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Attorneys for Plaintiffs, NICOLE LESHANE, an individual; STEVE GARNER, an individual; JUSTIN PRASAD, an individual; ISAAC SALDANA an individual; and MAURICE WEST, an individual; each on their own behalf, and on behalf of all others similarly-situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN – STOCKTON COURTHOUSE

NICOLE LESHANE, an individual; STEVE GARNER, an individual; JUSTIN PRASAD, an individual; ISAAC SALDANA an individual; and MAURICE WEST, an individual; each on their own behalf, and on behalf of all others similarly-situated,

Plaintiffs,

vs.

TRACY VW, INC., a California corporation; RJ GILL VENTURES, INC., a California corporation; and DOES 1 through 25, inclusive,

Defendants.

CASE NO.

STK-CV-UOE-2020-6864

CLASS AND REPRESENTATIVE ACTION

- 1) Failure to Pay All Wages Due Upon Termination Labor Code § 201 (a)
- 2) Failure To Provide Accurately Itemized Wage Statements in Violation of Labor Code § 226(a)
- 3) Failure To Provide Meal Periods in violation of Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders
- 4) Failure To Provide Rest Periods in violation of Labor Code § 226 and applicable IWC Wage Orders
- 5) Failure To Pay Overtime Earned in violation of Labor Code §§ 510, and applicable IWC Wage Orders
- 6) Failure to Maintain Record of all hours worked Labor Code §1174
- 7) Failure to Pay Wages For All Hours Worked in Violation of Labor Code 1194(a);
- 8) Failure to Pay All Wages When Due Labor Code § 204
- 9) Failure to Reimburse Expenses Labor Code §2802

CLASS AND REPRESENTATIVE ACTION

- 10) **Illegal Terms and Condition of Employment in Violation of Labor Code § 432.5**
11) **Failure to Produce Requested Personnel Employment Records in violation of Labor Code § 1198.5**
12) **Unlawful Business Practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.***
13) **PAGA Penalties Pursuant to Labor Code 2698 *et. seq.***

DEMAND FOR JURY TRIAL

Plaintiffs, NICOLE LESHANE, an individual; STEVE GARNER, an individual; JUSTIN PRASAD, an individual; ISAAC SALDANA an individual; and MAURICE WEST, an individual; (collectively, “Plaintiffs”), each on their own behalf and on behalf of all others similarly situated, allege as follows:

I. INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, and a Representative Action pursuant to the Private Attorney Generals Action of 2004 (the “PAGA”) under Labor Code Section 2698 et seq. on behalf of Plaintiffs each individually on their own behalf and on behalf of all current or former similarly-situated, non-exempt employees, of TRACY VW, INC., a California corporation and RJ Gill Ventures, Inc., a California Corporation, and any subsidiaries or affiliated companies – (at least ten of which operate in California under a common dealership enterprise commonly referred to as “Gill Auto Group” and/or alternatively, “Gill Automotive Group,” including but not limited to Livermore Ford Lincoln in Livermore, CA; Gilroy Chevrolet Cadillac in Gilroy, CA; Gill Buick GMC Cadillac in Madera, CA; Gill Chrysler Dodge Jeep Ram in Madera, CA; Livermore Alfa Romeo in Livermore, CA; and Livermore Maserati in Livermore, CA) (hereinafter collectively referred to as “Defendants”). The non-exempt employees employed by or formerly employed by Defendants within the State of California are hereinafter referred to individually as “Class Members” and collectively as the “Class” or “Classes.”

1 2. Plaintiffs are informed and believe, and based thereon allege that
2 Defendants currently employ, and during the relevant period have employed thousands of
3 employees in the State of California in non-exempt positions.

4 3. The acts complained of herein occurred, occur and will occur at least in part
5 within the time period from four (4) years preceding the filing of the Complaint, up to and
6 through the time of trial for this matter.

7 4. Defendants, violated numerous provisions of the California Labor Code,
8 including failure to compensate Plaintiffs and Class Members for all hours worked, failure
9 to provide compliant meal and rest periods, failure to pay premium pay wages for such
10 missed rest and meal breaks, failure to pay all earned wages due, failure to pay all wages
11 due at the conclusion of employment, failure to furnish paystubs accurately showing,
12 among other things accurately and properly itemized earnings and deductions for the total
13 hours worked during each pay period, failure to track and record all hours worked; failed to
14 reimburse class Members for expenses necessarily incurred in the discharge of their duties;
15 for setting illegal terms and conditions of employment and failure to produce personnel and
16 employment records upon request. Plaintiffs allege that these acts, which violate the
17 *California Labor Code*, constitute predicate unlawful and unfair business practices in
18 violation of the California Unfair Competition Laws.

19 5. Plaintiffs, and each of them, bring this action as individuals and on behalf
20 of all others similarly situated, and seek compensation for all uncompensated work,
21 liquidated and/or other damages as permitted by applicable law, as well as attorneys' fees,
22 applicable penalties as provided by statute, plus interest and costs.

23 **II. JURISDICTION AND VENUE**

24 6. The Court has jurisdiction over Plaintiffs' and Class Members' claims
25 pursuant to Business and Professions Code sections 17200-17208, and also seek injunctive
26 relief and restitution of ill-gotten benefits arising from Defendants' unlawful business acts and
27 practices under California Business and Professions Code sections 17200-17208.
28

1 7. Venue is proper in this judicial district, pursuant to Code of Civil Procedure
2 section 395. Plaintiffs are residents of California and worked for Defendants all over the state
3 of California, including San Joaquin County. Defendants conduct business in San Joaquin
4 County, CA and the unlawful acts alleged herein have a direct effect on Plaintiffs and those
5 similarly situated within the State of California and within the County of San Joaquin.

6 **III. THE PARTIES**

7 8. Plaintiff, Nicole Leshane, is a resident of Discovery Bay, California and at all
8 relevant times worked for Defendants in Tracy, California in the County of San Joaquin She
9 will serve as an adequate, typical and active participant and class representative for the
10 proposed Class and/or potential subclasses. Plaintiff, Nicole LeShane is employed by
11 Defendants as a non-exempt sales associate.

12 9. Plaintiff, Steve Garner, is a resident of Discovery Bay, California, and at all
13 relevant times worked for Defendants, California in Tracy, California in the County of San
14 Joaquin. He will serve as an adequate, typical and active participant and class representative
15 for the proposed Class and/or potential subclasses. Plaintiff, Steve Garner was formerly
16 employed by Defendants as a non-exempt sales associate.

17 10. Plaintiff, Justin Prasad, is a resident of Livermore, California and at all
18 relevant times reported to work for Defendants in Tracy, California, in the County of San
19 Joaquin. He will serve as an adequate, typical and active participant and class representative
20 for the proposed Class and/or potential subclasses. He was formerly employed by Defendants
21 as a finance director.

22 11. Plaintiff, Isaac Saldana, is a resident of Tracy, California and at all relevant
23 times reported to work for Defendants in Tracy, California in the County of San Joaquin. He
24 will serve as an adequate, typical and active participant and class representative for the
25 proposed Class and/or potential subclasses. He was formerly employed by Defendants as a
26 non-exempt car detailer.
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1 12. Plaintiff, Maurice West, is a resident of Stockton, California and at all
2 relevant times reported to work for Defendants in Tracy, California in the County of San
3 Joaquin. He will serve as an adequate, typical and active participant and class representative
4 for the proposed Class and/or potential subclasses. He was formerly employed by Defendants
5 as a non-exempt sales associate.

6 13. Plaintiffs are informed and believe, and based thereon allege, that each
7 Defendants acted in all respects pertinent to this action as the agent of the other Defendants,
8 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the
9 acts of each Defendants are legally attributable to the other Defendants.

10 14. At all times relevant to this Complaint, Defendant TRACY VW, INC. is and
11 was a California corporation conducting regular business throughout California, where it
12 employed Plaintiffs and the putative Class Members.

13 15. At all times relevant to this Complaint, Defendant, RJ GILL VENTURES,
14 INC. was and is a California corporation, conducting regular business throughout the State
15 of California, where it employed Plaintiffs and the putative Class Members.

16 16. Investigation into Defendants reveals that Defendants maintain a confusing
17 labyrinth of names for its dealership enterprises and marries them together under the umbrella
18 of its brand name “Gill Auto Group” and/or alternatively, “Gill Automotive Group” in
19 frequently inconsistent and confusing fashion.¹ Plaintiffs are currently unaware of the true
20

21
22 ¹ Defendants’ website, [gillautogroup.com] is identified as “Gill Automotive Group” on the banner at
23 the top of its homepage. (Note, According to the California Secretary of State, “Gill Automotive
24 Group, Inc.” was long ago dissolved in August of 2013.) However, the website’s “About Us”
25 message from its owner and CEO, Jay Gill informs visitors to the website - which lists multiple
26 dealership locations in California and Hawaii, that “... *Gill Auto has become a fast-growing
27 automotive organization with locations in both Central and Northern California, as well as
28 Hawaii, and we look forward to continuing to grow our company across America in order to
best serve our clients’ needs. ... I’d personally like to invite each and every one of you to
come into, or contact, our dealerships to experience a level of service unlike any other...*”
(emphasis added) and it is signed, “Jay Gill, President, Gill AutoGroup.”

1 names or capacities of all the Defendants sued herein under the fictitious names DOES 1–25,
2 inclusive, but pray for leave to amend and serve such fictitiously-named Defendants pursuant
3 to California Code of Civil Procedure section 474 once their names and capacities become
4 known.

5 17. Plaintiffs are informed and believe, and thereon allege, that DOES 1–25,
6 inclusive, are the partners, agents, owners, shareholders, managers, principals or employees
7 of Defendants and/or and were acting on behalf of Defendants.

