

WHITEHEAD EMPLOYMENT LAW
JACOB N. WHITEHEAD, ESQ. (SBN 266123)
reception@jnwpc.com
7700 Irvine Center Drive, Suite 930
Irvine, CA 92618
Tel. No.: (949) 674-4922

FILED
SUPERIOR COURT - STOCKTON
20 DEC 30 PM 1:22
BRANDON E. RILEY, CLERK
BY RUDY J. HALEY
DEPUTY

Attorneys for Plaintiffs, NICOLE LESHANE, an individual; STEVE GARNER, an individual; JUSTIN PRASAD, an individual; ISAAC SALDANA an individual; and MAURICE WEST, an individual; DANNY WYHS, an individual; and KYNA OLIVER, an individual; each on their own behalf, and on behalf of all similarly situated aggrieved employees

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,

v.

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-2020-0006864

FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT FOR PAGA PENALTIES PURSUANT TO LABOR CODE 2698-2699 et. seq. for Violations of Labor Code §§ 201(A), 202 and 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")

Plaintiffs, NICOLE LESHANE, an individual; STEVE GARNER, an individual; JUSTIN PRASAD, an individual; ISAAC SALDANA an individual; and MAURICE WEST, an individual; DANNY WYHS, an individual; and KYNA OLIVER, an individual (collectively, "Plaintiffs"), on behalf of the people of the State of California and as "aggrieved employees" acting as private attorney generals under the Labor Code Private

FIRST AMENDED COMPLAINT

FILE BY FAX

Attorneys General Act of 2004 §2699, et sea. (the “PAGA”) only, allege on information and belief, except upon their own personal knowledge, the following:

I. INTRODUCTION

1. Plaintiffs bring this action against Defendants, RJ Gill Ventures, Inc., a California corporation; Tracy VW, Inc., a California corporation; Gill Motors, Inc., a California corporation; and Gill Motors Tracy Inc., a California corporation (hereinafter “Defendants”), 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) on behalf of themselves and on behalf of all current and former aggrieved employees that work or worked for Defendants. Plaintiffs do not seek to recover anything other than penalties as permitted by California Labor Code §2699.

2. California has enacted the PAGA to permit individuals to bring an action on behalf of themselves and on behalf of others similarly situated “(Aggrieved Employees)” for PAGA penalties only, which is the precise and sole nature of this action.

3. Accordingly, Plaintiffs seek to obtain all applicable relief for Defendant’s violations under the PAGA and solely for relief as permitted by PAGA – that is penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as attempting to obtain any relief that would not be available in a PAGA only action.

II. JURISDICTION AND VENUE

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure sections 395 and 410.10 Plaintiffs are residents of California and worked for Defendants in the state of California, including San Joaquin County. Defendants conduct business in San Joaquin County, CA and the unlawful acts alleged herein have a direct effect on Plaintiffs and

1 similarly situated Aggrieved. Employees Aggrieved Employees within the State of California
2 and within the County of San Joaquin.

3 **III. THE PARTIES**

4 5. Plaintiff, Nicole Leshane, is a resident of Discovery Bay, California and at all
5 relevant times worked for Defendants in Tracy, California in the County of San Joaquin.
6 During the relevant statutory period, she was employed by Defendants as a non-exempt sales
7 associate from on or about August 19, 2019 to on or about June 2, 2020.

8 6. Plaintiff, Steve Garner, is a resident of Discovery Bay, California, and at all
9 relevant times worked for Defendants, California in Tracy, California in the County of San
10 Joaquin. During the relevant statutory period, Steve Garner was formerly employed by
11 Defendants as a non-exempt sales associate from on or about August 19, 2019 to June 10,
12 2020.

13 7. Plaintiff, Justin Prasad, is a resident of Livermore, California and at all
14 relevant times reported to work for Defendants in Tracy, California, in the County of San
15 Joaquin. He was formerly employed by Defendants as a finance director from on or about
16 August 1, 2019 to March 6, 2020.

17 8. Plaintiff, Isaac Saldana, is a resident of Tracy, California and at all relevant
18 times reported to work for Defendants in Tracy, California in the County of San Joaquin. He
19 was formerly employed by Defendants as a non-exempt car detailer from on or about
20 February 12, 2019 to March 21, 2020.

21 9. Plaintiff, Maurice West, is a resident of Stockton, California and at all
22 relevant times reported to work for Defendants in Tracy, California in the County of San
23 Joaquin. He was formerly employed by Defendants as a non-exempt sales associate from on
24 or about May 21, 2019 to November 15, 2020.

