is estimated at
5 \$49,082.32, with approximately \$147,246.96 paid to the LWDA. According to information
6 provided by Defendants, the number of Aggrieved Employees is approximately 1,920. Thus, the
7 average payment to Aggrieved Employees is estimated at \$25.56.

8 19. Plaintiffs acknowledge that there are substantial risks and uncertainty in
9 proceeding to trial. First and foremost was the risk that the United States Supreme Court would
10 issue its opinion in *Viking River*, which could have resulted in the outright dismissal of Plaintiffs'
11 representative PAGA claim. At the time that this settlement was reached, the U.S. Supreme Court
12 had granted certiorari in *Viking River*. Shortly after Plaintiffs entered into this Settlement, this
13 risk became a reality and the Supreme Court issued its opinion in *Viking River*, which overturned
14 the California Supreme Court's holding in *Iskanian v. CLS Transportation Los Angeles, LLC*
15 which held that a representative PAGA claim could not be compelled to arbitration. As a result,
16 absent this settlement, it is likely that **no** representative PAGA recovery would be possible at all.

17 20. With respect to Plaintiffs' commission-based claims, Defendants argue that its
18 commission pay plans comply with California law and that they have always compensated its
19 commissioned-based employees for all required paid rest periods. Defendants further argue that
20 at all times throughout the PAGA Period it calculated separate rest period compensation for its
21 commissioned based employees in compliance with California law. Defendants also contend that
22 employees experienced minimal (if any) uncompensated "non-productive" time. Additionally,
23 Defendants maintain that any questions of non-productive time would be highly individualized,
24 as employees worked in a variety of locations, and there are no records or other common evidence
25 of time spent on potentially non-productive tasks, making this claim unmanageable on a
26 representative basis.

27 21. With respect to Plaintiffs' meal period claims, Defendants argue that they have
28 maintained compliant written meal period policies throughout the Class Period and have always

provided employees the *opportunity* to take legally compliant meal periods, and that they are not required to “ensure” meal periods are taken. Additionally, Defendants maintain that employees voluntarily waived their second meal period when they worked shifts in excess of 10.0 hours (but less than 12.0 hours), as they are entitled to do under Labor Code § 512. Finally, Defendants argue that Plaintiffs’ meal period claims are not suited for representative treatment, as individual inquiries would be needed to assess which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a compliant meal period on a particular shift.

22. With respect to Plaintiffs’ reimbursement claims, Defendants maintain that aggrieved employees were not required to use their personal cellular phones as part of their job. Defendants further argue that any expenses incurred by employees were minimal, given the wide availability of low-cost cellular phone plans.

23. As a result of Defendants’ failures to pay all meal and rest period premiums, and all wages owed, Plaintiffs allege derivative PAGA claims for failure to issue accurate and itemized wage statements and failure to pay all wages owed at separation of employment. In response, Defendants argue that Plaintiffs’ underlying claims will fail and, as a result, the derivative claims will also fail. Defendants also maintain that any “derivative” PAGA claims for violations of Labor Code Sections 226 or 203 would be entirely duplicative and would be unlikely to be awarded in any significant manner by a Court.

24. Defendants further maintain that even if the Court awarded PAGA penalties for any of the alleged violations, it would substantially reduce the penalties based on the discretionary factors in Labor Code § 2699(e)(2) (authorizing reduction in penalties “if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”). Indeed, Defendants argue, many courts have reduced PAGA penalties drastically where, as here, the employer presented good-faith defenses and attempted to comply with the law.

25. Based on data provided by Defendants, there were approximately 52,574 Pay Periods worked by the Aggrieved Employees during the PAGA Period. Therefore, assuming that

1 Plaintiffs could prove at least one Labor Code violation in each pay period, Plaintiffs calculated
2 Defendants' maximum PAGA exposure at \$5,257,400 (52,574 pay periods * \$100 per violation).
3 However, as discussed above, Defendants raised numerous defenses to the merits of Plaintiffs'
4 claims, and argued that even if found liable, the Court would exercise its discretion to reduce any
5 potential PAGA penalties given Defendants' good-faith defenses. Additionally, at the time of
6 mediation, there was a looming threat that a forthcoming decision in *Viking River* could preclude
7 any representative PAGA recovery at all. In the face of Defendants' defenses on the merits, the
8 Court's discretion to reduce PAGA penalties, and the threat (which has since become reality) of
9 an adverse *Viking River* ruling, Plaintiffs felt that the negotiated settlement of \$380,592.00, was
10 clearly in the best interests of the LWDA and the Aggrieved Employees and was well within the
11 range of reasonableness.

12 26. Plaintiffs' counsel is requesting attorneys' fees of one-third of the Gross
13 Settlement Amount (i.e., \$126,864.00). Based on my experience in similar wage and hour class
14 and representative actions in California state courts, fee awards in matters such as this one
15 generally equal about one-third of the gross recovery. In addition, and as explained below and in
16 the accompanying Motion, this case presented significant risks to Plaintiffs, including the risk
17 that an adverse *Viking River* decision could effectively conclude the case. It is fair and reasonable
18 to account for these risks in compensating Plaintiffs' counsel, as well as the risks involved in
19 undertaking this litigation and expending considerable effort while working on a pure
20 contingency basis. Since undertaking representation of Plaintiffs, my office has dedicated
21 substantial resources to this litigation, including expending \$25,241.29 in litigation costs, without
22 receiving any compensation to date.

23 27. Plaintiffs' counsel has expended significant time and effort in this case, including
24 but not limited to, conducting extensive research regarding the merits of Plaintiffs' claims, their
25 ability to recover PAGA civil penalties, and Defendants' potential defenses. Plaintiffs' counsel
26 conducted informal discovery, and also performed extensive analysis of data and information
27 produced by Defendants, used this analysis to evaluate Plaintiffs' claims, and drafted a
28 comprehensive mediation brief. Plaintiffs' counsel also attended a private mediation, and

expended significant effort in preparing settlement documents, this Motion and supporting documents, and will oversee the settlement administration process. Given the considerable potential for adverse outcomes in this case, the contingent risk borne by Plaintiffs' counsel was great.

28. Since undertaking representation of Plaintiffs, my firm has dedicated substantial resources to this litigation without receiving any compensation to date. My office is requesting reimbursement of up to \$25,241.29 in total costs, which includes \$60.00 of anticipated costs for filing and serving the instant Motion. A summary of the costs incurred by my office to date in connection with this case is attached hereto as **Exhibit 4**. These costs include filing fees, copying costs, mediation fees, expert fees, service fees, and other expenses that were all reasonably incurred in the prosecution of this litigation on behalf of Plaintiffs and the Aggrieved Employees. My co-counsel, Capstone Law APC, is requesting reimbursement of \$3,407.43 in litigation costs, as indicated in the concurrently filed Declaration of Raul Perez. Collectively, Plaintiffs' counsel is requesting reimbursement of \$28,648.72 in total litigation costs.

29. In this case, Plaintiffs' counsel has a collective lodestar of approximately \$204,595.00 without the use of any multiplier, resulting in a *negative* multiplier compared to the \$126,864.00 fee request. My firm has a lodestar of approximately \$107,620.00. Capstone Law APC has a total lodestar of approximately \$96,975.00, as indicated in the concurrently filed Declaration of Raul Perez. Below is a general summary showing the number of hours of work performed by each attorney and paralegal in my firm on this case:

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (17th Year Attorney)	\$675	26.4	\$17,820.00
Sean M. Blakely (14th Year Attorney)	\$650	65.9	\$42,835.00
Neil M. Larsen (11th Year Attorney)	\$550	70.3	\$38,665.00
Diana M. Martinez (4th Year Attorney)	\$325	19.4	\$6,305.00
Firm Paralegals	\$175	11.4	\$1,995.00
Total Lodestar			\$107,620.00

30. My proposed hourly rate of \$675, Mr. Blakely's proposed hourly rate of \$650, Mr. Larsen's proposed hourly rate of \$550, and Ms. Martinez's proposed hourly rate of \$325 are reasonable in light of our respective skills, wage and hour class action litigation experience, reputation, and fee awards to other attorneys of similar experience in California. Moreover, our requested hourly rates are in line with the *Laffey* Matrix, a true and correct copy of which is attached hereto as **Exhibit 5**.

31. I believe the requested \$5,000 enhancement payment to each Plaintiff is reasonable given Plaintiffs' efforts in this case and the risks they undertook on behalf of Aggrieved Employees. Plaintiffs provided substantial factual information and documents, assisted in identifying potential witnesses, and otherwise assisted in the prosecution of this case, and also undertook significant risk in the event this case were lost as well as the reputational risk inherent in suing an employer on a representative basis. Accordingly, I believe Plaintiffs' requested enhancement payments are reasonable.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 6, 2022, at El Segundo, California.


