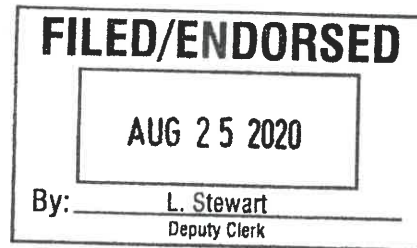


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6 Attorneys for Plaintiff JOSE HURTADO



7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

10 JOSE HURTADO,

11 Plaintiff,

12 vs.

13
14 JS FOLSOM AUTOMOTIVE, INC., a
Delaware Corporation;
15 FOLSOM BUICK-PONTIAC-GMC, INC., a
Delaware Corporation;
16 CLIFTON JOSEPH SMITH, an individual;
17 DENISE DEWEY, an individual; and
DOES 1 to 100, inclusive,

18 Defendants.
19
20
21
22

Case No. 34-2020-00284813

COMPLAINT FOR CIVIL PENALTIES:

1. Private Attorneys General Act

FILED BY FAX

23 Plaintiff JOSE HURTADO ("Plaintiff") hereby files this Complaint against Defendants JS
24 FOLSOM AUTOMOTIVE, INC., a Delaware Corporation; FOLSOM BUICK-PONTIAC-GMC,
25 INC., a Delaware Corporation; CLIFTON JOSEPH SMITH, an individual; DENISE DEWEY, an
26 individual; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants").

27 On information and belief, Plaintiff allege the following:

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1 Aggrieved Employees includes but is not limited to the following: all non-exempt employees who are
2 currently working or have worked for Defendants from June 17, 2019 up to the present date.

3 **PARTIES**

4 5. JOSE HURTADO is an individual over the age of eighteen (18) and is a resident of
5 the State of California.

6 6. On information and belief, Plaintiff alleges, JS FOLSOM AUTOMOTIVE, INC., is
7 now and/or at all times mentioned in this Complaint was a Delaware Corporation and the owner and
8 operator of an industry, business and/or facility doing business in the State of California.

9 7. On information and belief, Plaintiff alleges, FOLSOM BUICK-PONTIAC-GMC,
10 INC., is now and/or at all times mentioned in this Complaint was a Delaware Corporation and the
11 owner and operator of an industry, business and/or facility doing business in the State of California.

12 8. Plaintiff is informed and believes, and thereupon allege(s), that CLIFTON JOSEPH
13 SMITH, is an individual over the age of eighteen (18) and is a resident of the State of California.
14 Plaintiff further allege(s) that CLIFTON JOSEPH SMITH, is an owner, director, officer, and/or
15 managing agent of JS FOLSOM AUTOMOTIVE, INC. and FOLSOM BUICK-PONTIAC-GMC,
16 INC. responsible for causing the violations outlined in this Complaint. As such CLIFTON JOSEPH
17 SMITH is individually liable pursuant to California Labor Code section 558.1.

18 9. Plaintiff is informed and believes, and thereupon allege(s), that DENISE DEWEY, is
19 an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff
20 further allege(s) that DENISE DEWEY, is an owner, director, officer, and/or managing agent of JS
21 FOLSOM AUTOMOTIVE, INC. and FOLSOM BUICK-PONTIAC-GMC, INC. responsible for
22 causing the violations outlined in this Complaint. As such DENISE DEWEY is individually liable
23 pursuant to California Labor Code section 558.1.

24 10. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
25 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
26 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
27 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
28 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within

1 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
2 Plaintiff.

3 11. At all times mentioned herein, each Defendant was the agent or employee of each of the
4 other Defendants and was acting within the course and scope of such agency or employment. The
5 Defendants are jointly and severally liable to Plaintiff.

6 12. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
7 were members of and/or engaged in a joint employment, joint venture, partnership and common
8 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
9 joint venture, partnership and common enterprise.

10 13. Defendants, and each of them, now and/or at all times mentioned in this Complaint
11 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

12 14. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
13 wrongs, complaints, injuries and/or damages alleged in this Complaint.