25 10. Plaintiff, Danny Whys, is a resident of Mountain House, California and at
26 all relevant times reported to work for Defendants in Tracy, California in the County of San
27 Joaquin. During the relevant statutory period, he was formerly employed by Defendants as
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1 a service manager from on or about April 1, 2013, to the date of his termination on. September
2 2, 2020.

3 11. Plaintiff, Kyna Oliver, is a resident of Mountain House, California and
4 reported to work for Defendants in Tracy, California in the County of San Joaquin. During
5 the relevant statutory period, she was formerly employed by Defendants in accounts
6 receivable from on or about September 6, 2017 to September 4, 2020.

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

11 13. At all times relevant to this Complaint, Defendant TRACY VW, INC. is and
12 was a California corporation conducting regular business throughout California, where it
13 employed Plaintiffs and the Aggrieved Employees.

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

17 15. At all times relevant to this Complaint, Defendant GILL MOTORS, INC., was
18 a California corporation, conducting regular business in the State of California, where it
19 employed Plaintiffs and the Aggrieved Employees.

20 16. At all times relevant to this Complaint, Defendant GILL MOTORS TRACY,
21 INC., was a California corporation, conducting regular business in the State of California, where
22 it employed Plaintiffs and the Aggrieved Employees.

23 17. Investigation into Defendants reveals that Defendants maintain a confusing
24 labyrinth of names for its auto-dealership enterprises and marries them together under the
25 umbrella of its brand name "Gill Auto Group" and/or alternatively, "Gill Automotive Group"
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27
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1 in frequently inconsistent and confusing fashion.¹ Plaintiffs are currently unaware of the true
2 names or capacities of all the Defendants sued herein under the fictitious names DOES 1–25,
3 inclusive, but pray for leave to amend and serve such fictitiously-named Defendants pursuant
4 to California Code of Civil Procedure section 474 once their names and capacities become
5 known.

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

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

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

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

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

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

8 23. Plaintiffs are informed and believe, and based thereon allege, that despite the
9 formation of purported corporate existence, Defendants are in reality one and the same
10 including, but not limited to, because:

- 11 a. Defendants are completely dominated and controlled by the same persons
12 and/or entities who committed the violations of laws as set forth in this
13 complaint, and who have hidden and currently hide behind corporate
14 formalities to perpetrate frauds, circumvent statutes, or accomplish some
15 other wrongful or inequitable purpose;
- 16 b. Defendants have acted on behalf of those persons and/or entities who
17 violate, or cause to be violated, the provisions of law cited herein;
- 18 c. Defendants are owners, managers, officers, or managing agents of the
19 persons and/or entities who violate, or cause to be violated, the provisions
20 of law cited herein, and the term “managing agent” has the same meaning
21 as in subdivision (b) of Section 3294 of the California Civil Code;
- 22 d. Defendants derive actual and significant monetary benefits by and through
23 the persons and/or entities who violate, or cause to be violated, the
24 provisions of law cited herein, by using them as funding sources for their
25 own personal expenditures;
- 26 e. Plaintiffs are informed and believe that Defendants, while really one and
27 the same, were segregated to appear as though separate and distinct for
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1 purposes of perpetrating a fraud, circumventing a statute, or accomplishing
2 some other wrongful or inequitable purpose;

3 f. Plaintiffs are informed and believe that Defendants do not comply with all
4 requisite corporate formalities to maintain a legal and separate corporate
5 existence; and

6 g. Plaintiffs are informed and believe, and based thereon allege, that the
7 business affairs of Defendants are, and at all times relevant were, so mixed
8 and intermingled that the same cannot reasonably be segregated, and the
9 same are in inextricable confusion. Each of Defendants at all times
10 relevant was used by one another as a mere shell and conduit for the
11 conduct of certain of Defendants' affairs, and is, and was, the alter ego of
12 the others. The recognition of the separate existence of Defendants would
13 not promote justice in that it would permit Defendants to insulate
14 themselves from liability to Plaintiffs and the Aggrieved Employees for
15 violations of the Labor Code and other statutory violations. The corporate
16 existence of Defendants should be disregarded in equity and for the ends
17 of justice because such disregard is necessary to avoid fraud and injustice
18 to Plaintiffs and the Aggrieved Employees herein.