Paul K. Haines

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiffs Pedro Urbina, Carlos Torres, Rebecca Medrano, and Oscar Barrera (“Plaintiffs”), acting in a private attorney general capacity, and Defendants Mossy Nissan, Inc., Mossy Automotive Group Lemon Grove, Inc., Mossy Automotive Group, Inc., Mossy Ford, Inc., Mossy Automotive Group, II, Mossy Nissan Chula Vista, Mossy Auto Imports, MAG Infiniti OCN, LLC, MAG Infiniti KM, LLC, MAG Infiniti ESC LLC (“Defendants”) (Plaintiffs and Defendants are collectively referred to as the “Parties”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Actions” means the matters titled *Urbina et al. v. Mossy Automotive Group, Inc. et al.*, San Diego County Superior Court Case No. 37-2020-00022420-CU-OE-CTL and *Barrera v. Mossy Automotive Group Lemon Grove, Inc. et al.* San Diego County Superior Court Case No. 37-2020-00042815-CU-OE-CTL, and as set forth in Plaintiffs’ correspondence to the California Labor and Workforce Development Agency (“LWDA Letters”) dated April 21, 2020 and September 14, 2020.
2. “Aggrieved Employees” consist of all current and former non-exempt employees who worked for Defendants in California at any time during the PAGA Period.
3. “Defendants” means Defendants Mossy Nissan, Inc., Mossy Automotive Group Lemon Grove, Inc., Mossy Automotive Group, Inc., Mossy Ford, Inc., Mossy Automotive Group, II, Mossy Nissan Chula Vista, Mossy Auto Imports, MAG Infiniti OCN, LLC, MAG Infiniti KM, LLC, MAG Infiniti ESC LLC.
4. “Settlement Administrator” means Phoenix Settlement Administrators.
5. “Complaint” means the operative complaints in the Actions.
6. “Court” means the Superior Court of California for the County of San Diego.
7. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.
8. “LWDA” means the California Labor and Workforce Development Agency.
9. “Gross Settlement Amount” is the non-reversionary sum of Three Hundred Eighty Thousand Five Hundred Ninety-Two Dollars and Zero Cents (\$380,592.00), which represents the total amount payable under this Settlement Agreement by Defendants (subject to the Escalator Clause described below), including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiffs’ attorneys’ fees and costs, payment of Plaintiffs’ enhancement payments, and payment to the Settlement Administrator for administration costs.

10. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) Plaintiffs’ attorneys’ fees up to one third of the Gross Settlement Amount; (b) Plaintiffs’ litigation costs up to \$40,000.00; (c) Plaintiffs’ enhancement payments up to \$5,000.00 each, for a total of \$20,000.00; and (d) settlement administration costs up to \$10,000.00.

11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. “PAGA Period” means the time period from April 12, 2019 to June 30, 2022.

13. “PAGA Released Claims” mean all claims, rights, demands, liabilities and causes of action that arose during the PAGA Period for civil penalties under the PAGA, that were alleged in the Actions or that could have been alleged based on the facts alleged in the Actions. The PAGA Released Claims include, but are not limited to, claims under the PAGA for civil penalties for alleged violations of Labor Code §§ 201-204, 221, 222.5, 223, 224, 226, 226.2, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2804, and claims for attorneys’ fees, costs, or interest resulting therefrom. The release of the PAGA Released Claims shall extend for the duration of the PAGA Period.

14. “Parties” means, collectively, Plaintiffs and Defendants.

15. “Plaintiffs’ Counsel” means Paul K. Haines, Sean M. Blakely, and Neil Larsen of Haines Law Group, APC, and Mark A. Ozzello, Brandon Brouillette, John Stobart, and Joseph Hakakian of Capstone Law, APC.

16. “Released Parties” means Defendants and their former, present and future owners, parents, and subsidiaries, and all of their current, former and future officers, directors, members, managers, partners, shareholders, joint venturers, successors, assigns, accountants, insurers, or legal representatives.

II. RECITALS

1. Plaintiffs performed work for Defendants as non-exempt employees in California during the PAGA Period.

2. On April 22, 2020 and September 14, 2020, Plaintiffs provided written notice to the LWDA and Defendants asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of various Labor Code sections and their intent to file a civil lawsuit under the PAGA.

3. On June 29, 2020, Plaintiffs Pedro Urbina, Carlos Torres, Rebecca Medrano filed a representative action complaint titled *Urbina et al. v. Mossy Automotive Group, Inc. et al.*, San Diego County Superior Court Case No. 37-2020-00022420-CU-OE-CTL and Plaintiff Oscar Barrera filed a representative action complaint on November 20, 2020, titled *Barrera v. Mossy Automotive Group Lemon Grove, Inc. et al.*, San Diego County Superior Court Case No. 37-2020-00042815-CU-OE-CTL, asserting a cause of action for civil penalties under the PAGA.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiffs that their claims do not have merit, or an admission by Defendants of any liability or wrongdoing as to Plaintiffs, the Aggrieved Employees or any other person. Defendants specifically disclaim and deny any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendants shall pay Three Hundred Eighty Thousand Five Hundred Ninety-Two Dollars and Zero Cents (\$380,592.00) as the non-reversionary Gross Settlement Amount. Defendants will not pay more than the Gross Settlement Amount (subject to the Escalator Clause below). Defendants shall deposit the Gross Settlement Amount into a Qualified Settlement Account and agrees to fund the settlement within ten (10) business days of the Court's Order approving the PAGA settlement.

The Gross Settlement Amount shall be used to pay: (1) Amounts distributable to the LWDA and Aggrieved Employees; (2) Plaintiffs' attorneys fees and litigation costs; (3) Plaintiffs' enhancement payments; and (4) Settlement administration costs.

3. **Escalator Clause.** Defendants represents that there are approximately 52,574 pay periods worked by Aggrieved Employees in California during the PAGA Period ("Affected Pay Periods") as of April 12, 2022. If the actual number of Affected Pay Periods is more than 10% greater than this number (i.e., if there are more than 57,832 Affected Pay Periods), Defendants shall increase the GSA in proportion to the increase in Affected Pay Periods (e.g., if the number of Affected Pay Periods is 11% greater than 52,574, Defendants shall increase the GSA by 11%).

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiffs' Attorneys' Fees and Costs.** Defendants will not oppose Plaintiffs' request for attorneys' fees in the amount up to one third of the Gross Settlement Amount (estimated at \$126,864) and costs up to \$40,000.00 incurred in prosecuting these Actions. In the event the Court approves less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiffs may appeal an order granting less than the full amount sought for attorneys' fees and costs). The Settlement Administrator will report these payments on IRS Form 1099 issued to Plaintiffs' Counsel.

b. **Plaintiffs' Enhancement Payments.** Defendants will not oppose Plaintiffs' request for an enhancement payment of up to \$5,000.00 for each Plaintiff, for a total of \$20,000.00, for serving as the representative plaintiffs in these Actions. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount (although Plaintiffs may appeal an order granting less than the full amount sought for

Plaintiffs' enhancement payments). The Settlement Administrator will report this payment on IRS Form 1099 issued to Plaintiffs.

c. Administration Costs. Defendants will not oppose the Settlement Administrator's costs in the amount up to \$10,000.00 for administering the settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount.

5. Allocation of Net Settlement Amount. One hundred percent (100%) of the Net Settlement Amount shall be designated as "civil penalties" and shall be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Labor Code § 2699(i). The 25% portion to be paid to Aggrieved Employees shall be paid to all Aggrieved Employees pro rata, based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period.

6. PAGA Released Claims. Plaintiffs agree that upon entry of an Order approving the Settlement and judgment entered thereon, and upon the Settlement being fully funded, Plaintiffs and all Aggrieved Employees will release the PAGA Released Claims against the Released Parties that arose during the PAGA Period. Upon entry of the Order approving the settlement and judgment entered thereon and the Settlement being fully funded, Plaintiffs and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

7. Covenants and Representations by Plaintiffs and Plaintiffs' Counsel.

a. Plaintiffs represent and warrant that they have not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiffs acknowledge that they have read this Settlement Agreement, that they fully understand their rights, privileges and duties under the Settlement Agreement, and enter into this Settlement Agreement freely and voluntarily. Plaintiffs further acknowledge that they have had the opportunity to consult with their attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

8. Confidentiality. Except as provided below to the extent necessary to effectuate the settlement or as required by court or legal process, Plaintiffs and Plaintiffs' Counsel will keep the terms of this Settlement Agreement confidential. Neither Plaintiffs nor Plaintiffs' Counsel shall issue a press release, hold a press conference, publish information about the settlement on any website or through any social media or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiffs' counsel may reference the Actions by name and case number in a declaration establishing adequacy as class or representative counsel.

To permit judicial review and approval of the Settlement, as required by Labor Code section 2698, *et seq.*, Plaintiffs' Counsel will file the Settlement Agreement with the Court and submit the Settlement to the LWDA as part of the parties' seeking Court approval of the Settlement, per Labor Code § 2699(1)(2).

9. **Motion for Approval of PAGA Settlement by Plaintiffs' Counsel.** Plaintiffs' Counsel shall be responsible for promptly preparing and filing the Motion for Approval of the PAGA Settlement.

10. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not enter judgment as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the material terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within 10 days of written notice thereof to elect to terminate the Settlement Agreement, in which case the Settlement Agreement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to engage Phoenix Settlement Administrators to handle the administration of this settlement.

2. **Provision of Information for Aggrieved Employees.** Within ten (10) business days after entry of an order approving the settlement, Defendants shall provide the Settlement Administrator with information for Aggrieved Employees. Defendants will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, number of pay periods worked during the PAGA Period, and Social Security numbers to the extent available from Defendants' records. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement. Within seven (7) calendar days of receiving the Aggrieved Employees' information from Defendants, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. Within twenty-one (21) calendar days after the Settlement has been fully funded and after receiving approval from Plaintiffs' Counsel and Defendants' counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English and Spanish, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.5., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA

Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099, with no withholdings taken.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other reputable search method using the name, address or Social Security number of the Aggrieved Employee involved, and will perform up to a single re-mailing if a new address is located.

Funds represented by checks returned as undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate an updated address after performing a skip trace, and funds represented by checks remaining un-cashed more than 180 days after issuance (collectively, "Uncashed Checks"), shall escheat to the California State Controller's Office for deposit in the Unclaimed Property Fund, in the name of the Aggrieved Employee.