14 **GENERAL ALLEGATIONS**

15 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
16 set forth herein.

17 16. Defendants operate several car dealerships within California. Plaintiff worked for
18 Defendants as a non-exempt employee and regularly worked over eight (8) hours a day and forty (40)
19 hours a week. Plaintiff and Aggrieved Employees received non-discretionary remuneration in addition
20 to their basic hourly rate of pay. For example, Plaintiff and Aggrieved Employees were paid specified
21 amounts per units/vehicles sold. However, Defendants did not incorporate the value of the non-
22 discretionary piece rate pay and other non-discretionary remuneration into Plaintiff's and Aggrieved
23 Employees' regular rates of pay for the purpose of paying overtime and paid sick time. This caused
24 Plaintiff and similarly situated employees to be deprived of all overtime and paid sick time due and
25 owing to them as they worked overtime and took sick days, but were not paid the additional wages that
26 would have resulted by incorporating the value of all non-discretionary remuneration into the regular
27 rate of pay.

28 //

1 17. Defendants also failed to authorize and permit Plaintiff and Aggrieved Employees to take
2 all meal and rest periods owed to them, including first meal periods before the completion of their fifth
3 hour of work, and second meal periods and third rest periods when Plaintiff and Aggrieved Employees
4 worked over ten (10) hours in a shift. Defendants would also force Plaintiff and Aggrieved Employees
5 to clock out for meal periods they did not receive. Defendants never paid Plaintiff and Aggrieved
6 Employees any meal or rest period premiums. This practice also resulted in unpaid minimum and
7 overtime wages.

8 18. These unlawful practices caused Defendants to issue Plaintiff and Aggrieved Employees
9 paystubs that did not correctly itemize the applicable rates of pay in effect for all hours worked, failed to
10 identify the number of units sold and their value, failed to itemize the number of meal and rest period
11 premiums owed, and did not accurately state all gross and net wages earned. Similarly, Plaintiff and
12 Aggrieved Employees had unpaid overtime, minimum wages, meal and rest period premiums, and sick
13 leave pay as a result of Defendants' practices. These amounts remained unpaid at the time of Plaintiff
14 and Aggrieved Employees' separation and remain unpaid to this date.

15 19. At all times during Plaintiff's and Aggrieved Employees' employment, Clifton Joseph
16 Smith and Denise Dewey were owners, directors, officers, and/or managing agents of Defendants and
17 therefore had control over Plaintiff's and Aggrieved Employees' wages, including creating and
18 implementing the working conditions complained of herein. Clifton Joseph Smith and Denise Dewey
19 also had the authority to hire and fire employees; impose discipline upon employees; and train
20 employees.

21 **CAUSE OF ACTION**

22 **FIRST CAUSE OF ACTION**
23 **PRIVATE ATTORNEYS GENERAL ACT**
24 **(As to all Defendants)**

25 20. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 19 as though fully
26 set forth herein.

27 21. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
28 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

22. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

23. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

24. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

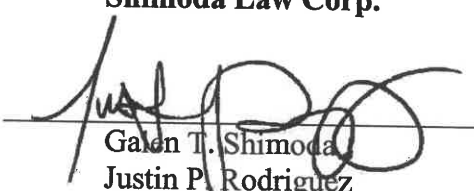
1. A jury trial;
2. As to the First Cause of Action:
 - a. For civil penalties as provided for in the Labor Code for each enumerated violation;
 - b. For those Labor Code sections, the violation of which there is no civil penalty

1 provided, the default penalty provided in Labor Code section 2699(f): for any
2 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
3 period; For any subsequent violation, two hundred dollars (\$200) for each
4 aggrieved employee per pay period;

- 5 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
6 d. For any other remedies as allowed by law and/or deemed appropriate by the
7 Court;

8
9 Dated: August 24, 2020

Shimoda Law Corp.

10
11 By: 

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff