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County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GARY MORALES, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

LITHIA MOTORS, INC., an Oregon
corporation; LITHIA MOTORS SUPPORT
SERVICES, INC., an Oregon corporation;
DCH TORRANCE IMPORTS INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.:

20STCV27429

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

**(1) VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

DEMAND OVER \$25,000.00

1 Plaintiff Gary Morales (“Plaintiff”) hereby submits this Representative Action Complaint
2 (“Complaint”) against Defendants Lithia Motors, Inc., Lithia Motors Support Services, Inc.,
3 DCH Torrance Imports Inc., and Does 1 through 50 (hereinafter collectively referred to as
4 “Defendants”) on behalf of himself and aggrieved employees of Defendants for penalties for
5 failure to provide off-duty meal and rest breaks and reimburse business expenses as follows:

6 **INTRODUCTION**

7 1. This action is within the Court’s jurisdiction under California Labor Code §§ 201-
8 203, 226.7, 512, 2802, and 2698, *et seq.*

9 2. This complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code against individuals who worked for Defendants.

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
12 jointly and severally, have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees in Defendants’ failure to provide off-duty meal and rest
14 breaks and reimburse business expenses.

15 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 have engaged in, among other things a system of willful violations of the California Labor Code,
17 by creating and maintaining policies, practices, and customs that knowingly deny employees the
18 above stated rights and benefits.

19 5. The policies, practices and customs of defendants described above and below
20 have resulted in unjust enrichment of Defendants and an unfair business advantage over
21 businesses that routinely adhere to the strictures of the California Labor Code.

22 **JURISDICTION AND VENUE**

23 6. The Court has jurisdiction over the violations of the California Labor Code §§
24 201-203, 226.7, 512, 2802, and 2698, *et seq.*

25 7. Venue is proper because Defendants are located Los Angeles County and Plaintiff
26 worked for Defendants in Torrance, California.

27 **PARTIES**

28 8. Plaintiff began working for Defendants from about December 2019 until on or

1 about February 2020. During his employment, Plaintiff would at times be paid on a commission
2 basis, or if the commissions did not meet the minimum wage in any particular pay period, then
3 Plaintiff would be paid on an hourly basis for that pay period.

4 9. Plaintiff was and is the victim of the policies, practices, and customs of
5 Defendants complained of in this action in ways that have deprived him of the rights guaranteed
6 by California Labor Code §§ 201-203, 226.7, 512, 2802, and 2698, *et seq.*

7 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
8 herein mentioned Defendant Lithia Motors, Inc. was and is an Oregon corporation doing
9 business in the State of California, and is engaged in the business of selling automobiles.

10 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
11 herein mentioned Defendant Lithia Motors Support Services, Inc. was and is an Oregon
12 corporation doing business in the State of California, and is engaged in the business of selling
13 automobiles.

14 12. Plaintiff is informed and believes, and based thereon alleges, that at all times
15 herein mentioned Defendant DCH Torrance Imports, Inc. was and is a California corporation
16 doing business in the State of California, and is engaged in the business of selling automobiles.

17 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
18 herein mentioned Defendants, are and were corporations, business entities, individuals, and
19 partnerships, licensed to do business and actually doing business in the State of California.

20 14. As such, and based upon all the facts and circumstances incident to Defendants'
21 business, Defendants are subject to California Labor Code §§ 201-203, 226.7, 512, 2802, and
22 2698, *et seq.*

23 15. Plaintiff does not know the true names or capacities, whether individual, partner
24 or corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason,
25 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
26 complaint when the true names and capacities are known. Plaintiff is informed and believes and
27 based thereon alleges that each of said fictitious Defendants were responsible in some way for
28 the matters alleged herein and proximately caused Plaintiff and members of the class to be

1 subject to the illegal employment practices, wrongs, and injuries complained of herein.

2 16. At all times herein mentioned, each of said Defendants participated in the doing
3 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
4 Defendants, and each of them, were the agents, servants, and employees of each of the other
5 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
6 acting within the course and scope of said agency and employment.