5. **Distribution of Payments.** Within twenty-one (21) calendar days of the Settlement being fully funded, the Settlement Administrator shall issue payments to (1) Aggrieved Employees; (2) the LWDA; (3) Plaintiffs' Counsel for Plaintiffs' Counsel's Court-approved attorneys' fees and litigation costs and expenses; (4) Plaintiffs for the Court-approved enhancement payments and (5) the Settlement Administrator for Court-approved Settlement administration costs incurred in connection with the Settlement. Payments made by Defendants pursuant to this Settlement shall be held by the Settlement Administrator in an interest-bearing account until they are disbursed, with any accrued interest inuring to the benefit of the Aggrieved Employees in the form of pro rata increases to Aggrieved Employees' Individual PAGA Payments.

6. **Accounting.** Within 45 days after all payments have been made under the Settlement, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the settlement.

7. **Tax Consequences.** Neither Plaintiffs nor Defendants, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. **MISCELLANEOUS PROVISIONS**

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs and attorneys' fees incurred in connection with this Settlement Agreement, the Actions and Plaintiffs' claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in San Diego, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of San Diego.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them with respect to the subject matter of this Settlement Agreement, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Actions.

6. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the settlement as provided herein; or (ii) the settlement does not become final for any other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their respective positions before the Settlement was executed.

7. **Judgment and Continued Jurisdiction.** As noted above, after approval of this settlement, the Court will have continuing jurisdiction under Cal. Code Civ. Proc. § 664.6 for purposes of addressing: (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

8. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest, or by counsel for all Parties.

9. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the mediator (Tripper Ortman) or the Court to resolve such disagreement.

10. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Actions, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

12. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable.

13. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

15. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

16. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

17. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement

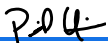
Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

18. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

19. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

IN WITNESS THEREOF, the Parties each acknowledge that they/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

Dated: 6/16, 2022


[Pedro Urbina \(Jun 16, 2022 11:30 PDT\)](#)
Pedro Urbina, Plaintiff

Dated: _____, 2022

Carlos Torres, Plaintiff

Dated: _____, 2022

Rebecca Medrano, Plaintiff

Dated: _____, 2022

Oscar Barrera, Plaintiff

Mossy Nissan, Inc., Mossy Automotive Group
Lemon Grove, Inc., Mossy Automotive Group,
Inc., Mossy Ford, Inc., Mossy Automotive Group,
II, Mossy Nissan Chula Vista, Mossy Auto
Imports, MAG Infiniti OCN, LLC, MAG Infiniti
KM, LLC, MAG Infiniti ESC LLC

Dated: _____, 2022

By:
Their:

Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

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IN WITNESS THEREOF, the Parties each acknowledge that they/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

Dated: _____, 2022

Pedro Urbina, Plaintiff

Dated: 22 June, 2022


[Carlos Torres \(Jun 22, 2022 13:56 GMT+2\)](#)

Carlos Torres, Plaintiff

Dated: _____, 2022

Rebecca Medrano, Plaintiff

Dated: _____, 2022

Oscar Barrera, Plaintiff

Mossy Nissan, Inc., Mossy Automotive Group
Lemon Grove, Inc., Mossy Automotive Group,
Inc., Mossy Ford, Inc., Mossy Automotive Group,
II, Mossy Nissan Chula Vista, Mossy Auto
Imports, MAG Infiniti OCN, LLC, MAG Infiniti
KM, LLC, MAG Infiniti ESC LLC

Dated: _____, 2022

By:
Their:

Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

18. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

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IN WITNESS THEREOF, the Parties each acknowledge that they/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

Dated: _____, 2022

Pedro Urbina, Plaintiff

Dated: _____, 2022

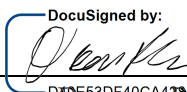
Carlos Torres, Plaintiff

Dated: 06/16, 2022



Rebecca Medrano (Jun 16, 2022 12:49 PDT)
Rebecca Medrano, Plaintiff

Dated: 6/22/2022, 2022

DocuSigned by:


D1DE53DF40CA42B1
Oscar Barrera, Plaintiff

Mossy Nissan, Inc., Mossy Automotive Group
Lemon Grove, Inc., Mossy Automotive Group,
Inc., Mossy Ford, Inc., Mossy Automotive Group,
II, Mossy Nissan Chula Vista, Mossy Auto
Imports, MAG Infiniti OCN, LLC, MAG Infiniti
KM, LLC, MAG Infiniti ESC LLC

Dated: _____, 2022

By:
Their:

APPROVED AS TO FORM:

Dated: June 22, 2022

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiffs Pedro Urbina, Carlos
Torres, and Rebecca Medrano

Dated: June 22, 2022

CAPSTONE LAW, APC

By: 

Mark A. Ozzello
Brandon Brouillette
John Stobart
Joseph Hakakian
Attorneys for Plaintiff Oscar Barrera

Dated: _____, 2022

FISHER & PHILLIPS LLP

By: _____
Megan C. Winter
Jamie L. Gross
Attorneys for Defendants

Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

18. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

19. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

IN WITNESS THEREOF, the Parties each acknowledge that they/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

Dated: _____, 2022

Pedro Urbina, Plaintiff

Dated: _____, 2022

Carlos Torres, Plaintiff

Dated: _____, 2022

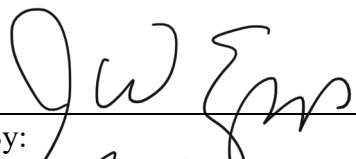
Rebecca Medrano, Plaintiff

Dated: _____, 2022

Oscar Barrera, Plaintiff

Mossy Nissan, Inc., Mossy Automotive Group
Lemon Grove, Inc., Mossy Automotive Group,
Inc., Mossy Ford, Inc., Mossy Automotive Group,
II, Mossy Nissan Chula Vista, Mossy Auto
Imports, MAG Infiniti OCN, LLC, MAG Infiniti
KM, LLC, MAG Infiniti ESC LLC

Dated: July 5, 2022

By: 
Their: SECRETARY

APPROVED AS TO FORM:

Dated: _____, 2022

HAINES LAW GROUP, APC

By: _____

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiffs Pedro Urbina, Carlos
Torres, and Rebecca Medrano

Dated: _____, 2022

CAPSTONE LAW, APC

By: _____

Mark A. Ozzello
Brandon Brouillette
John Stobart
Joseph Hakakian
Attorneys for Plaintiff Oscar Barrera

Dated: July 6, 2022

FISHER & PHILLIPS LLP

By: Megan C. Winter

Megan C. Winter
Jamie L. Gross
Attorneys for Defendants

EXHIBIT A

Re: Payment from *Pedro Urbina, et al. v. Mossy Automotive Group, Inc., et al.*, Superior Court of California San Diego County, Case No. 37-2020-00022420-CU-OE-CTL and *Oscar Santos Barrera v. Mossy Automotive Group Lemon Grove, Inc., et al.*, Superior Court of California San Diego County, Case No. 37-2020-00042815-CU-OE-CTL

Date: [REDACTED]/[REDACTED]/2022

SIMID
Name
Address

Dear Name:

Enclosed, please find a check made payable to you. This is your payment from the settlement of the lawsuits entitled *Pedro Urbina, et al. v. Mossy Automotive Group, Inc., et al.*, San Diego Superior Court, Case No. 37-2020-00022420-CU-OE-CTL, and *Oscar Santos Barrera v. Mossy Automotive Group Lemon Grove, Inc., et al.*, San Diego Superior Court, Case No. 37-2020-00042815-CU-OE-CTL, both of which are pending in the Superior Court of the State of California for the County of San Diego (the “Actions”).

The Actions are filed against Defendants Mossy Nissan, Inc., Mossy Automotive Group Lemon Grove, Inc., Mossy Automotive Group, Inc., Mossy Ford, Inc., Mossy Automotive Group, II, Mossy Nissan Chula Vista, Mossy Auto Imports, MAG Infiniti OCN, LLC, MAG Infiniti KM, LLC, MAG Infiniti ESC LLC (“Defendants”) and includes a claim pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”). The Actions were brought by Plaintiffs Pedro Urbina, Carlos Torres, Rebecca Medrano, and Oscar Barrera (“Plaintiffs”) on behalf of the State of California and other alleged aggrieved employees. You have been identified as one of the employees on whose behalf the case was brought.

In these lawsuits, Plaintiffs claimed that Defendants violated the California Labor Code by allegedly failing to pay overtime, failing to pay all minimum wages, failing to provide proper meal periods, failing to authorize and permit rest periods, failing to furnish accurate wage statements, failing to reimburse necessary business expenses, failing to timely pay final wages, and unlawfully deducting wages. Defendants vehemently dispute all of Plaintiffs’ allegations and deny that they engaged in any of the alleged misconduct. The Parties have reached a settlement of Plaintiffs’ representative PAGA claims, and on [DATE], the Court approved the settlement, including the amount of civil penalties to be paid under the settlement. A portion of the civil penalty settlement amount goes to the State of California’s Labor and Workforce Development Agency. Another portion of the civil penalty settlement amount goes to employees of Defendants who Plaintiffs allege were affected by the alleged violations of the Labor Code. In agreeing to enter into this settlement, Defendants do not admit that they are liable in any way to current or former employees for any violations of the California Labor Code, or any penalties, and have denied and disputed all of Plaintiffs’ contentions. The Court has not decided the merits of Plaintiffs’ claims or Defendants’ defenses.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. This check will remain valid for 180 days from the date of issuance. Please note that no deductions/withholdings have been made from your settlement payment, and you will be responsible for any tax consequences arising from your receipt of the same (for which an IRS Form 1099 will issue). If you do not cash your check within 180 days of issuance, the funds will be deposited by the Settlement Administrator with the California State Controller to be deposited in the Unclaimed Property Fund in your name. If you are still employed by Defendants, your decision to cash the check will not affect your employment in any way.