8 18. Plaintiffs are informed and believe, and thereon allege, that each and all of the
9 acts and omissions alleged herein was performed by or is attributable to Defendants, each
10 acting as the agent for the other, with legal authority to act on the other’s behalf. The acts of
11 any and all Defendants were in accordance with, and represent the policy of, each of the other
12 Defendants.

13 19. At all times herein mentioned, Defendants, and each of them, ratified each and
14 every act or omission complained of herein. At all times herein mentioned, Defendants, and
15 each of them, aided and abetted the acts and omissions of each and all of the other Defendants
16 in proximately causing the damages herein alleged.

17 20. Plaintiffs are informed and believe, and thereon allege, that each of the
18 Defendants is in some manner intentionally, negligently, or otherwise responsible for the
19 acts, omissions, occurrences and transactions alleged herein.

20 **IV. ALTER EGO, AGENCY AND JOINT EMPLOYER**

21 21. Plaintiffs are informed and believe, and based thereon allege, that there
22 exists such a unity of interest and ownership between Defendants that the individuality and
23 separateness of Defendants have ceased to exist.

24 22. Plaintiffs are informed and believe, and based thereon allege, that despite the
25 formation of purported corporate existence, Defendants are in reality one and the same
26 including, but not limited to, because:
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- 1 a. Defendants are completely dominated and controlled by the same persons
2 and/or entities who committed the violations of laws as set forth in this
3 complaint, and who have hidden and currently hide behind corporate
4 formalities to perpetrate frauds, circumvent statutes, or accomplish some
5 other wrongful or inequitable purpose;
- 6 b. Defendants have acted on behalf of those persons and/or entities who
7 violate, or cause to be violated, the provisions of law cited herein;
- 8 c. Defendants are owners, managers, officers, or managing agents of the
9 persons and/or entities who violate, or cause to be violated, the provisions
10 of law cited herein, and the term “managing agent” has the same meaning
11 as in subdivision (b) of Section 3294 of the California Civil Code;
- 12 d. Defendants derive actual and significant monetary benefits by and through
13 the persons and/or entities who violate, or cause to be violated, the
14 provisions of law cited herein, by using them as funding sources for their
15 own personal expenditures;
- 16 e. Plaintiffs are informed and believe that Defendants, while really one and
17 the same, were segregated to appear as though separate and distinct for
18 purposes of perpetrating a fraud, circumventing a statute, or accomplishing
19 some other wrongful or inequitable purpose;
- 20 f. Plaintiffs are informed and believe that Defendants do not comply with all
21 requisite corporate formalities to maintain a legal and separate corporate
22 existence; and
- 23 g. Plaintiffs are informed and believe, and based thereon allege, that the
24 business affairs of Defendants are, and at all times relevant were, so mixed
25 and intermingled that the same cannot reasonably be segregated, and the
26 same are in inextricable confusion. Each of Defendants at all times
27 relevant was used by one another as a mere shell and conduit for the
28 conduct of certain of Defendants’ affairs, and is, and was, the alter ego of

1 the others. The recognition of the separate existence of Defendants would
2 not promote justice in that it would permit Defendants to insulate
3 themselves from liability to Plaintiffs for violations of the Labor Code and
4 other statutory violations. The corporate existence of Defendants should be
5 disregarded in equity and for the ends of justice because such disregard is
6 necessary to avoid fraud and injustice to Plaintiffs herein.

7 23. Accordingly, Defendants constitute the alter ego of one another, and the
8 fiction of their separate corporate existence must be disregarded.

9 24. As a result of the aforementioned facts, Plaintiffs are informed and believe,
10 and based thereon allege that Defendants were Plaintiffs' joint employers by virtue of a
11 joint enterprise, and that Plaintiffs were employees of Defendants. Plaintiffs performed
12 services for each and every one of Defendants, and to the mutual benefit of all Defendants,
13 and all Defendants shared control of Plaintiffs as employees, either directly or indirectly,
14 and the manner in which Defendants' business was and is conducted.

15 **V. FACTUAL SUMMARY BACKGROUND**

16 California Wage and Hour Violation Allegations

17 25. Upon information and belief, Defendants employ and have employed
18 individuals in various non-exempt positions at their car sales lots as sales associates, detailers,
19 customer service consultants, finance directors, business office associates or other similarly
20 titled positions. Upon information and belief, these employees work or formerly worked in
21 non-exempt, positions with non-organizational decision-making authority, but rather were
22 engaged in the service, sales, clerical and administrative positions related to customer service
23 and automobile sales. The non-exempt Plaintiffs and similarly situated employees were not
24 or have not been paid during the relevant liability period all of their legal wages pursuant to
25 the Labor Code and applicable Industrial Welfare Commission Wage Order No. 7 ("IWC No.
26 7").
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1 26. The non-exempt Plaintiffs are informed and believe, and based thereon
2 allege that Defendants currently employ, and during the relevant period had employed
3 thousands of employees in the State of California, who were paid a base hourly rate, plus
4 commissions.

5 27. During the Class Period, Defendants and their managers and supervisors
6 often called or sent work related text messages to their employees while at home or off and
7 clock, but failed to record and track the time worked when the non-exempt Plaintiffs and
8 those similarly situated worked off the clock, as is required by Labor Code Section 1174
9 (d). As a result, Plaintiffs and those similarly situated were not paid for all hours worked,
10 including work performed off the clock.

11 28. During the Class Period, the non-exempt Plaintiffs and those similarly-
12 situated routinely worked overtime, including Saturdays and Sundays and on some
13 occasions for 15 to 20 consecutive days straight, but were not properly paid their overtime
14 wages.

15 29. Furthermore, even though Defendant purports to have a rest and meal
16 break policy, in reality and practice the rest breaks and meal breaks are never provided.
17 Defendants' car dealerships are volume driven and therefore its managers and supervisors
18 place inordinate amounts of pressure on their teams to make sales. Defendant constantly
19 monitors the activities of its employees and makes frequent announcements over its PA
20 system and berates their employees to "*keep working!*" The managers heap verbal abuse
21 on their sales team employees whenever there is any perception that they might fall short of
22 achieving targeted sales goals. Resultantly, yelling, screaming and name-calling by
23 managers and accompanying threats of having their leads taken away or of termination are
24 not the exception; they are the norm. There is no such thing as a break. Plaintiffs or those
25 similarly situated are *fully expected* to tend to customers on the lot and to answer phone
26 calls or text messages at all time. Thus, any purported 'written' rest or meal break policy is
27 a complete farce. In fact Defendant's employee handbook has a provision entitled, "Notice
28 of Rights-Meal and Rest Period." The notice states it is the personal responsibility of

1 employees to schedule and takes their breaks with the following qualifier, "*So as not to*
2 *disappoint the customers.*" Defendants are fully aware that Plaintiffs and the Class
3 Members they seek to represent were unable to take their rest and meal breaks and in fact,
4 actively impeded them from doing so. Because of the fear of negative consequences of
5 taking any of their lawfully entitled breaks, Plaintiffs and the Class Members simply forego
6 them altogether.

7 30. The same treatment was not spared on non-sales employees of Defendant.
8 Plaintiff, Isaac Saldana was a car detailer. If he dared tried to go and grab lunch, he would
9 be immediately texted by employer, demanding to know, "Where are you!?" If he tried to
10 stay on the lot and take a lunch break, his supervisor routinely interrupted him and would
11 ask him to stop his lunch break and go 'do a favor' for this customer or that person. As for
12 rest breaks, for Mr. Saldana, - they were entirely non-existent.

13 31. Plaintiff, Justin Prasad's experience was similar. He was Defendant's sole
14 finance director at the Tracy VW dealership in Tracy, California. He daily worked from 9
15 a.m. to 10 p.m. *without a single break.* Instead he would go home for an hour at 10 p.m.,
16 eat dinner, shower and return and continued working until about 2 a.m. Despite the fact
17 that he was routinely working 300-400 hours a month, not once did he receive a rest break
18 or a meal break. And not once was he paid overtime wages.

19 32. On information and belief, the Plaintiffs allege that they and the Class
20 Members they seek to represent did not waive their meal periods during the liability period.

21 33. Accordingly, during the Class Period, the Plaintiffs and Class Members
22 were not provided with one hour's wages in lieu of missed meal breaks in one or more of
23 the following manners:

24 a) They were not provided meal periods for work days in excess of five
25 and/or ten hours and were not compensated one hour's wages in lieu thereof, all in violation
26 of, among others, Labor Code §§ 226.7, 512, and applicable IWC Wage Order No. 7-2001;

27 b) They were required to work through their daily meal period(s), or to
28 work an unlawful "on-duty meal period;"

1 c) They were impeded in their ability to take a meal period.

2 34. In addition, during the Class Period, the non-exempt Plaintiffs and Class
3 Members they seek to represent, were not provided lawful rest periods, and were not provided
4 with one hour's wages in lieu thereof, in one or more of the following manners:

5 a) They were required to work without being provided a
6 minimum ten minute rest period for every four hours or major fraction thereof worked and
7 not being compensated one hour of pay at their regular rate of compensation for each
8 workday that a rest period was not provided;

9 b) They were either impeded or prevented from taking or unable to take
10 lawful rest periods.

11 35. Further, during the Class Period as a matter of routine and daily practice,
12 Plaintiffs and those similarly situated are/were required to use their personal cell phones in
13 conducting their duties. Sales Associates and other non-sales service staff move about
14 Defendants' car lots and are dependent on cell phone communications with their managers,
15 supervisors and co-team Members. All of them were required to use their personal cell
16 phones on a daily basis. Managers and supervisors routinely send out group chats to staff
17 members – even when they are off the clock into the late evening hours. Sales associates
18 have their personal cell phone numbers printed on their business cards so that customers
19 with whom they have built or are building a rapport can contact them directly.