7 17. Plaintiff is informed and believes, and based thereon alleges, that at all times
8 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
9 joint venturer of, or working in concert with each of the other co-Defendants and was acting
10 within the course and scope of such agency, employment, joint venture, or concerted activity.
11 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
12 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
13 Defendants.

14 18. At all times herein mentioned, Defendants, and each of them, were members of,
15 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
16 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

17 19. At all times herein mentioned, the acts and omissions of various Defendants, and
18 each of them, concurred and contributed to the various acts and omissions of each and all of the
19 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
20 herein mentioned, Defendants, and each of them, ratified each and every act or omission
21 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
22 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
23 damages as herein alleged.

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

26 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

27 20. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
28 though fully set forth herein.

1 21. Plaintiff brings this cause of action on behalf as a proxy for the State of California
2 and in this capacity, seeks penalties on behalf of all Aggrieved Employees from April 10, 2019,
3 through the present, for Defendants' violations of Labor Code §§ 201-203, 226.7, 512, and 2802,
4 arising from Defendants': (a) failure to provide off-duty meal periods, or provide premium
5 compensation in lieu thereof, in violation of Labor Code §§ 201-203, 226.7 and 512; (b) failure
6 to provide off-duty rest periods, or pay premium compensation in lieu thereof, in violation of
7 Labor Code §§ 201-203 and 226.7; and (c) failure to reimburse employees for business expenses
8 in violation of Labor Code §§ 2802.

9 22. Defendants failed in their affirmative obligation to provide off-duty meal and rest
10 periods, or provide premium compensation in lieu thereof, and reimburse business expenses.
11 Like other aggrieved employees, Plaintiff regularly earned non-discretionary remuneration such
12 as bonuses and commissions. When Plaintiff was paid on a commission-only basis, Defendants
13 regularly required Plaintiff to work off-the-clock and did not pay for non-productive time, such
14 as time spent attending required meetings or training sessions.

15 23. During shifts of 3.5 hours or longer, Defendants regularly failed to provide
16 Plaintiff with a 10-minute duty-free rest break or pay premium compensation in lieu thereof. As
17 these shifts were paid on a commission-only basis, no paid rest breaks were provided to Plaintiff.

18 24. Plaintiff also regularly worked shifts in excess of 5 hours without being provided
19 a 30-minute meal break during which he was relieved of all duties, and shifts in excess of 10
20 hours during which he was not provided a second 30-minute meal break and relieved of all
21 duties. When meal period compensation was paid, however, it was remitted at an incorrect rate
22 of pay. Specifically, Defendants failed to include all non-discretionary pay into the regular rate
23 of pay for the purposes of paying meal period premiums. Further, the meal period compensation
24 was even below Plaintiff's base hourly rate of pay. As a result, Plaintiff and other aggrieved
25 employees were underpaid.

26 25. Further, Defendants failed to reimburse Plaintiff for work-related expenses such
27 as use of his cell phone.

28 26. On April 10, 2020, Plaintiff submitted his written notice online to the California

1 Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code
2 §§ 201-203, 226.7, 512, and 2802, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys
3 General Act (“PAGA”), as well as provided notice to Defendants via certified mail. As of the
4 date of the filing of this Complaint, the LWDA has not notified Plaintiff whether it intends to
5 investigate said violations.

6 27. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
7 applicable civil penalties for Defendants’ violation of Labor Code §§ 201-203, 226.7, 512, and
8 2802, for the time periods described above, as an individual and on behalf of all other current
9 and former Aggrieved Employees.

10 **PRAYER FOR RELIEF**

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

13 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
14 Labor Code § 2698, *et seq.*, and for costs and attorneys’ fees;

15 2. On all causes of action for attorneys’ fees and costs as provided by California
16 Labor Code §§ 218.5 and 2699, and Code of Civil Procedure § 1021.5; and

17 3. For such other and further relief the Court may deem just and proper.
18

19 DATED: July 15, 2020

DIVERSITY LAW GROUP, P.C.

20
21 By: _____

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Attorneys for Plaintiff and the Class
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