While you were not a party to the Action, you and the State of California have been bound by the settlement entered in this matter and approved by the Court, including the release contained in the settlement. The release pertains to civil penalties under PAGA only. The release includes all claims under the PAGA that were

alleged in, or could have been alleged based on the facts alleged in, Plaintiffs' complaint in the Action, including claims for civil penalties, attorneys' fees, costs, or interest under the PAGA based on Defendants' alleged failure to pay overtime, alleged failure to pay all minimum wages, alleged failure to provide proper meal periods, alleged failure to authorize and permit rest periods, alleged failure to furnish accurate wage statements, alleged failure to reimburse necessary business expenses, alleged failure to timely pay final wages, and alleged unlawful deductions from wages, during the time period April 12, 2019 through June 30, 2022 (the "PAGA Period").

If you have any questions, you can contact , the Settlement Administrator, at 1- - .

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

April 22, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Pedro Urbina, et al. v. Mossy Automotive Group, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Carlos Torres (“Mr. Torres”), Pedro Urbina (“Mr. Urbina”), and Rebecca Medrano (“Ms. Medrano”) with respect to claims arising from their employment with Mossy Automotive Group, Inc.; Mossy Automotive Group II, LLC; Mossy Nissan, Inc.; Mossy Ford, Inc.; Mossy Automotive Group El Cajon Inc.; Mossy Automotive Group Lemon Grove Inc.; Mossy Nissan Chula Vista; Mossy Nissan El Cajon; Mossy Nissan Escondido; Mossy Nissan Kearny Mesa; Mossy Nissan National City; Mossy Nissan Oceanside; Mossy Nissan Poway; Mag West Mossy Ford II, LP; Mag West Mossy Honda II, LP; Mag West Mossy Nissan II, LP; Mag West Mossy Toyota II, LP; Mag West Mossy Volkswagen II, LP; and Does 1 through 100 (collectively, “Defendants”). Mr. Torres, Mr. Urbina, and Ms. Medrano are “aggrieved employees” as defined by Labor Code Section 2699 *et seq.*, due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3(a)(1), which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. The “aggrieved employees” whom Mr. Torres, Mr. Urbina, and Ms. Medrano seek to represent are all current and former non-exempt employees who performed work for Defendants in the State of California during the one year immediately preceding the date of this letter through the present.

Defendants own and operate several car dealerships in Southern California including, but not limited to, Mossy Honda Lemon Grove, Mossy Infiniti, Mossy Mitsubishi Escondido, Mossy Nissan Chula Vista, Mossy Nissan El Cajon, Mossy Nissan Escondido, Mossy Nissan Kearny Mesa, Mossy Nissan National City, Mossy Nissan Poway, Mossy Nissan Oceanside, Mossy Toyota San Diego, Mossy Volkswagen Escondido, and Mossy Ford San Diego. Mr. Torres worked at Defendants’ Mossy Volkswagen car dealership as a non-exempt Sales Consultant until approximately October 31, 2019. Mr. Urbina worked as non-exempt Lube Technician at Defendants’ Mossy Nissan Escondido car dealership from November 2016 until on or about January 22, 2020. Defendants employed Ms. Medrano as a non-exempt Sales Representative at the Mossy Ford car dealership from approximately May 2019 to approximately August 2019.

During Mr. Torres, Ms. Medrano, and other aggrieved employees' employment with Defendants, Mr. Torres, Ms. Medrano, and other aggrieved employees were paid pursuant to a commission payment plan whereby Mr. Torres, Ms. Medrano, and other aggrieved employees were paid a commissions per vehicle sold or leased. Mr. Torres, Ms. Medrano, and other aggrieved employees recorded their actual hours worked, however, were only paid hourly base wages if their earned commissions did not exceed their base wages in a pay period. While paid on a commission-only basis, Defendants failed to separately compensate Mr. Torres, Ms. Medrano, and other aggrieved employees for all of the time spent working on tasks which were not compensated on a commission-only basis, including, but not limited to, hours spent waiting for customers, attending daily meetings, and cleaning the dealership (i.e. non-productive time). As a result, Mr. Torres, Ms. Medrano, and other aggrieved employees were not paid at least the minimum wage for all hours worked.

While working on a commission-only basis, Mr. Torres, Ms. Medrano, and aggrieved employees worked shifts in excess of 3.5 hours, and were not provided with a paid rest period for every 4-hour period worked, or major fraction thereof, due to Defendants' commission compensation plan, which failed to separately compensate Mr. Torres, Ms. Medrano, and aggrieved employees for all required rest periods,. *See Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017); *Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did not separately compensate drivers for their rest periods."). Upon information and belief, for at least a portion of the relevant time period, Defendants failed to properly pay Mr. Torres, Ms. Medrano and other aggrieved employees for rest periods at the correct rate of pay as required by Industrial Welfare Commission Wage Order 4 § 12(A).

Defendants also failed to authorize and permit Mr. Urbina, Ms. Medrano, and other aggrieved employees from taking all required rest periods due to work demands, and by actively discouraging Mr. Urbina, Ms. Medrano, and other aggrieved employees from taking all required off-duty rest periods. Defendants also failed to authorize and permit Mr. Urbina, Ms. Medrano, and other aggrieved employees to take a third rest period on shifts over 10.0 hours. On those occasions when Defendants failed to authorize and permit Mr. Urbina, Ms. Medrano, and other aggrieved employees from taking all legally-compliant rest periods to which they were entitled, Defendants failed to compensate employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, for at least a portion of the relevant time period, Defendants failed to maintain any pay code or other mechanism for the payment of rest period premiums when they failed to authorize and permit Mr. Urbina, Ms. Medrano, and other aggrieved employees with legally-compliant rest periods.

Furthermore, Defendants routinely failed to provide Mr. Torres, Mr. Urbina, Ms. Medrano, and aggrieved employees with timely, full 30-minute first meal periods commencing before the conclusion of the fifth hour of work in violation of Labor Code § 512, and Wage Order 4, § 11(A). Specifically, Mr. Torres, Mr. Urbina, Ms. Medrano, and

other aggrieved employees were unable to take their meal period before the conclusion of the fifth hour of work due to work demands imposed by Defendants. For example, Mr. Urbina's time records reveal that on December 28, 2019, he clocked in for his shift at 8:02 a.m., and clocked out for his meal period at 2:22 p.m., resulting in a late meal period. Likewise, Ms. Medrano's timecard entry for July 16, 2019 shows that she clocked in for her shift at 9:29 a.m., and clocked out for her meal period at 3:36 p.m., which is well after the fifth hour of work. Additionally, Defendants failed to provide Mr. Torres, Mr. Urbina, and Ms. Medrano, and aggrieved employees with all required meal periods due to Defendants' meal period policies/practices which fail to provide a second meal period for shifts in excess of 10.0 hours. On those occasions when Defendants failed to provide Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees all legally-compliant meal periods to which they were entitled, Defendants failed to compensate employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Defendants also failed to adequately reimburse to Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees for use of their personal cellular phone for a variety of work-related purposes, including communicating with their coworkers, supervisors, and clients. Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees were required to use their personal cellular phones for work-related purposes, however, Defendants often failed to pay any reimbursements to Mr. Urbina, Ms. Medrano, and other aggrieved employees for cellular phone expenses. On some occasions, Defendants inadequately reimbursed Mr. Torres and other aggrieved employees only \$10.00 per pay period for use of their personal cellular phone, which is denoted as "Cell Allowance" on employee's wage statement. Although Defendants required Mr. Torres, Mr. Urbina, Ms. Medrano, and aggrieved employees to use their personal cellular phones for work related activities, Defendants failed to adequately reimburse Mr. Torres, Mr. Urbina, and Ms. Medrano, and other aggrieved employees for all cellular phone expenses.

As a result of Defendants' failure to pay all minimum wages, rest period premium wages, and meal period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees.

As a further result of Defendants' failure to pay all minimum wages, rest period premium wages, and meal period premium wages, Defendants failed to pay all wages owed to Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees upon their separation of employment.

As described above, Defendants committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"):

Minimum Wage Violations

Defendants were required to pay Mr. Torres, Mr. Urbina, Ms. Medrano, and aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197; Wage Order 4, § 4. Because Defendants failed to compensate Mr. Torres and Ms. Medrano and other aggrieved employees for all non-productive time when they were paid on a commission-only basis, Defendants failed to compensate Mr. Torres and Ms. Medrano and other aggrieved employees for all hours worked. As a result of Defendants' policies/practices, which fail to compensate for all hours worked, Mr. Torres and Ms. Medrano and other aggrieved employees were deprived of all required minimum wages.

Rest Period Violations

As described above, Defendants failed to authorize and permit Mr. Torres, Mr. Urbina, Ms. Medrano, and aggrieved employees to take all required rest periods, as required under Labor Code §§ 226.7 and 516, and Wage Order 4, § 12. Specifically, Defendants' commission payment plan failed to separately compensate Mr. Torres, Ms. Medrano and other aggrieved employees for all required rest periods at the correct rate of pay. *See Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017). Further, Mr. Urbina, Ms. Medrano, and other aggrieved employees were not authorized and permitted to take all legally-compliant off-duty rest periods due to work demands. As a result, Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.").

Meal Period Violations

Defendants failed to provide Mr. Torres, Mr. Urbina, and Ms. Medrano, and other aggrieved employees with timely, full 30-minute first meal periods commencing before the conclusion of the fifth hour of work, in violation of Labor Code § 512, and Wage Order 4, §11(A). Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees were also not provided with all required meal periods due to Defendants' meal period policies/practices which fail to provide a second meal period for shifts over 10.0 hours. *See* Labor Code §§ 226.7, 512; Wage Order 4, § 11. As a result, Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that meal periods were not provided. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.").