20 36. At no time have Plaintiffs or those similarly situated, been reimbursed
21 expenses they incurred for the use of their personal cell phones in performing work related
22 duties and communications.

23 37. Because of the foregoing alleged practices, the Plaintiffs and similarly
24 situated Class Members did not receive accurately itemized wage statements during the
25 Class Period.

26 38. During the Class Period, the non-exempt Plaintiffs and Class Members they
27 seek to represent, were not paid wages for all hours worked, whether regular time or
28 overtime, and/or were required to work without compensation during the workday and

1 workweek while performing tasks, duties, and responsibilities for compensable hours
2 worked.

3 39. Further, upon information and believe Defendants required Plaintiffs to agree
4 to illegal employment terms and conditions in violation of Labor Code Section 432.5.
5 Specifically, on May 21, 2020, by email, Robert Benn, the CFO of Gill Automotive Group
6 advised all workers of a new policy. The email stated that anyone who fails to clock out at the
7 end of the day or ... who fails to clock out and back in after lunch will be penalized: *"Anyone*
8 *who fails to clock out for the day will be given the state minimum of two hours for the day."*
9 This unlawful policy would require Plaintiffs and the other Class Members to forfeit nearly an
10 entire days wages meaning forfeiture of their right to be paid for *all hours worked* (which for
11 most employees was 10-14 hours a day) except for two hours. Further, under the new policy,
12 *"Anyone who fails to clock out and back in for lunch will be assumed to have taken a two*
13 *hour lunch and will be charged accordingly"* The owner of Gill Automotive Group, Jay
14 Gill replied by email the same day giving his tacit approval stating, *"Agreed. All must follow*
15 *the rules if you want to get paid."* This unlawful policy was dictated at the corporate level
16 and is implemented companywide, regardless of the employees' assigned location or position.

17 40. Further on information and belief, in addition to Defendants' willful failure to
18 pay overtime and failure to pay all wages for every hour of labor worked, and failure to pay
19 premium pay wages for missed rest breaks and meal breaks, Defendant also willfully failed to
20 pay all such legally due wages when formerly employed Class Members ceased their
21 employment with Defendants in violation of California Labor Code Section 203. When
22 Plaintiff Justin Prasad quit on March 6, 2020, he didn't receive his final pay for nearly 40 days
23 thereafter. He was given only a portion of the pay he was owed and was told he would
24 receive the rest of his pay in a month. He had to call Defendants repeatedly to get his money.
25 When he spoke to Pepe in HR, he was always told it wasn't his fault and Mr. Prasad would be
26 shuffled off to talk to someone else.

1 41. On June 8, 2020, Plaintiffs by and through their counsel of record in writing
2 requested copies of their personnel and payroll records from Defendant, Tracy VW, Inc.
3 Defendant failed to respond in any manner whatsoever.

4 42. Defendants engaged in, ratified and enforced the following unlawful
5 practices and policies against Plaintiffs and the Class Members they seek to represent:

- 6 a.) Failing to pay former employee Class Members who were discharged, laid
7 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
8 and 203.
- 9 b.) Failing to pay non-exempt employees overtime for all hours worked in
10 excess of an eight-hour day in violation of Labor Code Section 510, 1194 and
11 IWC Wage Order No. 7-2001.
- 12 c.) Failing to maintain accurate records of earned wages and work periods in
13 violation of Labor Code §§ 226 and 1174(d) and IWC Wage Order No. 7-2001.
- 14 d.) Failing to provide non-exempt employees meal periods under Labor Code
15 Section 226.7 and IWC Wage Order No. 7-2001.
- 16 e.) Failing to provide non-exempt employees rest periods under Labor Code
17 Section 226.7 and IWC Wage Order No. 7-2001.
- 18 f.) Failing to furnish timely and accurate itemized wage statements to non-
19 exempt employees under Labor Code Section 226.
- 20 g.) Failing to pay employees all wage due, each and every pay period under
21 Labor Code Section 204.
- 22 h.) Failing to reimburse employees for cell phone use and expenses necessarily
23 incurred in the discharge of their duties;
- 24 i.) Requiring employees to agree to illegal employment terms and conditions in
25 violation of Labor Code Section 432.5;
- 26 j.) Failing to provide Plaintiff's their personnel and employment records after a
27 written request, in violation of Labor Code Section 1198.5;
- 28

1 k.) Defendants engaged in unfair business practices under Business and
2 Professions Code Section 17200 et seq.

3 43. On information and belief, Plaintiffs allege that Defendants' actions as
4 described throughout this Complaint were willful.

5 44. Because Defendants failed to comply with Labor Code section 226(a) by
6 failing to provide itemized wage statements showing all deductions from payment of wages
7 and accurately reporting total hours worked, the non-exempt Plaintiffs and the similarly-
8 situated Class Members they seek to represent are entitled to penalties not to exceed \$4,000
9 for each employee pursuant to Labor Code section 226(b).

10 45. The Plaintiffs, as individuals, and on behalf of all others similarly situated,
11 seek injunctive relief, compensation for all uncompensated work, and/or all other damages
12 permitted by applicable law, as well as attorneys' fees, penalties, interest and costs.

13 46. Plaintiffs also bring this case as a representative action seeking penalties for
14 the State of California in a representative capacity, as provided by the Private Attorneys
15 General Act ("PAGA") to the extent permitted by law, and as aggrieved employees who held
16 the positions identified herein and who were subject to Defendants' violations of the Labor
17 Code. A true and correct copy of the June 11 2020 written notice showing compliance with
18 Labor Code § 2699.3 is attached hereto as **Exhibit A** and demonstrates that the named
19 Plaintiffs are aggrieved employees who have standing to bring a representative action on
20 behalf of the State of California and Labor and Workforce Development Agency (the
21 "LWDA") as private attorney generals. No notice of cure by Defendants was provided and
22 no notice of investigation was received from the LWDA in the statutorily proscribed 65-day
23 period since the mailing of the written notice. Accordingly, Plaintiffs also file this as
24 representative action as specifically permitted and authorized by Labor Code §
25 2699.3(a)(2)(A).
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individual Members of the Class. These common questions of law and fact include, without limitation:

- a.) Whether Defendants' policy and practice of failing to pay such Members of the Class for all hours worked violates California labor law;
- b.) Whether Defendants' policy and practice of failing to pay such Members of the Class all overtime due when they worked in excess of eight hours a day, including overtime hours worked on weekends, including seven consecutive days of work, violates California labor law;
- c.) Whether Defendants' policy and practice of failing to provide accurately itemized wage statements violates California labor laws entitling Class Members to injunctive relief under 226 (h);
- d.) Whether Defendants' policy and practice of failing to provide such Class Members with their required meal breaks violates California labor law;
- e.) Whether Defendants' policy and practice of failing to provide such Class Members with their required rest breaks violates California labor law;
- f.) Whether Defendant's failure to record all hours worked, including time worked off the clock violates California Labor law;
- g.) Whether Defendants' failure to reimburse for personal cell phone expenses incurred in the discharge of work related duties, violates California Labor Code Section 2802;
- h.) Whether Defendants' policy and practice of failing to timely pay all wages due and owed upon discharge or termination violates California labor law; and
- i.) Whether Defendants violated Labor Code sections 201-203, 204, 226, 226.7, 432.5, 510, 512, 1174, 1194, 1198.5, 2802, and applicable IWC Wage Order No. 7-2001;
- j.) Whether Defendants violated Business and Professions Code Sections 17200 *et. seq.* of and whether such violations constitute a violation of fundamental public policy;

1 k.) The proper formula for calculating restitution, damages and waiting time
2 penalties owed to Plaintiffs and the Class Members;

3 l.) Whether Plaintiffs and Class Members are entitled to equitable relief pursuant
4 to Business and Professions Code sections 17200, *et. seq.*; and

5 51. Typicality: Plaintiffs' claims are typical of the claims of the Class.
6 Defendants' common course of conduct in violation of law as alleged herein has caused
7 Plaintiffs and Class Members to sustain the same or similar injuries and damages.
8 Plaintiffs' claims are thereby representative of, and co-extensive with the claims of the
9 Class.

10 52. Adequacy of Representation: Plaintiffs are Members of the Class and do
11 not have any known existing conflicts of interest with other Class Members. Plaintiffs will
12 prosecute the case vigorously on behalf of the Class. Counsel representing Plaintiffs is
13 competent and experienced in litigating employment class actions. Plaintiffs will fairly and
14 adequately protect the interest of Class Members.

15 53. Superiority of Class Action: A class action is superior to other available
16 means for the fair and efficient adjudication of this controversy. Individual joinder of all
17 Class Members is not practicable, and questions of law and fact common to the Class
18 predominate over any questions affecting only individual Members of the Class. Each Class
19 Member has been damaged and is entitled to recovery by reason of Defendants' illegal
20 policies and practices. Class action treatment will allow those similarly situated persons to
21 litigate their claims in the manner that is most efficient and economical for the parties and
22 the judicial system.

23 **FIRST CAUSE OF ACTION**
24 **FAILURE TO PAY ALL WAGES DUE UPON TERMINATION**
25 **In Violation of Labor Code § 201(a), 202 and 203**
26 **(As to All Defendants and Does 1-25, Inclusive)**

27 54. Plaintiffs, on their own behalf and on behalf of the Class Members re-
28 allege and incorporate by reference all of the foregoing paragraphs, as though fully set forth
herein.

CLASS AND REPRESENTATIVE ACTION

1 55. Labor Code Section 201(a) requires an employer who discharges an
2 employee to pay all compensation due and owing to the employee immediately upon the
3 employee's discharge from employment.

4 56. Labor Code Section 202 requires an employer to pay within 72 hours all
5 compensation due and owing to an employee who quits his or her employment.