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

21 24. As a result of the aforementioned facts, Plaintiffs are informed and believe,
22 and based thereon allege that Defendants were Plaintiffs' and the Aggrieved Employees
23 joint employers by virtue of a joint enterprise, and that Plaintiffs and the Aggrieved
24 Employees were employees of Defendants. Plaintiffs and the Aggrieved Employees
25 performed services for each and every one of Defendants, and to the mutual benefit of all
26 Defendants, and all Defendants shared control of Plaintiffs and the Aggrieved Employees
27 as employees, either directly or indirectly, and the manner in which Defendants' business
28 was and is conducted.

1 **V. FACTUAL SUMMARY BACKGROUND**

2 25. Upon information and belief, Defendants employ and have employed
3 individuals in various non-exempt positions at their car sales lots as sales associates, detailers,
4 customer service consultants, finance directors, business office associates or other similarly
5 titled positions. Upon information and belief, these employees work or formerly worked in
6 non-exempt, positions with non-organizational decision-making authority, but rather were
7 engaged in the service, sales, clerical and administrative positions related to customer service
8 and automobile sales. The non-exempt Plaintiffs and similarly situated employees were not
9 or have not been paid during the relevant liability period all of their legal wages pursuant to
10 the California Labor Code and applicable Industrial Welfare Commission Wage Order No. 7
11 (“IWC No. 7”).

12 26. The non-exempt Plaintiffs are informed and believe, and based thereon
13 allege that Defendants currently employ, and during the relevant period had employed
14 thousands of similarly situated Aggrieved Employees in the State of California, who were
15 also paid a base hourly rate and/or a base hourly rate, plus commissions.

16 27. During the relevant statutory period, Defendants and their managers and
17 supervisors often called or sent work related text messages to their employees while at
18 home or off and clock but failed to record and track the time worked when the non-exempt
19 Plaintiffs and similarly situated Aggrieved. Employees worked off the clock, as is required
20 by Labor Code Section 1174 (d). As a result, Plaintiffs and similarly situated Aggrieved.
21 Employees were not paid for all hours worked, including work performed off the clock.

22 28. During the relevant statutory period, the non-exempt Plaintiffs and the
23 Aggrieved Employees routinely worked overtime, including Saturdays and Sundays and on
24 some occasions for 15 to 20 consecutive days straight, but were not properly paid their
25 overtime wages.

26 29. Furthermore, even though Defendants purport to have a rest and meal
27 break policy, in reality and practice the rest breaks and meal breaks are never provided.
28

1 Defendants' car dealerships are volume driven and therefore its managers and supervisors
2 place inordinate amounts of pressure on their teams to make sales. Defendants constantly
3 monitor the activities of their employees. At Defendant, Tracy VW, Inc. the manager
4 would make frequent announcements over its PA system and berate their employees to
5 "*keep working!*" Managers heap verbal abuse on their sales team employees whenever
6 there is any perception that they might fall short of achieving targeted sales goals.
7 Resultantly, yelling, screaming and name-calling by managers and accompanying threats of
8 having their leads taken away or of termination are not the exception; they are the norm. In
9 reality, there is no such thing as a break. Plaintiffs or similarly situated Aggrieved.
10 Employees are *fully expected* to tend to customers on the lot and to answer phone calls or
11 text messages at all time. Thus, any purported 'written' rest or meal break policy is a
12 complete farce. In fact Defendants' employee handbook has a provision entitled, "Notice
13 of Rights-Meal and Rest Period." The notice states it is the personal responsibility of
14 employees to schedule and takes their breaks with the following qualifier, "*So as not to*
15 *disappoint the customers.*" Defendants are fully aware that Plaintiffs and the Aggrieved
16 Employees are/were unable to take their rest and meal breaks and in fact, actively impeded
17 them from doing so. Because of the fear of negative consequences of taking any of their
18 lawfully entitled breaks, Plaintiffs and the Aggrieved Employees would simply forego them
19 altogether.

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

27 31. Plaintiff, Justin Prasad's experience was similar. He was Defendant's sole
28 finance director at the Tracy VW dealership in Tracy, California. He daily worked from 9

1 a.m. to 10 p.m. *without a single break*. Instead he would go home for an hour at 10 p.m.,
2 eat dinner, shower and return and continued working until about 2 a.m. Despite the fact
3 that he was routinely working 300-400 hours a month, not once did he receive a rest break
4 or a meal break. And not once was he paid overtime wages.

5 32. On information and belief, the Plaintiffs allege that they and the Aggrieved
6 Employees did not waive their meal periods during the PAGA liability period.