Failure to Reimburse Employees for Necessary Business Expenses

Defendants failed to adequately reimburse Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees for necessary work expenses incurred due to Defendants' policy/practice of not providing all reimbursements for cellular phone expenses. *See* Wage Order 4, § 9; Labor Code §§ 2802 and 2804 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."); *see also Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014). Accordingly, Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees are entitled to reimbursement for all expenditures incurred as a direct consequence of the discharge of their duties for Defendants and/or at the direction of Defendants.

Wage Statement Violations

Defendants are required to furnish Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees with complete and accurate itemized wage statements that show, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 4, § 7. As a result of Defendants' failure to pay all minimum wages, rest period premium wages, and meal period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees in violation of Labor Code § 226. Defendants' failure to comply with the wage statement obligations was knowing and intentional, and Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees all of their final wages at the time of separation, which included all minimum wages, as well as rest period premium wages, and meal period premium wages. Defendants' failure to pay all final wages due to Mr. Torres, Mr. Urbina, Ms. Medrano, and aggrieved employees was willful and, consequently, entitles Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

As "aggrieved employees," Mr. Torres, Mr. Urbina, and Ms. Medrano, will initiate a civil action on behalf of themselves and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Torres, Mr. Urbina, and Ms. Medrano's own investigation, and on

information and belief, Defendants committed, and continue to commit, the following violations:

- a. Defendants violated Labor Code §§ 558, 1182.12, 1194, 1194.2 and 1197, by failing to pay Mr. Torres, Ms. Medrano, and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Defendants violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit all rest periods as required by law and/or failing to separately compensate Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees for required rest periods at the correct rate of pay;
- c. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees at these employee's respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees for all necessary work expenses incurred;
- e. Defendants violated Labor Code § 226 by failing to furnish Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees with accurate and compliant itemized wage statements;
- f. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final wages due, including but not limited to minimum wages, rest period premium wages, and meal period premium wages to Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees upon their separation of employment;
- g. Defendants violated Labor Code § 204 by failing to pay Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Torres, Mr. Urbina, Ms. Medrano, and other aggrieved employees.

Pursuant to Labor Code Section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: MOSSY AUTOMOTIVE GROUP, INC. (via certified mail)
MOSSY AUTOMOTIVE GROUP II, LLC (via certified mail)
MOSSY NISSAN, INC. (via certified mail)
MOSSY FORD, INC. (via certified mail)
MOSSY AUTOMOTIVE GROUP EL CAJON INC. (via certified mail)
MOSSY AUTOMOTIVE GROUP LEMON GROVE INC. (via certified mail)
MOSSY NISSAN CHULA VISTA (via certified mail)
MOSSY NISSAN EL CAJON (via certified mail)
MOSSY NISSAN ESCONDIDO (via certified mail)
MOSSY NISSAN KEARNY MESA (via certified mail)
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MOSSY NISSAN OCEANSIDE (via certified mail)
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C/O JOHN EPPS
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SAN DIEGO, CA 92109



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Diana M

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☐ Addressee

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Diana M

C. Date of Delivery

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SAN DIEGO, CA 92111

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MOSSY FORD, INC.
C/O JOHN W. EPPS
4625 BRINELL ST
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2. Article Number (Transfer from service label)

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GROVE INC.
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Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- | | |
|--|----|
| ☐ Return Receipt (hardcopy) | \$ |
| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

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7019 2970 0000 0586 2079
MOSSY AUTOMOTIVE GROUP LEMON
GROVE INC.
C/O JOHN W. EPPS
4555 MISSION BAY DR
SAN DIEGO, CA 92109

Postmark
Here

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MAG WEST MOSSY NISSAN II, LP
C/O PHILIP E MOSSY
4625 BRINELL ST
SAN DIEGO, CA 92111



9590 9402 5816 0034 9282 53

2. Article Number (Transfer from service label)

7019 2970 0000 0586 2161

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Diana M*
☐ Agent
☐ Addressee

B. Received by (Printed Name)

Diana M

C. Date of Delivery

 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Mail Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail Restricted Delivery:
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Domestic Return Receipt

U.S. Postal Service™

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

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OFFICIAL USE

Certified Mail Fee

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Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

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MAG WEST MOSSY NISSAN II, LP
C/O PHILIP E MOSSY
4625 BRINELL ST
SAN DIEGO, CA 92111

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MAG WESY MOSSY TOYOTA II, LP
C/O PHILIP E MOSSY
4625 BRINELL ST
SAN DIEGO, CA 92111



9590 9402 5296 9154 3357 76

2. Article Number (Transfer from service label)

7019 2970 0000 0586 2154

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Diana M

☐ Agent☐ Addressee

B. Received by (Printed Name)

Diana M

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

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Domestic Return Receipt

U.S. Postal Service™
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Certified Mail Fee

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Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$

MAG WESY MOSSY TOYOTA II, LP
C/O PHILIP E MOSSY
4625 BRINELL ST
SAN DIEGO, CA 92111

Postmark

Here

JUL 22 2020

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MOSSY NISSAN NATIONAL CITY
C/O JOHN W. EPPS
4625 BRINELL ST
SAN DIEGO, CA 92111



9590 9402 5816 0034 9286 66

2. Article Number (Transfer from service label)

7019 2970 0000 0586 2208

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

☐ Mail
☐ Mail Restricted Delivery
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Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only
For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

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MOSSY NISSAN NATIONAL CITY
C/O JOHN W. EPPS
4625 BRINELL ST
SAN DIEGO, CA 92111

Postmark
Here

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

7019 2970 0000 0586 2208

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MOSSY NISSAN KEARNY MESA
C/O JOHN W. EPPS
4625 BRINELL ST
SAN DIEGO, CA 92111



9590 9402 5816 0034 9284 82

2. Article Number (Transfer from service label)

7019 2970 0000 0586 2130

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail
 Mail Restricted Delivery
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Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

MOSSY NISSAN KEARNY MESA
C/O JOHN W. EPPS
4625 BRINELL ST
SAN DIEGO, CA 92111

Postmark
 Here

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

7019 2970 0000 0586 2130

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MOSSY NISSAN EL CAJON
C/O JOHN W. EPPS
4625 BRINELL ST
SAN DIEGO, CA 92111



9590 9402 5816 0034 9286 42

2. Article Number (Transfer from service label)

7019 2970 0000 0586 2048

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Diana M*
☐ Agent
☐ Addressee

B. Received by (Printed Name)

Diana M

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☒ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Mail Restricted Delivery (00) | |

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- | | |
|--|----|
| ☐ Return Receipt (hardcopy) | \$ |
| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

Postmark
Here

MOSSY NISSAN EL CAJON
C/O JOHN W. EPPS
4625 BRINELL ST
SAN DIEGO, CA 92111

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

7019 2970 0000 0586 2048

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MAG WEST MOSSY VOLKSWAGON II,
LP
C/O PHILIP E MOSSY
4625 BRINELL ST
SAN DIEGO, CA 92111



9590 9402 5816 0034 9282 60

2. Article Number (Transfer from service label)

7019 2970 0000 0586 2147

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

dm

☐ Agent☐ Addressee

B. Received by (Printed Name)

Diana M

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature
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☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery
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Domestic Return Receipt

U.S. Postal Service™

CERTIFIED MAIL® RECEIPT

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OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$☐ Return Receipt (electronic) \$☐ Certified Mail Restricted Delivery \$☐ Adult Signature Required \$☐ Adult Signature Restricted Delivery \$

Postage

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MAG WEST MOSSY VOLKSWAGON II,
LP
C/O PHILIP E MOSSY
4625 BRINELL ST
SAN DIEGO, CA 92111



PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MOSSY NISSAN, INC.
C/O PHILIP MOSSY
4625 BRINELL ST
SAN DIEGO, CA 92111



9590 9402 5816 0034 9285 98

2. Article Number (Transfer from service label)

7019 2970 0000 0586 2109

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

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☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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| ☐ Certified Mail Restricted Delivery | ☒ Return Receipt for Merchandise |
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☐ Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL US

Certified Mail Fee

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Extra Services & Fees (check box, add fee as appropriate)

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MOSSY NISSAN, INC.
C/O PHILIP MOSSY
4625 BRINELL ST
SAN DIEGO, CA 92111

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1 Article Addressed to:

MOSSY NISSAN OCEANSIDE
C/O JOHN W. EPPS
4625 BRINELL ST
SAN DIEGO, CA 92111



9590 9402 5296 9154 3357 69

2. Article Number (Transfer from service label)

7019 2970 0000 0586 2215

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

Diana M

C. Date of Delivery:

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
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- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Registered Mail Restricted Delivery (\$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

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MOSSY NISSAN OCEANSIDE
C/O JOHN W. EPPS
4625 BRINELL ST
SAN DIEGO, CA 92111

Postmark
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PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

7019 2970 0000 0586 2215

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MOSSY AUTOMOTIVE GROUP EL CAJON
INC.
C/O JOHN W. EPPS
4625 BRINELL ST
SAN DIEGO, CA 92111



9590 9402 5816 0034 9286 11

2. Article Number (Transfer from service label)

7019 2970 0000 0586 2086

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

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dmm

☐ Agent
☐ Addressee

B. Received by (Printed Name)

Dianam

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☒ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |

Mail
Mail Restricted Delivery

Domestic Return Receipt

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Extra Services & Fees (check box, add fee as appropriate)

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| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

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MOSSY AUTOMOTIVE GROUP EL CAJON
INC.
C/O JOHN W. EPPS
4625 BRINELL ST
SAN DIEGO, CA 92111

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PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MOSSY NISSAN ESCONDIDO
C/O JOHN W. EPPS
4625 BRINELL ST
SAN DIEGO, CA 92111



9590 9402 5816 0034 9286 59

2. Article Number (Transfer from service label)

7019 2970 0000 0586 2055

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Diana M

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Diana M

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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Certified Mail Fee

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Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