6 57. Labor Code Section 203 provides that if an employer willfully fails to pay,
7 without abatement or reduction, in accordance with Labor Code Sections 201, 201.3, 201.5,
8 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages
9 of the employee shall continue as a penalty from the due date thereof at the same rate until
10 paid or until an action therefor is commenced; but the wages shall not continue for more than
11 30 days.

12 58. By failing to compensate Plaintiffs and Class Members as required by law,
13 Defendants have willfully failed to make timely payment of the full wages due to its
14 employees who have resigned or been discharged.

15 59. As a result of Defendants' unlawful conduct as alleged herein, Plaintiffs and
16 Class Members have sustained economic damages, including, but not limited to, unpaid wages
17 and lost interest in an amount to be determined at trial.

18 60. As a result of Defendants' conduct Plaintiffs and the Class Members
19 suffered injuries and are also entitled to attorneys' fees, in addition to interest, expenses and
20 costs of suit, under Labor Code sections 218.5 and 1194.

21 61. Wherefore, Plaintiffs and the Class Members request judgment as is
22 further set forth herein below.

23 **SECOND CAUSE OF ACTION**
24 **FAILURE TO PROVIDE ACCURATELY ITEMIZED WAGE STATEMENTS**
25 **In Violation of Labor Code § 226**
26 **(As to All Defendants and Does 1-25, Inclusive)**

27 62. The Plaintiffs individually on their own behalf and on behalf of similarly-
28 situated Class Members re-allege and incorporate by reference all of the foregoing
paragraphs, as though fully set forth herein.

1 63. California Labor Code section 226(a) provides that, semimonthly or at the
2 time of each payment of wage, an employer shall provide each employee with a wage
3 statement itemizing, among other things, the total hours worked by the employee in the pay
4 period.

5 64. An employee suffers injury if the employer fails to provide a wage statement
6 or an employee suffers injury if the employer fails to provide accurate and complete
7 information as required by any one or more items listed in section 226(a)(1)-(9) and the
8 employee cannot “promptly and easily” ascertain one or more of the following without
9 reference to other documents or information the amount of gross wages or net wages paid
10 during the pay period: The total number of hours worked if the employee is not salaried; the
11 number of piece-rate units earned and the piece rate; deductions made; the dates of the pay
12 period; all applicable hourly rates in effect during that pay period; the name and address of
13 the employer; or the name of the employee and either the last four digits of his or her social
14 security number or an employee identification number other than the social security number.

15 65. California Labor Code Section 226(e) provides that an employee suffering
16 injury as a result of a knowing and intentional failure by an employer to comply with Labor
17 Code section 226(a) is entitled to recover the greater of his or her actual damages or a
18 penalty of \$50 for the initial pay period in which a violation occurs and \$100 per employee
19 for each violation in a subsequent pay period (up to a maximum of \$4,000), in addition to
20 attorneys' fees and costs.

21 66. The Plaintiffs and Class Members are and/or were entitled to payment and
22 accompanying accurately itemized wage statements semimonthly.

23 67. Defendants knowingly and intentionally failed to provide accurately
24 itemized wage statements to Plaintiffs and Class Members that correctly reflected all hours
25 worked, including overtime and hours worked off the clock and failed to pay them premium
26 pay for missed rest and or meal break periods in accordance with California Labor Code
27 Section 226.
28

1 68. Defendants' failure to provide accurately itemized wage statements to
2 Plaintiffs and Class Members caused injury to Plaintiffs and Class Members by, among
3 other things, impeding them from knowing the accurate amount of wages to which they
4 were entitled.

5 69. As a result of Defendants' unlawful conduct, as alleged herein, Plaintiffs
6 and Class Members are entitled to the damages and penalties under California Labor Code
7 section 226(e).

8 70. As a result of Defendants' conduct, Plaintiffs and the Class Members are
9 also entitled to injunctive relief under Labor Code Section 226(g) and in addition to
10 attorneys' fees, interest, expenses and costs of suit pursuant to Section 226(e).

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PROVIDE MEAL BREAKS**

13 **In Violation of Labor Code §§ 226.7, 512 and IWC No. 7-2001**

14 **(As to All Defendants and Does 1-25, Inclusive)**

15 71. Plaintiffs on their own behalf and on behalf of the similarly situated, Class
16 Members re-allege and incorporate by reference all of the foregoing paragraphs, as though
17 fully set forth herein.

18 72. California Labor Code Sections 226.7 and 512(a) and Wage Order No. 7-
19 2001 provide that all employees who work in excess of five hours must be provided at least
20 a half-hour uninterrupted meal break in which they are relieved of all duty.

21 73. The Plaintiffs and Class Members work(ed) shifts in excess of five hours,
22 but are or were not provided with a half-hour uninterrupted meal breaks.

23 74. Defendants by and through its workplace policies fail or have failed to
24 provide or have impeded the ability of the Plaintiffs and Class Members to take half-hour
25 uninterrupted meal breaks.

26 75. As a result of Defendants' failure to afford proper meal periods on days,
27 they are liable to the Plaintiffs and Class Members for one hour of additional pay at the
28

1 regular rate of compensation for each workday that proper meal periods are or were not
2 provided, pursuant to California Labor Code section 226.7

3 76. Defendants have not paid such premiums to Plaintiffs and Class Members.

4 77. As a result of Defendants' conduct, Plaintiffs and Class Members are
5 entitled to damages to compensate them for the unpaid premiums, as well as injunctive
6 relief-requiring Defendants to comply with the California Labor Code and Wage Order No.
7 7-2001 with respect to meal and rest periods.

8 78. As a result of Defendants' conduct, the Plaintiffs and the Class Members
9 are also entitled to attorneys' fees under Labor Code sections 218.5 and 1194, in addition
10 to interest, expenses and costs of suit.

11 79. Wherefore, Plaintiffs and the Class Members request judgment as is
12 further set forth herein below.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST BREAKS**

15 **In Violation of Labor Code § 226.7, and IWC No. 7-2001**

16 **(As to All Defendants and Does 1-25, Inclusive)**

17 80. Plaintiffs, on their own behalf and on behalf of similarly situated Class
18 Members re-allege and incorporate by reference all of the foregoing paragraphs, as though
19 fully set forth herein.

20 81. During the liability period, Defendants did not permit or actively impeded
21 the Plaintiffs and Class Members' ability to take rest periods.

22 82. By their failure to provide rest periods for every four hours or major
23 fraction thereof worked per day and by failing to provide compensation for such
24 unprovided rest periods, as alleged above, Defendants willfully violated the provisions of
25 Labor Code Section 226.7 and IWC Wage Order 7-2001.

26 83. The Plaintiffs and Class Members did not voluntarily or willfully waive
27 their rest periods.
28

CLASS AND REPRESENTATIVE ACTION

84. By their failure to keep adequate records as required by sections 226 and 1174(d) of the Labor Code, Defendants have injured the Plaintiffs and Class Members and made it difficult for them to calculate their unpaid rest period compensation (including wages, interest, and penalties thereon) due the Plaintiffs and Class Members.

85. As a result of the unlawful acts of Defendants, the Plaintiffs and Class Members have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code §§ 203, 226, 226.7, and 1194, and applicable IWC Wage Orders.

86. Wherefore, the Plaintiffs and the Class Members request relief as described herein and below.

FIFTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME

Violation of California Labor Code § 510, 1198 and IWC Wage Order 7-2001

(As to All Defendants and Does 1-25, Inclusive)

87. Plaintiffs, on their own behalf and on behalf of the similarly situated Class Members re-allege and incorporate by reference all of the foregoing paragraphs, as though fully set forth herein.

88. California Labor Code § 510 provides that work in excess of eight hours in a day, or 40 hours in a week, must be compensated at a rate of not less than one and one-half times the regular rate of pay for an employee; and for the first eight hours worked on the seventh consecutive day of work in a workweek; and double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and double the employee's regular rate of pay for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

89. IWC Wage Order 7-2001 and Cal. Code Reg., Title 8, section 11100 also provide that work in excess of eight hours in a day, or 40 hours in a week, must be compensated at not less than one and one-half times the regular rate of pay for an employee.

CLASS AND REPRESENTATIVE ACTION

1 90. Labor Code Section 1198 makes unlawful the employment of any employee
2 under conditions of labor prohibited by the applicable Wage Order.

3 91. The Plaintiffs and Class Members work, or have worked, more than eight hours
4 in a day and were not paid at the overtime rate for all hours worked and/or work or have worked
5 in excess of eight hours on the seventh consecutive day of work in a workweek without being
6 paid their proper overtime wages.

7 92. Pursuant to Labor Code sections 218 and 1194, the Plaintiffs and Class
8 Members are entitled to recover in a civil action the unpaid balance of the full amount of
9 overtime compensation for all hours worked in excess of eight hours a day.

10 93. Wage Order 7-2001 provides for civil penalties for violations of the Wage
11 Order. As result of Defendants' violation of Wage Order 7-2001 the Plaintiffs and Class
12 Members are entitled to and hereby seek civil penalties in the amount of \$50 for the first
13 violation and \$100 for each subsequent violation.

14 94. Labor Code Section 558 provides that any employer who violates any provision
15 regulating hours and days of work in any order of the IWC shall be subject to civil penalties.

16 95. As a result of Defendants' violation of Wage Order 7-2001, the Plaintiffs and
17 Class Members are entitled to and hereby seek civil penalties in the amount of \$50 for the first
18 violation and \$100 for each subsequent violation.

19 96. Labor Code Section 218.6 provides for interest on all unpaid wages in any
20 action brought for nonpayment of wages.

21 97. The Plaintiffs and Class Members seek to recover interest on all unpaid wages
22 due.