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Here

Postmark

MOSSY NISSAN ESCONDIDO
C/O JOHN W. EPPS
4625 BRINELL ST
SAN DIEGO, CA 92111

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

EXHIBIT 3



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

September 14, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Oscar Santos Barrera v. Mossy Honda Lemon Grove, et al.*

Dear PAGA Administrator:

This office represents Oscar Santos Barrera in connection with his claims under the California Labor Code. Mr. Santos Barrera was an employee of MOSSY AUTOMOTIVE GROUP LEMON GROVE INC.; MAG WEST MOSSY FORD II, LP; MAG WEST MOSSY HONDA II, LP; MAG WEST MOSSY NISSAN II, LP; MAG WEST MOSSY TOYOTA II, LP; MAG WEST MOSSY VOLKSWAGEN II, LP; MOSSY AUTOMOTIVE GROUP, INC.; MOSSY AUTOMOTIVE GROUP II, LLC; MOSSY AUTOMOTIVE GROUP EL CAJON INC.; MOSSY AUTO IMPORTS; MOSSY FORD, INC.; MOSSY HOLDING COMPANY, INC.; MOSSY NISSAN, INC.; MOSSY NISSAN CHULA VISTA; MOSSY NISSAN EL CAJON; MOSSY NISSAN ESCONDIDO; MOSSY NISSAN KEARNY MESA; MOSSY NISSAN NATIONAL CITY; MOSSY NISSAN OCEANSIDE; and/or MOSSY NISSAN POWAY. For the purpose of this letter, Mr. Santos Barrera collectively refers to these entities as "MOSSY."

The employers may be contacted directly at the addresses below:

MOSSY AUTOMOTIVE GROUP LEMON
GROVE INC.
4555 MISSION BAY DR
SAN DIEGO CA 92109

MAG WEST MOSSY FORD II, LP
4625 BRINELL ST
SAN DIEGO CA 92111

MAG WEST MOSSY HONDA II, LP
4625 BRINELL ST
SAN DIEGO CA 92111

MAG WEST MOSSY NISSAN II, LP
4625 BRINELL ST
SAN DIEGO CA 92111

MAG WEST MOSSY TOYOTA II, LP
4625 BRINELL ST
SAN DIEGO CA 92111

MAG WEST MOSSY VOLKSWAGEN II, LP
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY AUTOMOTIVE GROUP, INC.
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY AUTOMOTIVE GROUP II, LLC
1695 AUTO PARK WAY SOUTH
ESCONDIDO CA 92029

MOSSY AUTOMOTIVE GROUP II, LLC
4555 MISSION BAY DR
SAN DIEGO CA 92109

MOSSY AUTOMOTIVE GROUP EL CAJON INC.
4625 BRINELL STREET
SAN DIEGO CA 92111

MOSSY AUTO IMPORTS
2700 NATIONAL CITY BLVD
NATIONAL CITY CA 91950

MOSSY FORD, INC.
4625 BRINELL STREET
SAN DIEGO CA 92111

MOSSY HOLDING COMPANY, INC.
4555 MISSION BAY DR
SAN DIEGO CA 92109

MOSSY NISSAN, INC.
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY NISSAN CHULA VISTA
4625 BRINELL STREET
SAN DIEGO CA 92111

MOSSY NISSAN EL CAJON
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY NISSAN ESCONDIDO
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY NISSAN KEARNY MESA
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY NISSAN NATIONAL CITY
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY NISSAN OCEANSIDE
4625 BRINELL STREET
SAN DIEGO CA 92111

MOSSY NISSAN POWAY
4625 BRINELL STREET
SAN DIEGO CA 92111

Mr. Santos Barrera intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Santos Barrera seeks relief on behalf of himself, the State of California, and other persons who are or were employed by MOSSY as a non-exempt, hourly paid or commissions-paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

MOSSY employed Mr. Santos Barrera as a non-exempt, hourly paid employee from approximately March 2017 to February 2020. Mr. Santos Barrera worked for MOSSY as a Detail Technician/Automotive Service Technician at the MOSSY Honda dealership located in Lemon Grove, California. During his employment, Mr. Santos Barrera typically worked eight (8) hours or more per day, five (5) days per week, from 7:00 a.m. to 4:00 p.m. or later. At the time his employment ended, Mr. Santos Barrera was compensated on a hourly basis, plus commissions or bonuses based on productivity ("hourly production bonus"). His job duties included, without limitation, preparing new vehicles for customers, detailing used cars for the lot, mixing and producing cleaning chemicals, and re-stocking the car wash.

MOSSY committed one or more of the following Labor Code violations against Mr. Santos Barrera, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

MOSSY’s Company-Wide and Uniform Payroll and HR Practices

MOSSY AUTOMOTIVE GROUP LEMON GROVE INC.; MOSSY AUTOMOTIVE GROUP, INC.; MOSSY AUTOMOTIVE GROUP EL CAJON INC.; MOSSY AUTO IMPORTS; MOSSY FORD, INC.; MOSSY NISSAN, INC.; MOSSY NISSAN CHULA VISTA; MOSSY NISSAN EL CAJON; MOSSY NISSAN ESCONDIDO; MOSSY NISSAN KEARNY MESA; MOSSY NISSAN NATIONAL CITY; MOSSY NISSAN OCEANSIDE; and/or MOSSY NISSAN POWAY are California corporations. MOSSY HOLDING COMPANY, INC. is a Delaware corporation. MAG WEST MOSSY FORD II, LP; MAG WEST MOSSY HONDA II, LP; MAG WEST MOSSY NISSAN II, LP; MAG WEST MOSSY TOYOTA II, LP; MAG WEST MOSSY VOLKSWAGEN II, LP; and MOSSY AUTOMOTIVE GROUP II, LLC are California limited partnerships and a limited liability company. Together, MOSSY is a family-owned chain of car dealerships, with approximately 17 dealership locations in California. Upon information and belief, MOSSY maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Diego, California, for all non-exempt, hourly paid or commissions-paid employees working for MOSSY in California, including Mr. Santos Barrera and other aggrieved employees. At all relevant times, MOSSY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, commissions-paid employees in California, including Mr. Santos Barrera and other aggrieved employees, regardless of its location or position.

Upon information and belief, MOSSY maintains a centralized Payroll department at its corporate headquarters in San Diego, California, which processes payroll for all non-exempt, hourly paid or commissions-paid employees working for MOSSY in California, including Mr. Santos Barrera and other aggrieved employees. Further, MOSSY issues the same formatted wage statements in the same manner for all non-exempt, hourly paid or commissions-paid employees working in California, including Mr. Santos Barrera and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, MOSSY utilized the same methods and formulas when calculating wages due to Mr. Santos Barrera and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Santos Barrera’s experience and counsel’s review of those records currently available relating to Mr. Santos Barrera’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Santos Barrera reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

MOSSY willfully failed to pay all overtime wages owed to Mr. Santos Barrera and other aggrieved employees. During the relevant time period, Mr. Santos Barrera and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, MOSSY had a company-wide policy and/or practice of strictly limiting the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing dealership locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with MOSSY's understaffing policy, as well as the assignment of heavy workloads and strict deadlines (*see infra*), led Mr. Santos Barrera and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks.

As a result of this restriction on overtime accrual, MOSSY forced Mr. Santos Barrera and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, such as preparing new cars and detailing used vehicles. MOSSY discouraged and impeded Mr. Santos Barrera and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline or verbal reprimand for not completing their assignments while incurring unapproved overtime hours. Alternatively, when Mr. Santos Barrera and other aggrieved employees did not clock out at their designated shift end-times, on information and belief, Mr. Santos Barrera and other aggrieved employees were subject to MOSSY's supervisors falsifying their time records in order to prevent employees from accruing additional overtime.

Thus, Mr. Santos Barrera and other aggrieved employees were required to work off-the-clock performing tasks after their scheduled shifts, but were prevented from accounting for and recording this time in MOSSY's timekeeping system. For example, at least once per week, Mr. Santos Barrera was required to clock out at his designated shift end-time even when he had additional assignments to complete for the day, and would work 2-4 hours after he had clocked out, to complete detailing on all of the vehicles that were to be showcased for sale the following week. Thus, MOSSY failed to track all of this time spent working after clocking out, and Mr. Santos Barrera and other aggrieved employees received no compensation for this time.

Second, as stated, MOSSY had, and continues to have, a company-wide policy staffing its dealership locations strictly based on the labor hours or labor budget set by the corporate office. MOSSY's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload, which included weekly deadlines for completing detailing on cars at the dealership. Because MOSSY did not employ or staff an adequate number of employees to meet their productivity expectations and failed to provide employees with adequate meal period coverage, Mr. Santos Barrera and other aggrieved employees were assigned heavy workloads, which MOSSY knew or should have known could only be met by working additional hours. Mr. Santos Barrera and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and their supervisors' demands.

Third, MOSSY has, on a company-wide basis, failed to adhere to a schedule of meal periods. This company-wide practice, coupled with the heavy workload and pressure from MOSSY to complete assigned tasks, impeded Mr. Santos Barrera and other aggrieved employees from taking timely, compliant meal periods. Additionally, Mr. Santos Barrera and other aggrieved employees would be required to respond to text messages and calls on their personal cellular phones from supervisors and management during unpaid meal periods. As a result, Mr. Santos Barrera and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to

receive meal periods. Further, on information and belief, because MOSSY frowned upon employees accruing meal period penalties, MOSSY pressured Mr. Santos Barrera and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that MOSSY would otherwise owe. Mr. Santos Barrera was required to clock out within the first five (5) hours of his shift but would work through his meal periods, in order to complete his detailing assignments. Thus, Mr. Santos Barrera and other aggrieved employees performed work during meal periods for which they were not paid. MOSSY did not pay Mr. Santos Barrera and other aggrieved employees for the time they continued to perform tasks during meal periods.

MOSSY knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Santos Barrera and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. MOSSY also knew, or should have known, that it did not compensate Mr. Santos Barrera and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Santos Barrera and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Santos Barrera and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. MOSSY's failure to pay Mr. Santos Barrera and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, MOSSY did not pay Mr. Santos Barrera and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, MOSSY paid Mr. Santos Barrera and other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, MOSSY failed to incorporate all remunerations, including commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when Mr. Santos Barrera and other aggrieved employees worked overtime and received these other forms of pay, MOSSY failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Santos Barrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

First, during the relevant time period, MOSSY implemented a company-wide compensation plan for commissioned employees that systematically failed to compensate Mr. Santos Barrera and/or other aggrieved employees for all hours worked. As previously stated, MOSSY did not accurately record Mr. Santos Barrera's and/or other aggrieved employees' actual hours worked and/or did not pay them for all hours that they worked. Specifically, MOSSY required Mr. Santos Barrera and/or other aggrieved

employees paid on a commission basis to perform other non-commission producing activities without compensation. Thus, MOSSY failed to record the time spent by Mr. Santos Barrera and/or other aggrieved employees on nonproductive tasks (such as cleaning the dealership, waiting for customers, and attending meetings), and, as a result, failed to pay them for all hours worked. MOSSY also failed to separately pay other aggrieved employees for rest periods.

Second, as stated above, due to MOSSY's restrictions on overtime accrual, MOSSY systematically failed to pay Mr. Santos Barrera and other aggrieved employees for actual hours worked after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to MOSSY's uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads, failure to adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Mr. Santos Barrera and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. In addition, MOSSY systematically failed to pay Mr. Santos Barrera and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded. As set forth above, MOSSY's policies required Mr. Santos Barrera and other aggrieved employees to clock out for meal periods, even though Mr. Santos Barrera and other aggrieved employees performed additional duties and were subject to MOSSY's control during this time.

Third, during the relevant time period, MOSSY also maintained and implemented a company-wide policy of requiring other aggrieved employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug tests and/or physical examinations. At all times, upon information and belief, MOSSY was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider/facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. MOSSY gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and examinations for the sole benefit of MOSSY. Other aggrieved employees followed MOSSY's instructions and traveled to the medical facility designated by MOSSY, and underwent mandatory drug testing and/or physical examinations. However, MOSSY did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, MOSSY did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, MOSSY did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, MOSSY regularly failed to pay at least minimum wages to Mr. Santos Barrera and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Santos Barrera and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 226.2 – Failure to Separately Compensate for Rest Periods and Other Nonproductive Time

California Labor Code section 226.2 requires employers that utilize a piece-rate compensation plan to separately compensate employees for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates. Labor Code section 226.2 further requires that employers provide employees compensated on a piece-rate basis with itemized statements stating the total hours of

compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and the total hours of other nonproductive time, as specified, the rate of compensation, and the gross wages paid for that time during the pay period. Under California law, employers who pay employees on a commission basis must separately compensate them for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates. *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal.App.5th 98, 108 (2017).

During the relevant time period, MOSSY adopted a company-wide compensation plan whereby it paid Mr. Santos Barrera and/or other aggrieved employees on a commission basis for the detailing, repairing, servicing, and/or sale of vehicles. *See supra*. On information and belief, MOSSY did not accurately record their actual hours worked and/or did not pay them for all hours that they worked. Thus, MOSSY failed to separately compensate Mr. Santos Barrera and/or other aggrieved employees for all nonproductive time, including, but not limited to, such non-selling activities as cleaning the dealership, waiting for customers, and attending meetings. In addition, MOSSY had, and continues to have, a company-wide policy of failing to separately pay other aggrieved employees for rest periods as required by law. During the relevant time period, MOSSY never separately paid other aggrieved employees paid on a commission-only basis for rest periods.

On information and belief, MOSSY also failed to provide Mr. Santos Barrera and/or other aggrieved employees with itemized statements listing the total hours of all nonproductive time and total hours of compensable rest periods, and other required details regarding payment for nonproductive time and rest periods. MOSSY further did not provide other aggrieved employees with itemized statements showing the rates at which they were paid for compensable nonproductive time and rest periods.

MOSSY's failure to separately compensate Mr. Santos Barrera and/or other aggrieved employees for rest periods and other nonproductive time at or above specified minimum hourly rates, as well as MOSSY's failure to provide Mr. Santos Barrera and/or other aggrieved employees with the requisite itemized statements, violates Labor Code section 226.2.

Mr. Santos Barrera and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, MOSSY had, and continues to have, a company-wide policy and/or practice of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads and discouraging employees from incurring overtime, which resulted in a lack of meal period coverage and prevented Mr. Santos Barrera and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, MOSSY failed to adhere to a schedule of meal periods, resulting in Mr. Santos Barrera and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to weekly deadlines for finishing detailing on vehicles at the dealership, without incurring overtime. Also, Mr. Santos Barrera and other aggrieved employees were required to respond to calls on their personal cellular phones from supervisors and management during unpaid meal periods. These policies and practices discouraged and impeded Mr. Santos Barrera and other aggrieved employees from taking compliant meal periods.

As a result of MOSSY's practices and/or policies, Mr. Santos Barrera and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, approximately 1-2 times per week, Mr. Santos Barrera worked in excess of six (6) or seven (7) hours before taking a meal period, if he took one at all. Moreover, Mr. Santos Barrera's meal periods were interrupted or shortened once or twice per week in order to respond to his supervisors' requests to detail a car that had just been sold to a customer.

Additionally, on information and belief, because MOSSY frowned upon employees accruing meal period penalties, MOSSY's management would pressure employees to clock out for meal periods and continue working in order to strictly limit meal penalties that would need to be paid by MOSSY. For example, Mr. Santos Barrera was pressured by his supervisors to clock out and continue working during his meal periods in order to complete this workload, upon threat of verbal discipline if he incurred meal penalties and failed to finish his assignments. Mr. Santos Barrera would sometimes clock out within the first five (5) hours of his shift but continue performing tasks throughout his entire meal period in order to complete his work assignments; in all, Mr. Santos Barrera would miss his meal periods 3-4 times per week. Mr. Santos Barrera and other aggrieved employees worked through meal periods or had their meal periods interrupted, because there were not enough employees on duty to handle the workload.

Furthermore, MOSSY did not schedule second meal periods and had no policy for permitting Mr. Santos Barrera and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. As a result, Mr. Santos Barrera and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Santos Barrera and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

MOSSY knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Santos Barrera and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. MOSSY further knew or should have known that it did not pay Mr. Santos Barrera and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, MOSSY engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Santos Barrera and other aggrieved employees did not receive premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that MOSSY did pay Mr. Santos Barrera and other aggrieved employees premium pay for missed, late, and interrupted meal periods, MOSSY did not pay Mr. Santos Barrera and other aggrieved employees at the correct rate of pay for premium wages because

MOSSY systematically failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, MOSSY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Santos Barrera and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, MOSSY regularly failed to authorize and permit Mr. Santos Barrera and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, MOSSY's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Santos Barrera and other aggrieved employees from being relieved of all duty to take compliant rest periods. MOSSY also failed to schedule rest periods at all, which further led to Mr. Santos Barrera and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, MOSSY maintained and implemented a company-wide practice and/or policy requiring that Mr. Santos Barrera and other aggrieved employees remain on MOSSY's premises during their rest periods. Because Mr. Santos Barrera and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, MOSSY effectively maintained control over Mr. Santos Barrera and other aggrieved employees during rest periods, and as result of this rest period policy, MOSSY did not relinquish control over Mr. Santos Barrera and other aggrieved employees during rest periods.

As a result of MOSSY's practices and policies, Mr. Santos Barrera and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. Santos Barrera missed his rest periods due to MOSSY's assignment of heavy workloads, which made it impossible to take rest periods and also complete his work duties in the allotted time.

MOSSY also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Santos Barrera and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that MOSSY did pay rest period premium wages to Mr. Santos Barrera and other aggrieved employees, it did so at the incorrect rates. Because MOSSY did not properly calculate Mr. Santos Barrera's and other aggrieved employees' regular rates of pay by including all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, MOSSY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Santos Barrera and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. MOSSY has not provided Mr. Santos Barrera and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, MOSSY has knowingly and intentionally provided Mr. Santos Barrera and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, MOSSY issued uniform wage statements to Mr. Santos Barrera and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, MOSSY violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because MOSSY did not record the time Mr. Santos Barrera and other aggrieved employees spent working off-the-clock, deducted time from Mr. Santos Barrera's and other aggrieved employees' records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), and/or failed to provide itemized statements listing the total hours of all nonproductive time and other required details regarding payment for nonproductive time, MOSSY did not list the correct amount of gross wages and net wages earned by Mr. Santos Barrera and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, MOSSY failed to accurately list the total number of hours worked by Mr. Santos Barrera and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because MOSSY did not calculate Mr. Santos Barrera's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, MOSSY did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, MOSSY also failed to list the correct amount of net wages in violation of section 226(a)(5). MOSSY also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, MOSSY issued uniform wage statements to Mr. Santos Barrera and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Santos Barrera's and other aggrieved employees' wage statements incorrectly list the employer's address as 3615 Lemon Grove Ave., Lemon Grove, CA 91945, but, according to the California Secretary of State's website, MOSSY AUTOMOTIVE GROUP LEMON GROVE, INC. is listed on the California Secretary of State's website with a different address, 4555 Mission Bay Drive, San Diego, CA 92109.