23 98. The Plaintiffs and Class Members seek liquidated damages pursuant to Labor
24 Code section 1194.2.

25 99. The Plaintiffs and Class Members seek to recover all unpaid overtime wages,
26 penalties and interest and interest due to them.

1 100. As a result of Defendants' conduct, the Plaintiffs and Class Members are also
2 entitled to attorneys' fees under Labor Code sections 218.5 and 1194, in addition to interest
3 expenses and costs of suit.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO MAINTAIN RECORDS OF ALL HOURS WORKED**

6 **In Violation of Labor Code § 1174**

7 **(As to All Defendants and Does 1 – 25, Inclusive)**

8 101. Plaintiffs, on their own behalf and on behalf of the similarly situated Class
9 Members re-allege and incorporate by reference all of the foregoing paragraphs, as though
10 fully set forth herein.

11 102. California Labor Code § 1174 (d), which was in force and effect at all
12 relevant times herein, provides in pertinent part, that “Every person employing labor in this
13 state shall keep... “at a central location in the state or at the plants or establishments at
14 which employees are employed, payroll records showing the hours worked daily by and the
15 wages paid to, and the number of piece-rate units earned by and any applicable piece rate
16 paid to, employees employed at the respective plants or establishments. These records shall
17 be kept in accordance with rules established for this purpose by the commission, but in any
18 case shall be kept on file for not less than three years. An employer shall not prohibit an
19 employee from maintaining a personal record of hours worked, or, if paid on a piece-rate
20 basis, piece-rate units earned.”

21 103. Defendants failed to maintain records of all hours that the Plaintiffs and
22 Class Members worked, including the time they were contacted by supervisors and
23 managers requiring them work on their personal time while off the clock.

24 104. Labor Code Section 1174.5 provides that an employer who fails to maintain
25 the records pursuant to 1174 (d) shall be subject to a civil penalty of five hundred (\$500)
26 dollars.
27
28

1 105. As a result of Defendants' violation of Section 1174 (d) Plaintiffs and the Class
2 Members are entitled to and do hereby seek civil penalties in the amount of \$500.00.

3 106. Wherefore, the Plaintiffs and the Class Members request relief as described
4 herein and below.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES FOR ALL HOURS WORKED**

7 **In Violation of Labor Code §1194**

8 **(As to All Defendants, and Does 1 – 25, Inclusive)**

9 107. The Plaintiffs, on their own behalf and on behalf of the similarly situated
10 Class Members re-allege and incorporate by reference all of the foregoing paragraphs, as
11 though fully set forth herein.

12 108. As alleged herein, during the Class Period Defendants have failed to
13 properly compensate Plaintiffs and the Class Members for all overtime worked nor did they
14 record and pay Plaintiffs and the Class Members for time that they were required to work
15 when off the clock.

16 109. By uniformly failing to track and record all of the hours worked by
17 Plaintiffs and members of the Class, and failing to compensate them for all overtime hours
18 worked, Defendants were able to skim wages from employees by not paying them a separate
19 hourly wage for each and every hour worked as clearly required by California law. Through
20 this unlawful and illegal policy and practice, Defendants have failed to pay Plaintiffs and the
21 Class all wages owed to them.

22 110. Pursuant to Labor Code § 1194, "... any employee receiving less than the
23 legal minimum wage or the legal overtime compensation applicable to the employee is
24 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
25 wage or overtime compensation, including interest thereon, reasonable attorney's fees, and
26 costs of suit.
27
28

1 111. Plaintiffs are informed and believe and based thereupon allege that the
2 result of the unlawful and illegal policy and practice caused damage in the nonpayment of
3 wages to themselves and the proposed Class and/or Unpaid Wage Subclass, in an amount
4 according to proof at trial.

5 112. Plaintiffs are informed and believe that the nonpayment of their wages is
6 fixed and ascertainable on a class wide basis such that prejudgment interest on those wages
7 is recoverable.

8 113. Plaintiffs are informed and believe that the nonpayment of wages for all
9 labor performed also entitles Plaintiffs and the proposed Class and/or Unpaid Wage
10 Subclass to attorneys' fees and costs, and liquidated damages in an amount equal to the
11 amount unlawfully unpaid according to Labor Code § 1194.2.

12 **EIGHTH CAUSE OF ACTION**

13 **FAILURE TO TIMELY PAY ALL WAGES EARNED WHEN DUE**

14 **In Violation of California Labor Code Sections 201 - 204**

15 **(As to All Defendants and Does 1-25, Inclusive)**

16 114. Plaintiffs on their own behalf, and on behalf of the Class Members re-
17 allege and incorporate by reference all of the foregoing paragraphs, as though fully set forth
18 herein.

19 115. California Labor Code Sections 201 and 202 require Defendants to pay its
20 employees all wages due within the time specified by law under Labor Code Section 204.
21 California Labor Code Section 203 provides that if an employer willfully fails to timely pay
22 such wages, the employer must continue to pay the subject employees' wages until the back
23 wages are paid in full or an action is commenced, up to a maximum of thirty days' wages.

24 116. The Plaintiffs on their own behalf, and on behalf of the Class Members
25 who are currently or were formerly employed with Defendants during the Class Period are
26 entitled to unpaid compensation, but to date have not received such compensation.
27
28

1 117. The Defendants did not or have not paid the Plaintiffs and the Class
2 Members who are currently or were formerly employed by Defendants, their accrued and
3 rightfully earned wages for each and every hour of labor worked during each and every pay
4 period of their employment pursuant to Labor Code Section 204.

5 118. The Plaintiffs and the Class Members were not and/or have not been
6 properly compensated for overtime wages and wages for they work or worked while off the
7 clock, each and every pay period, to which they are and were entitled, during the term of their
8 employment.

9 119. As a result of Defendants' unlawful conduct as alleged herein, the non-
10 exempt Plaintiffs and Class Members have sustained economic damages, including, but
11 not limited to such unpaid wages and lost interest in an amount to be determined at trial.

12 120. As a result of Defendants' conduct, Plaintiffs and the Class Members
13 are also entitled to attorneys' fees, in addition to interest, expenses and costs of suit,
14 pursuant to Labor Code sections 218.5 and 1194.

15 121. Wherefore, Plaintiffs and the Class Members request judgment as is
16 further set forth herein below.

17 **NINTH CAUSE OF ACTION**
18 **UNLAWFUL FAILURE TO REIMBURSE EMPLOYEES FOR EXPENSES**
19 **In Violation of Labor Code § 2802**
20 **(As to All Defendants and Does 1 – 25, Inclusive)**

21 122. Plaintiffs on their own behalf and on behalf of the similarly situated Class
22 Members reallege and incorporate by reference all of the foregoing paragraphs as though
23 fully set forth herein.

24 123. California Labor Code Section 2802 provides than an employer shall
25 indemnify his or her employees for all necessary expenditures or losses incurred by the
26 employee in direct consequence of the discharge of his or her duties.

27 124. Defendants required as a condition of employment that Plaintiffs and the
28 Class Members to utilize their personal cell phones in the daily and routine discharge of their

1 duties. Defendants do not and have not reimbursed Plaintiffs and the Class Members for their
2 cell phone expenses.

3 125. As a result of Defendants' unlawful conduct and such non reimbursement
4 for expenses incurred in direct consequence of the discharge of their duties, Plaintiffs and the
5 Class Members have sustained economic damages, including but not limited to such lost
6 reimbursement of cell phone expenses.

7 126. As a result of Defendants' conduct, Plaintiffs and the Class Members are
8 also entitled and seek to recover attorneys' fees under Labor Code Section 2802 (c) , in
9 addition to interest and costs of suit.

10 **TENTH CAUSE OF ACTION**

11 **ILLEGAL TERMS AND CONDITIONS OF EMPLOYMENT**

12 **In Violation of Labor Code Section 432.5**

13 **(As to All Defendants and Does 1-25, inclusive)**

14 127. Plaintiffs on their own behalf and on behalf of the similarly situated Class
15 Members reallege and incorporate by reference all of the foregoing paragraphs as though
16 fully set forth herein.

17 128. California Labor Code Section 432.5 prohibits employers from requiring any
18 applicant or employee to agree to any illegal employment term or condition.

19 129. By written policy, effective May 21, 2020, Defendants coerced and forced and
20 continue to coerce and force Plaintiffs and Class Members to consent to unlawful deduction
21 or forfeiture of wages to which they are lawfully entitled for "all hours worked," as a penalty
22 for any employee who fails to properly clock in or out.

23 130. Plaintiffs and members of the Class suffered and will continue to suffer
24 damages in amounts according to proof at the time of trial as a direct and proximate result of
25 Defendants' illegal terms and conditions of employment.

26 131. Plaintiffs are entitled to recover from Defendants the full amount of the
27 expenses, losses, deduction and wages withheld as a result of Defendant's unlawful policies
28

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1 and practices, compelling them to agree to the illegal terms and conditions forcing them to
2 accept a penalty in the form of forfeiture of their lawfully earned wages, plus interest,
3 reasonable attorneys' fees and costs of suit and penalties.

4 132. Wherefore, Plaintiffs and the Class Members they seek to represent seek to
5 request relief as set forth below.

6 **ELEVENTH CAUSE OF ACTION**

7 **Failure to Produce Requested Personnel Employment Records**

8 **In Violation of Labor Code § 1198.5**

9 **(As To Defendant, Tracy VW, Inc. and Does 1-25, inclusive)**

10 133. Plaintiffs on their own behalf and on behalf of all others similarly situated,
11 reallege and incorporate by reference all of the foregoing paragraphs as though fully set
12 forth herein.

13 134. Labor Code Section 1198.5 was in full force and effect at all relevant times
14 herein and provides in pertinent part, "Every current and former employee, or his or her
15 representative, has the right to inspect and receive a copy of the personnel records that the
16 employer maintains relating to the employee's performance or to any grievance concerning
17 the employee. (b) (1) The employer shall make the contents of those personnel records
18 available for inspection to the current or former employee, or his or her representative, at
19 reasonable intervals and at reasonable times, but not later than 30 calendar days from the
20 date the employer receives a written request, Upon a written request from a current or
21 former employee, or his or her representative, the employer shall also provide a copy of the
22 personnel records, at a charge not to exceed the actual cost of reproduction, not later than
23 30 calendar days from the date the employer receives the request..."

24 135. On June 8, 2020, Plaintiffs by and through their counsel of record in writing
25 requested copies of their personnel and payroll records from Defendant, Tracy VW, Inc.
26 More than thirty days have lapsed since Plaintiffs submitted their written request for their
27
28

1 records in writing and Defendant has failed to provide access to or to produce copies of the
2 requested records.

3 136. Plaintiffs hereby seek to recover penalties for Defendants' failure to produce
4 their requested personnel records pursuant to the provisions of Section 1198.5(k) which
5 states, "If an employer fails to permit a current or former employee, or his or her
6 representative, to inspect or copy personnel records within the times specified in this section,
7 or times agreed to by mutual agreement as provided in this section, then the employee may
8 recover a penalty of seven he current or former employee or the Labor Commissioner may
9 recover a penalty of seven hundred fifty dollars (\$750) from the employer," as well as their
10 attorney's fees and costs.

11 **TWELFTH CAUSE OF ACTION**

12 **UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS PRACTICES**

13 **Violation of California Business and Professions Code § 17200 et seq.**

14 **(As to All Defendants and Does 1-25, Inclusive)**

15 137. Plaintiffs on their own behalf, and on behalf of the Class Members re-
16 allege and incorporate by reference all of the foregoing paragraphs, as though fully set forth
17 herein.
18

19 138. California Business and Professions Code Section 17200, et seq. prohibits
20 unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

21 139. California Business and Professions Code Section 17202 provides:
22 "Notwithstanding Section 3369 of the Civil Code, specific or preventative relief may be
23 granted to enforce a penalty, forfeiture, or penal law in case of unfair competition."

24 140. California Business and Professions Code Section 17203 provides in
25 relevant part that the court may "restore to any person in interest any money or property, real
26 or person, which may have been acquired by means of such unfair competition."

27 141. California Business and Professions Code Section 17203 also provides that
28 any person who meets the standing requirements of Section 17204 and complies with

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1 California Code of Civil Procedure Section 382 may pursue representative claims for relief
2 on behalf of others.

3 142. California Business and Professions Code Section 17204 allows any
4 “person who has suffered injury in fact and has lost money or property as a result of such
5 unfair competition” to prosecute a civil action for violation of the Unfair Business Practices
6 Act.

7 143. Pursuant to Section 17204, Plaintiffs and the other similarly situated Class
8 Members are entitled to enforce all applicable provisions of the Labor Code.

9 144. Beginning at an exact date unknown to Plaintiffs, but at least since the date
10 four years prior to the filing of this suit, Defendants have committed acts of unfair
11 competition as defined by the Unfair Business Practices Act, by engaging in the unlawful,
12 unfair and fraudulent practices and acts described in the Complaint, including, but not limited
13 to violations of Labor Code Sections 201-204, 226, 226.7, 432.5, 510, 512, 1174 (d), 1174
14 (d), 1194, 2802 and the provisions of IWC No. 7-2001.

15 145. The violations of these laws and regulations, as well as of fundamental
16 California public policies protecting workers, serve as unlawful predicate acts and practices
17 for purposes of Business and Professions Code Section 17200 et seq.

18 146. The acts and practices described above constitute unfair, unlawful and
19 fraudulent business practices, and unfair competition, within the meaning of Business and
20 Professions Code Section 17200, et seq. Among other things, Defendants’ acts and practices
21 have forced Plaintiffs and other similarly situated workers to labor without receiving
22 appropriate compensation.

23 147. The acts and practices described above have allowed Defendants to gain
24 an unfair competitive advantage over law-abiding employers and competitors.

25 148. As a result of the acts and practices described herein, Plaintiffs and other
26 similarly situated workers have been denied compensation in an amount to be proven at trial.

27 149. Plaintiffs and other similarly situated Class Members are therefore, entitled
28 to restitution pursuant to Business and Professions Code Section 17203 and 17208 for all

1 wages and other compensation unlawfully withheld from them during the four-year period
2 prior to the filing of the complaint.

3 150. As a result of the aforementioned acts and practices, Defendants have
4 received and continue to receive ill-gotten gains belonging to Plaintiffs and other similarly
5 situated Class Members.

6 151. Injunctive relief is necessary and appropriate to prevent Defendants from
7 repeating their unlawful, unfair and fraudulent business acts and practices described herein.

8 152. Pursuant to Section 17203 and/or any other applicable law, Plaintiffs seek
9 an order-preventing Defendants from engaging in unlawful, unfair and fraudulent conduct
10 and preventing Defendants from profiting and benefiting from their illegal and wrongful acts.

11 153. Plaintiffs' success in this action will enforce important rights affecting the
12 public interest. Therefore, Plaintiffs sue on behalf of themselves as individuals and other
13 similarly situated employees.

14 154. An award of attorneys' fees is appropriate pursuant to California Civil
15 Code Section 1021.5 because 1) this action will confer a significant benefit upon a large class
16 of persons; and 2) there is a financial burden involved in pursuing this action; and 3) it would
17 be against the interest of justice to force Plaintiffs to pay attorneys' fees from any amount
18 recovered in this action.

19
20 **THIRTEENTH CAUSE OF ACTION**

21 **Violations of the PAGA Brought on Behalf of Individual Plaintiffs**
22 **and all Aggrieved Employees**
23 **(As to all Defendants and Does 1-25, Inclusive)**

24 155. Plaintiffs, on their own behalf, and on behalf of the Aggrieved PAGA
25 Members re-allege and incorporate by reference all of the foregoing paragraphs, as though
26 fully set forth herein.

27 156. Plaintiffs, by their employment with Defendants and Defendants' violations
28 of the Labor Code as alleged herein, are aggrieved employees with standing to bring an action

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1 under the PAGA. Plaintiffs, by virtue of **Exhibit A** hereto, have satisfied all prerequisites to
2 serve as representatives of the general public to enforce California's labor laws including,
3 without limitation, the penalty provisions identified in Labor Code § 2699.5. Since the
4 LWDA took no steps within the time period required to intervene and because Defendants
5 took no corrective action to remedy the allegations set forth above, Plaintiffs as
6 representatives of the people of the State of California, will seek any and all penalties
7 otherwise capable of being collected by the Labor Commission and/or the DLSE. This
8 includes each of the following, as is set forth in Labor Code § 2699.5, which states:

9 “The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation
10 of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201,
11 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
12 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221,
13 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227,
14 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of
15 Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403,
16 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511,
17 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921,
18 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153,
19 subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and
20 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293,
21 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309,
22 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section
23 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,
24 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1),
25 (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4,
26 subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735,
27 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of
28 Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810,
subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.”

157. Plaintiffs are informed and believe that Defendants have violated and
continue to violate the provisions of the Labor Code and applicable Wage Order No. 7-2001.

158. Pursuant to Labor Code section 2699, any provision of the Labor Code that
already provides a civil penalty to be assessed and collected by the Labor and Workforce
Development Agency, or any of its departments, divisions, commissions, boards, agencies or
employees for violation of the code or does not provide a civil penalty may be recovered
through a civil action brought by an aggrieved employee on behalf of himself or herself, and

1 other current or former employees pursuant to the procedures set forth in Labor Code, section
2 2699.3.

3 159. Plaintiffs, are “aggrieved employees” because they were employed by the
4 violators during the one-year statutory time period and during such time period, were subject
5 to one or more violations, including Labor Code sections 201-204, 226(a), 226.7, 432.5, 510,
6 512, 1174, 1194(a), and 2802, and are therefore properly suited to represent the interests of a
7 PAGA Member.

8 160. On or around June 11, 2020, Plaintiffs on their own behalf and on behalf
9 of the Aggrieved Employee PAGA Members served via certified mail, the notice of
10 Plaintiffs’ PAGA claim to Defendants.

11 161. Plaintiffs are informed and believe that Defendants have violated and
12 continue to violate provisions of the Labor Code and applicable Wage Order No. 7. Despite
13 mailing of **Exhibit A**, at least 65-days prior to the filing of the FAC, the LWDA has not
14 notified Plaintiffs that it intends to investigate the alleged Labor Code violations identified in
15 **Exhibit A**, such that, by operation of law Plaintiffs are entitled to commence this cause of
16 action as a representative action under the PAGA. *See Lab. Code 2699.3(a)(2)(A)*.

17 162. Upon information and belief and thereupon Plaintiffs allege that pursuant to
18 2699(f), Defendants at the very least owe penalties for each violation of Labor Code, sections
19 201, 204, 226(a), 226.7, 432.5, 510, 512, 1174, 1194(a), and 2802 and IWC No. 7-2001.
20

21 163. Plaintiffs as the personal representatives of the Aggrieved Employees, will
22 and do seek to recover any and all penalties for each and every violation shown to exist or to
23 have occurred during the liability period, in an amount according to proof, as to those
24 penalties that are otherwise only available to public agencies. Said fund recovered will be
25 distributed in accordance with the PAGA, with at least 75% of said PAGA penalty recovery
26 being reimbursed to the State of California and the LWDA.
27
28

164. Further, pursuant to Labor Code, section 2698 *et. seq.* Plaintiffs and similarly situated Aggrieved Employee Class Members are entitled to their attorney's fees and costs.