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), MOSSY willfully failed to maintain accurate payroll records for Mr. Santos Barrera and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, MOSSY failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Santos Barrera and other aggrieved employees, in violation of section 1198. As stated, MOSSY engaged in a company-wide practice and/or policy of falsifying Mr. Santos Barrera's and other aggrieved employees' time records by deducting meal periods or recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Santos Barrera and other aggrieved employees.

Furthermore, in light of MOSSY's failure to provide Mr. Santos Barrera and other aggrieved employees with second 30-minute meal periods to which they were entitled, MOSSY kept no records of meal start and end times for second meal periods.

Because MOSSY failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Santos Barrera and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Santos Barrera and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Santos Barrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, MOSSY failed to pay Mr. Santos Barrera and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, compensation for rest periods and other nonproductive time, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Santos Barrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, MOSSY has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, on or about February 8, 2020, Mr. Santos Barrera notified MOSSY of his intention to quit effective February 21, 2020. However, MOSSY only provided him with part of his earned wages on February 21, 2020. On information and belief, Mr. Santos Barrera did not

receive all of his earned commissions and/or bonus payments, which were due and payable immediately on his last day of work, until on or about February 27, 2020. Thus, although Mr. Santos Barrera provided MOSSY with advance notice of his intention to quit, MOSSY failed to pay Mr. Santos Barrera all of his final wages at the time of quitting, in violation of Labor Code section 202.

Additionally, MOSSY willfully failed to pay Mr. Santos Barrera and other aggrieved employees who are no longer employed by MOSSY all their earned wages, including, but not limited to, overtime wages, minimum wages, compensation for rest periods and other nonproductive time, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving MOSSY's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Santos Barrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, MOSSY unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221.

MOSSY systematically, and on a company-wide basis, maintained a compensation plan that improperly deducted wages from other aggrieved employees' wages. MOSSY had a company-wide policy of allowing adjustments to be made to employee advances and/or wages, and would deduct commissions or incentives earned from employees' wages after repair orders are marked "closed."² Advances against future earned wages were "subject to chargeback upon audit or any adjustment by the Dealership, Manufacturer[,] and/or warranty provider." Advances and/or wages could be adjusted due to reductions in price, returns by customers or manufacturer or warranty provider within the time frame for returns, audit adjustments, and/or customer goodwill, among other reasons. These deductions were not expressly authorized in writing by other aggrieved employees. Thus, MOSSY's policy of utilizing commission chargebacks or deducting incentive payments from other aggrieved employees' wages constitutes an unlawful deduction of wages in violation of California Labor Code sections 221 and 224.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

² Per Mossy Automotive Technician Compensation Program, effective date Jan. 1, 2020: "A Repair Order is not 'closed' until the vehicle has been delivered to the customer and the Dealership has been paid in full on the transaction and all related paperwork is properly completed and approved for payment by the Customer, Manufacturer and/or warranty provider"

During the relevant time period, as stated above, MOSSY implemented a policy of failing to pay for rest periods and other nonproductive time and deducting commission chargebacks or incentive payments from employees' wages, which, on information and belief, resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, MOSSY acted with the intent to deprive other aggrieved employees of statutory wages, including, but not limited to, minimum wages and compensation for rest periods and other nonproductive time, to which they were entitled to under California law. Thus, MOSSY paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, MOSSY implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug tests and/or physical examinations, but required them to do so at their own expense. As stated, MOSSY had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, MOSSY was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider/facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug test and/or physical examinations. During the relevant time period, as stated, other aggrieved employees followed MOSSY's instructions and underwent drug testing and/or physical examinations.

However, MOSSY did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. MOSSY's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled

day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

MOSSY violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5), because MOSSY failed to pay Mr. Santos Barrera and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule. MOSSY had a company-wide practice of sending Mr. Santos Barrera and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Santos Barrera or other aggrieved employees for half of their scheduled shift. For example, 2-3 times per month, Mr. Santos Barrera was sent home an hour into his shift because business was slow and no cars needed detailing. Although Mr. Santos Barrera and other aggrieved employees would report to work based on the schedule that MOSSY provided to them, MOSSY would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Santos Barrera and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Santos Barrera and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, MOSSY, on a company-wide basis, required that Mr. Santos Barrera and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. Santos Barrera and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing work-related matters with supervisors. Although MOSSY required Mr. Santos Barrera and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, MOSSY failed to reimburse them for this cost.

Second, as stated, MOSSY had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. MOSSY maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, MOSSY was in control of scheduling the date and time for the testing and/or examination, selecting the provider or facility where the testing and/or examination was to

take place, and determining the scope of the testing and/or examination. MOSSY gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and examinations for the sole benefit of MOSSY. Although MOSSY required other aggrieved employees to undergo drug testing and/or physical examinations, MOSSY failed to reimburse them for their travel expenses.

Third, MOSSY, on a company-wide basis, has required Mr. Santos Barrera and other aggrieved employees to purchase basic tools and supplies that were necessary for completion of assigned tasks. For example, Mr. Santos Barrera was required to buy a buffer, air blower, cleaning pads, and other tools that were needed in order to perform his work duties. The cost of these tools and supplies totaled \$400-\$500 over the course of Mr. Santos Barrera's employment. Thus, MOSSY failed to provide basic tools and supplies to Mr. Santos Barrera and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Santos Barrera and other aggrieved employees for the costs of these tools and supplies.

Fourth, on a company-wide basis, MOSSY failed to provide Mr. Santos Barrera and other aggrieved employees with uniform cleaning services or reimburse them for cleaning expenses incurred. For example, due to the nature of their work, Mr. Santos Barrera's and other aggrieved employees' uniforms would become stained with chemicals and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from any other items, thus incurring additional laundry expenses.

MOSSY could have provided Mr. Santos Barrera and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, detailing tools and supplies, and a laundering service for uniforms, or, MOSSY could have reimbursed employees for their travel, mileage, tools and supplies, and laundry expenses. Instead, MOSSY passed these operating costs off onto Mr. Santos Barrera and other aggrieved employees.

Thus, MOSSY had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Santos Barrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." MOSSY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Santos Barrera's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Santos Barrera seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Santos Barrera, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California

against MOSSY for violations of California Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a), 226.2, 226.7, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Santos Barrera seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Santos Barrera's reasonable attempt to settle his dispute with MOSSY prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform MOSSY of Mr. Santos Barrera's aforementioned grievances and the proposed remedies as detailed below, while affording MOSSY a reasonable opportunity to satisfy Mr. Santos Barrera's demands.

Demand is hereby made that MOSSY shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. MOSSY shall pay Mr. Santos Barrera and all other aggrieved employees employed by MOSSY at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. MOSSY shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and compensation for rest periods and other nonproductive time, provided lawful meal and rest periods, and paid reporting time pay.
3. MOSSY shall conduct a survey or interview all current and former aggrieved employees in California who worked for MOSSY in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mandatory medical examinations, travel, cellular phone, tools and supplies, and laundering expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. MOSSY shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. MOSSY also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. MOSSY shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for MOSSY's benefit, including, but not limited to, costs of mandatory medical examinations, travel, cellular phone, supplies and tools, and laundering expenses, as required by Labor Code sections 222.5 and 2802.
6. MOSSY shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful practice of utilizing commission chargebacks and deducting incentive payments, including unlawful deductions (Labor Code sections 221 and 224) and secret payment of lower wages (Labor Code section 223).

7. MOSSY shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. MOSSY shall provide Mr. Santos Barrera and all aggrieved employees employed by MOSSY at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. MOSSY shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. MOSSY shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, 1199, and 2699, and Wage Order No. 7-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Mao Shiokura

Copy: MOSSY AUTOMOTIVE GROUP LEMON GROVE INC. (via U.S. Certified Mail); MAG WEST MOSSY FORD II, LP (via U.S. Certified Mail); MAG WEST MOSSY HONDA II, LP (via U.S. Certified Mail); MAG WEST MOSSY NISSAN II, LP (via U.S. Certified Mail); MAG WEST MOSSY TOYOTA II, LP (via U.S. Certified Mail); MAG WEST MOSSY VOLKSWAGEN II, LP (via U.S. Certified Mail); MOSSY AUTOMOTIVE GROUP, INC. (via U.S. Certified Mail); MOSSY AUTOMOTIVE GROUP II, LLC (via U.S. Certified Mail); MOSSY AUTOMOTIVE GROUP EL CAJON INC. (via U.S. Certified Mail); MOSSY AUTO IMPORTS (via U.S. Certified Mail); MOSSY FORD, INC. (via U.S. Certified Mail); MOSSY HOLDING COMPANY, INC. (via U.S. Certified Mail); MOSSY NISSAN, INC. (via U.S. Certified Mail); MOSSY NISSAN CHULA VISTA (via U.S. Certified Mail); MOSSY NISSAN EL CAJON (via U.S. Certified Mail); MOSSY NISSAN ESCONDIDO (via U.S. Certified Mail); MOSSY NISSAN KEARNY MESA (via U.S. Certified Mail); MOSSY NISSAN NATIONAL CITY (via U.S. Certified Mail); MOSSY NISSAN OCEANSIDE (via U.S. Certified Mail); MOSSY NISSAN POWAY (via U.S. Certified Mail)

EXHIBIT 4

Haines Law Group, APC

Expense Summary

Pedro Urbina, et al. v. Mossy Automotive Group, Inc., et al.

EXPENSE	AMOUNT
Expert Fees	\$10,656.00
Mediation Fee	\$12,000.00
Filing, CourtCall Costs, Service & Messenger Fees	\$2,255.06
Copying and Postage Costs	\$324.87
Westlaw Charges	\$5.36
TOTAL:	\$25,241.29

EXHIBIT 5

LAFFEY MATRIX

[History](#)
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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.