PRAYER FOR RELIEF

Plaintiffs on behalf of themselves individually and on behalf of the similarly situated Class Members they seek to represent, request relief as follows:

1. For an order, pursuant to California Code of Civil Procedure Section 382, certifying this action as a class action, appointing Plaintiffs as Class Representatives and or any other subclasses under CCP Section 382;

2. For an order appointing Plaintiffs' attorney as Class Counsel;

3. For a declaratory judgment that Defendants have violated California Labor Laws and public policy, as alleged herein;

4. For a declaratory judgment that Defendants have violated California Business and Professions Code sections 17200 et seq. as a result of the aforementioned violations of the Labor Code and of California public policy protecting workers by ensuring that workers are paid for all hours worked;

5. For a permanent and mandatory injunction prohibiting Defendants, its officers, agents, employees, affiliated companies and all those working in concert with them from committing future violations of the laws and public policies described herein;

6. For an award of restitution;

7. For an order imposing all statutory and/or civil penalties provided by law, including, but not limited to penalties under California Labor Code Sections 201-204, 226(a), 226(e), 226.7, 558, 1194, 1198.5, applicable IWC Wage Order No. 7-2001, and under the PAGA pursuant to Labor Code Section 2698 et seq., together with interest on those amounts;

8. For waiting time penalties pursuant to Labor Code Section 203 according to proof for all employees who have left Defendants' employment;

9. For pre-judgment and post-judgment interest as provided by law;

CLASS AND REPRESENTATIVE ACTION

- 1 10. For injunctive relief pursuant to Labor Code Section 226(h);
- 2 11. For an order awarding Plaintiffs on behalf of themselves and the Class
- 3 Members compensatory damages, including, but not limited to wages, earnings, and other
- 4 compensation, according to proof and interest on these amounts;
- 5 12. For award of reasonable attorneys' fees as provided by California Labor
- 6 code sections 218.5, 218.6, 226 (g), 558, 1194.2(a), 1021.5, 2802(c), and 2698 *et. seq.* ;
- 7 13. An award and administrative priority claim against the Defendants in favor
- 8 of the individual Plaintiffs and the other similarly situated Class Members equal to the sum
- 9 of their unpaid wages and unpaid expenses, pursuant to California Labor Code Sections
- 10 201, 202 and 203;
- 11 14. For all costs of suit herein; and
- 12 15. For such other and further relief as this Court deems just and proper.
- 13 16. Plaintiff reserves the right to amend their prayer for relief.

14

15 **JURY DEMAND**

16 Plaintiffs demand a trial by jury on all issues so triable.

17

18 DATED: August 18, 2020

WHITEHEAD EMPLOYMENT LAW

19

20 By:  _____

21 JACOB N. WHITEHEAD

22 Attorney For Plaintiffs and

23 The Putative Class

24

25

26

27

28

EXHIBIT A



June 11, 2020

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

First Class Mail

Jay Gill, CEO and Secretary of
Tracy VW, Inc.
2266 Kittyhawk Road
Livermore, California 94551

Via Certified Mail

Don Tena, CFO and Registered Agent for
Tracy VW, Inc.
2266 Kittyhawk Road
Livermore, California 94551

First Class Mail

RJ Gill Ventures, Inc.
15319 W Nielsen Ave.
Kerman, CA 93630

Via Certified Mail

Jagroop S. Gill, CEO and Registered Agent for
RJ Gill Ventures, Inc.
15319 W. Nielsen Ave.
Kerman, CA 93630

Re: Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the “PAGA”)

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiffs, Nicole Leshane, Steve Garner, Justin Prasad, Isaac Saldana, and Maurice West (“Plaintiffs”) have retained Whitehead Employment Law to represent them and other similarly-situated current and former employees (collectively, the “Aggrieved Employees”) of RJ Gill Ventures, Inc., a California corporation and Tracy VW, Inc., a California corporation (hereinafter “Defendants”) regarding violations of the California Labor Code, Industrial Welfare Commission Wage Orders, and other applicable employment laws.

Defendants currently or formerly employed Plaintiffs and other Aggrieved Employees, who work or have worked as Sales Representatives/Associates, Finance Associates, and Automotive Detailers/Delivery Drivers (the “Covered Positions”). This notice formally serves to inform Defendants of Plaintiffs’ intent to file a PAGA class action complaint against Defendants and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendants’ failure to: provide compliant rest/meal breaks, pay for every hour worked, pay overtime, maintain accurate records of hours worked, reimburse job-related expenses, furnish accurately itemized wage statements, timely pay all wages due to Aggrieved Employees who ceased employment with Defendants during the statutory period upon their separation or termination of employment, Defendants required employees to agree in writing to a

condition prohibited by law, and any and all penalties, interest, and attorneys' fees. Based upon these violations, Defendants violated numerous provisions of California's Labor Code including, but not limited to, violations of Labor Codes 201-203, 204, 226, 226.7, 432.5, 510, 512, 1174 (d), 1194(a), 2802, and Industrial Welfare Commission Wage Order No. 7-2001 (IWC No. 7") as further detailed herein below.

Plaintiffs are informed and believe that said violations are ongoing, systematic and uniform. If Defendants fail to cure these alleged violations, as stated above, Plaintiffs will bring an action against Defendants under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

Factual History and Background:

The factual history and background giving rise to the Plaintiffs', **Nicole Leshane, Steve Garner, Justin Prasad, Isaac Saldana, and Maurice West**, and the Aggrieved Employees' legal claims are as follows:

The Defendants, RJ Gill Ventures, Inc. and Tracy VW, Inc. are California corporations. RJ Gill Ventures, Inc. is the holding company for approximately ten or independent automotive dealerships (branded and marketed as Gill Automotive Group) including Tracy VW, Inc., ("Tracy VW") located at 2605 Auto Plaza Drive, Tracy, CA 95304. The named representative Plaintiffs worked at the Tracy VW dealership during the relevant time period and seek hereby to represent all similarly – situated Aggrieved Employees who labor under and have suffered the same unlawful employment terms, policies and compensation practices at all of the other Gill Automotive Group dealerships under the operational direction and control of Defendants.

The Plaintiffs and Aggrieved Employees are/were nonexempt employees. Pursuant to California laws, the Plaintiffs and Aggrieved Employees are/were therefore entitled to an hourly wage for each hour worked, overtime pay, mandatory meal-and-rest breaks, accurate wage statements, and wages for all labor performed.

¹ Without limitation, Plaintiffs, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

As stated, the Plaintiffs and Aggrieved Employees' primary positions are/were sales representatives/associates, finance associates, automotive detailers/delivery drivers, and other similarly titled positions (the "Covered Positions"). The Plaintiffs and Aggrieved Employees were paid an hourly rate (approximately \$12-\$13.50 per hour). Aggrieved Employees who hold/held sales and finance associate positions also received commissions based on their unit sales. Plaintiffs and Aggrieved Employees who are/were involved in inside sales positions did not earn monthly salaries equivalent to no less than two (2) times the state minimum wage for full-time employment and did/do not spend more than fifty percent of their time engaged in outside sales activities away from their workplace premises. In fact zero percent of their time involves outside sales. Therefore Plaintiffs and the Aggrieved Employees do not meet any statutory criteria for exempt status.

During the relevant statutory period, the Plaintiffs and Aggrieved Employees routinely work/worked 10-12 hour days, 6-7 days a week. Plaintiffs and Aggrieved Employees commonly worked over 100 hours in a single pay period. Although working overtime was common, the Plaintiffs and Aggrieved Employees were rarely – if ever, compensated for overtime hours worked. Pay stubs reveal that Plaintiffs consistently worked in excess of 80 hours per pay period, but those hours worked in excess of eight hours per shift or more than 40 hours per week hours were only compensated at their regular hourly rate of pay and not 1.5 times their hourly rates of pay as required by Labor Code § 510.

Defendants' car dealerships are a very fast-paced environment, with extreme demands to meet volume-driven goals set by Defendants. At Tracy VW, the store manager, "Patrick" constantly pressured Plaintiffs and Aggrieved Employees to work faster, longer, and harder, any anyone falling the least bit short of his expectations and demands are/were subjected to antagonistic and verbal abuse. Due to the inordinate pressure on employees by the Defendants to make greater and greater sales, Plaintiffs and Aggrieved Employees were very rarely able to take rest breaks or uninterrupted meal breaks. It was and is, a company-wide culture and practice for employees to work an entire shift, from early a.m. start times until late evening hours, without being able to take a rest break and more often than not, without a meal break. Any attempt to take a meal was and is not ever duty free, as Plaintiffs are/were expected to interrupt their breaks and tend to customers and/or to answer texts and phone calls *at all times*, whether on a break or not. Defendants have not ever paid Plaintiffs and the Aggrieved employees premium pay to which they were entitled for the missed and non-compliant rest and meal breaks. At no time did Plaintiffs or the Aggrieved Employees agree to waive their rest and meal break periods.

Defendants' employee handbook has a document, entitled "Notice of Rights- Meal and Rest Period." This notice that Defendant requires employees to take meal and rest breaks. The document goes on to state it is the personal responsibility of employees to schedule and take their breaks – with the following qualifier, *"so as not to disappoint the customers."* The notice also states the company makes time for meal and rest breaks for all staff. If the employee cannot take the breaks he/she is required to report it to a supervisor.

In contravention of their own written policy, Defendants do not and did not make time available for the Plaintiff and Aggrieved Plaintiffs to take meal or rest breaks during the statutory period. In fact they proactively prohibit them from taking them at all. Defendant constantly monitored employees, and makes frequent announcements over the PA system that employees *need to keep working*.

In an email dated May 21, 2020, by Robert Benn, CFO of Gill Automotive Group,² to the company, he wrote that all employees who don't clock out for the day will be paid for only two hours of work (regardless of whether they worked a full shift, including overtime). The email also stated that *"... anyone who does not clock out and back in for lunch will be assumed to have taken a 2-hour lunch and will not be paid for that time, and there will be no manager overrides for time cards to fix any of these issues."* Jay Gill, the owner of the Gill Automotive Group dealerships responded to Mr. Benn's email the same day, stating that he agreed with Mr. Benn and pronounced that "all must follow the rules if they want to get paid." Defendants have unlawfully set up an arbitrary and punitive system that punishes employees who fail to clock in or out by docking Plaintiffs and Aggrieved Employees pay for actual hours worked.

Further, Plaintiffs and Aggrieved Employees were daily required to utilize their personal cell phones throughout their regularly scheduled shifts as well as on their own personal time while off the clock. It was not uncommon for Plaintiffs to receive text messages on their personal cell phones from supervisors and managers as late as 11 p.m. or after. Plaintiffs and Aggrieved Employees were required to download and utilize apps on their personal cell phones as mandated by the Defendants (E-leads, Tracy VW website, Gill Auto Group Website, Volkswagen training portal, KBB appraisal app, Facebook, Instagram) and to use their personal cell phones for Defendants'-mandated participation and communications via group texts among co-workers and management. Plaintiffs and Aggrieved Employees also utilized their personal cell phones for navigational/mapping purposes when traveling by car for work-related duties. Defendants did not and have not ever reimbursed Plaintiffs and Aggrieved Employees for the expenses incurred in the use of their personal cell phones.

Plaintiffs and Aggrieved Employees were also required to utilize their personal vehicles in the course of performing their work-related duties for the Defendants while: picking up/dropping off customers, delivering sold vehicles/parts, dealer trades, meeting with customers, attending trainings, traveling around various parts of Northern California. Defendants did not and have not ever reimbursed Plaintiffs and Aggrieved Employees for their mileage and use of their personal vehicles.

Due to the foregoing-described actions, Defendants have unlawfully failed to timely pay all wages due pursuant to Labor Code § 204 and have unlawfully failed to pay all wages due upon termination to those Plaintiffs and Aggrieved Employees who ceased their employment relationship with Defendants during the statutory period.

Rest/M meal Break Violations

Under Labor Code § 226.7 *"(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b) 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 work day that the meal or rest period is not provided."*

² Gill Automotive Group is not a formally organized entity. It is the brand name under which Defendants operate and market their group of dealerships.

Further, under Labor Code § 512 (a) *“An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.”*

Per the IWC Wage Orders, “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided. See, IWC No. 7, Section 12 (A) & (B).

As stated, the Plaintiffs and Aggrieved Employees were rarely able to take rest or meal breaks, despite working 10-12 hour days, 6-7 days a week for Defendants. Defendants actively failed to relinquish control to permit Plaintiffs and Aggrieved Employees opportunities for lawful breaks. Defendants took it so far as to make pressuring announcements on the PA system to “keep working.” Defendants’ break policy also advises that employees are to be mindful *so as to not upset customers when deciding to take breaks*. Even when opportunity accorded the rare chance for a rest or meal break, Defendants expected and demanded that Plaintiffs and Aggrieved Employees stay close by and always have their cell phones on and ready to answer calls or texts from customers or Defendants. Defendants have not ever paid premium pay penalties for the missed and non-compliant rest and meal breaks.

This is a clear violation of the provisions of the Labor Code and the IWC No. 7 which set forth California employers’ affirmative obligation to provide timely, duty-free rest and meal break periods. Defendants’ practices contradict their very own policies written in the employee handbook which represent that Defendants would accord Plaintiffs and the Aggrieved Employees time for breaks for employees, when in fact they did and do not.

Pursuant to §512 of the Labor Code and Section 12 (B) of IWC No. 7, Plaintiffs and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period.

As a further and direct consequence of Defendants’ failure to pay the premium pay penalties as mandated under Lab. Cod. § 226.7 and IWC No. 7, all Aggrieved Employees who separated from their employment with Defendants prior to today, and were not and have not been properly paid these penalties, are owed such penalties, per Labor Code § 201(a).

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states *“All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”*

Under Labor Code § 1194 (a) *“Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”*

The Plaintiffs and Aggrieved Employees often worked off the clock, answering telephone calls, texts as Defendants expectation and demand that Plaintiffs and Aggrieved Employees be reachable by cell phone to respond to calls and texts from managers, colleagues and customers at all hours of the day and night, even when on their own personal time. This time spent working off the clock carrying out work-related duties, was/is never tracked or recorded by Defendants, nor was/is it compensated by the Defendants.

Labor Code §§ 204 and 1194 (a) have been violated and Plaintiffs are entitled to recover payment for all hours worked, including time worked off the clock, with penalties and interest thereon, as well as their attorney’s fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *“Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”*

As indicated above, the Plaintiffs and Aggrieved Employees often worked overtime, in fact they worked overtime consistently, nearly every pay period. Plaintiffs’ pay stubs consistently reflect that they worked more than 80 hours during a two-week pay period, evidencing that the Plaintiffs and Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period.

Labor Code § 510 (a) has been violated Plaintiffs and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest, as well as their attorney’s.

Unlawfully Requiring Employees to Agree to Terms of Employment Prohibited by Law

Pursuant to Labor Code § 432.5 *“No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”*

As indicated above, the employee handbook's "Notice of Rights- Meal and Rest Period" states that Defendants require employees to take rest and meal breaks, that they make time for such breaks, but that the employees bear the personal responsibility to schedule and take breaks but not disappoint customers. Meanwhile, Defendants pressure the Plaintiffs and Aggrieved Employees to work nonstop, monitor all employees, and make public announcements to remind them to keep working. Defendants have forced Plaintiffs and Aggrieved Employees to agree to a policy that makes them accountable for breaks that are impossible for them to take given the work environment.

As detailed above, the company-wide May 21, 2020 email by Robert Benn, CFO of Gill Automotive Group (with the tacit approval of Gill Automotive Group dealerships owner Jay Gill) advising all workers that anyone who fails to clock out at the end of the day or employees who fails to clock out and back in after lunch will be penalized by losing nearly a full day's wages, is an illegal term of employment that Defendants have forced Plaintiffs and Aggrieved Employees to abide by and agree with, "if they want to be paid" in direct violation of Labor Code § 432.5.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *"Every person employing labor in this state shall:... (d) 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...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."*

As indicated above, the Plaintiffs and Aggrieved Employees very regularly work/worked overtime hours, in most pay periods throughout the statutory period. Plaintiffs' pay stubs show hours in excess of 80 hours per pay period, however overtime hours are only compensated at the regular rate and not the overtime rate and not properly recorded or paid as the overtime that was worked. Further, As indicated above, the Plaintiffs and Aggrieved Employees were often required to work off-the-clock, communicating with and receiving work-related communications from managers, colleagues and customers. These off the clock hours are/were not tracked or recorded by the Defendants in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendants' unlawful business practices and compensation practices under the Labor Code and IWC No. 7, Plaintiffs and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendants to *"furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."*

As indicated above, Plaintiffs and Aggrieved Employees often worked overtime hours most pay periods and were not compensated at the rate of 1.5 times their regular hourly rate of pay and instead were only paid at their regular hourly rate of pay for hours worked in excess of eight hours in a day and over 40 hours in a week, or at double their hourly rate of pay for all hours worked on the seventh consecutive day of work in excess of eight hours. Hours worked off the clock, were not recorded and do not appear on Plaintiffs and Aggrieved Employees pay stubs. Further, as indicated above, Defendants maintain an illegal policy of docking and penalizing Plaintiffs and Aggrieved Employees for their time and compensation if they fail to clock in or out for lunch or out at the end of a shift, regardless of the actual number of hours such employees worked that day.

In failing to account with accuracy, all of the hours worked by the Plaintiffs and Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendants violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Aggrieved Employees' respective (1) gross wages earned, (2) total hours worked, (3) net wages earned, and (4) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Based on the foregoing, Defendants have violated Labor Code § 226.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when former Plaintiffs and Aggrieved Employees' employment relationships with Defendants terminated, Defendants failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendants have failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendants have failed to pay the Plaintiffs and Aggrieved Employees all of their earned wages, overtime, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Failure To Reimburse Work Related Expenses

Labor Code § 2802(a) provides, “*An employer shall indemnify his or her employee 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*”

As described above, the Plaintiffs and Aggrieved Employees utilized their personal cell phones/data/text/email in the course of work-related duties with no reimbursement from Defendants. The Plaintiffs and Aggrieved Employees are/were never reimbursed by Defendants for their expenses incurred in the use of their personal cell phone in the execution of their work related duties. In addition, the Plaintiffs and Aggrieved Employees were required to utilize their personal vehicles for various work-related purposes and duties on a frequent basis as mandated by the Defendants. The Plaintiffs and Aggrieved Employees are/were never reimbursed by Defendants for their car use/mileage.

Defendants violated Labor Code § 2802 and the Plaintiffs and the Aggrieved Employees seek reimbursement of these work-related expenses, as well as their attorney’s fees, penalties and interest thereon as permitted by § 2802.

Conclusion

In sum, as has been factually alleged, Defendants violated among other statutes and regulations Labor Code §§ 201-203, 204, 226, 226.7, 432.5, 510, 512, 1174(d), 1194 (a) and 2802, and IWC No. 7 and Plaintiffs seek to recover any and all applicable statutory penalties, interest, and attorneys’ fees and civil penalties as provided for under Labor Code 2699.

To date, the Defendants have failed to pay the Plaintiffs and Aggrieved Employees all of their wages, reimbursements, penalties, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Plaintiffs request the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA’s provisions. Alternatively, Plaintiffs request the agency inform them if it does not intend to investigate these violations so that they may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Jacob N. Whitehead