7 33. Accordingly, during the relevant statutory period, the Plaintiffs and
8 Aggrieved Employees were not provided with one hour's wages in lieu of missed meal
9 breaks in one or more of the following manners:

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

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

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

16 34. In addition, during the relevant statutory period, the non-exempt Plaintiffs
17 and Aggrieved Employees were not provided lawful rest periods, and were not provided with
18 one hour's wages in lieu thereof, in one or more of the following manners:

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

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

25 35. Further, during the relevant statutory period as a matter of routine and
26 daily practice, Plaintiffs and similarly situated Aggrieved Employees are/were required to
27 use their personal cell phones in conducting their job duties. Sales Associates and other
28 non-sales service staff move about Defendants' car lots and are dependent on cell phone

1 communications with their managers, supervisors and co-team Members. All of them were
2 required to use their personal cell phones on a daily basis. Managers and supervisors
3 routinely send out group chats to staff members – even when they are off the clock into the
4 late evening hours. Sales associates have their personal cell phone numbers printed on
5 their business cards so that customers with whom they have built or are building a rapport
6 can contact them directly.

7 36. At no time have Plaintiffs or the Aggrieved Employees, been reimbursed
8 expenses they incurred for the use of their personal cell phones in performing work related
9 duties and communications.

10 37. Because of the foregoing alleged practices, the Plaintiffs and Aggrieved
11 Employees did not receive accurately itemized wage statements during the relevant
12 statutory period.

13 38. During the relevant statutory period, the non-exempt Plaintiffs and
14 Aggrieved Employees were not paid wages for all hours worked, whether regular time or
15 overtime, and/or were required to work without compensation during the workday and
16 workweek while performing tasks, duties, and responsibilities for compensable hours
17 worked.

18 39. Further, upon information and believe Defendants required Plaintiffs and the
19 Aggrieved Employees to agree to illegal employment terms and conditions in violation of
20 Labor Code Section 432.5. Specifically, on May 21, 2020, by email, Robert Benn, the CFO of
21 Gill Automotive Group advised all workers of a new policy. The email stated that anyone
22 who fails to clock out at the end of the day or ... who fails to clock out and back in after lunch
23 will be penalized: *“Anyone who fails to clock out for the day will be given the state minimum
24 of two hours for the day.”* This unlawful policy would require Plaintiffs and the Aggrieved
25 Employees to forfeit nearly an entire day’s wages meaning forfeiture of their right to be paid
26 for *all hours worked* (which for most employees was 10-14 hours a day) except for two hours.
27 Further, under the new policy Defendants stated that, *“Anyone who fails to clock out and back
28 in for lunch will be assumed to have taken a two hour lunch and will be charged accordingly*

....” The owner of Gill Automotive Group, Jay Gill replied by email the same day giving his tacit approval stating, “*Agreed. All must follow the rules if you want to get paid.*” This unlawful policy was dictated at the corporate level and is implemented companywide, regardless of the employees’ assigned locations or positions.

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

41. Defendants engaged in, ratified and enforced the following unlawful practices and policies against Plaintiffs and the Aggrieved Employees they seek to represent:

- a.) Failing to pay former employee Aggrieved Employees who were discharged, laid off, or resigned in accordance with the requirements of Labor Code §§ 201, 202, and 203.
- b.) Failing to pay non-exempt employees overtime for all hours worked in excess of an eight-hour day in violation of Labor Code Section 510, 1194 and IWC Wage Order No. 7-2001.
- c.) Failing to maintain accurate records of earned wages and work periods in violation of Labor Code §§ 226 and 1174(d) and IWC Wage Order No. 7-2001.
- d.) Failing to provide non-exempt employees meal periods under Labor Code Section 226.7 and IWC Wage Order No. 7-2001.

1 e.) Failing to provide non-exempt employees rest periods under Labor Code
2 Section 226.7 and IWC Wage Order No. 7-2001.

3 f.) Failing to furnish timely and accurate itemized wage statements to non-
4 exempt employees under Labor Code Section 226.

5 g.) Failing to pay employees all wage due, each and every pay period under
6 Labor Code Section 204.

7 h.) Failing to reimburse employees for cell phone use and expenses necessarily
8 incurred in the discharge of their duties under Labor Code Section 2802;

9 i.) Requiring employees to agree to illegal employment terms and conditions in
10 violation of Labor Code Section 432.5;

11 42. On information and belief, Plaintiffs allege that Defendants' actions as
12 described throughout this Complaint were willful and occurred during the PAGA period.
13 To the extent equitable tolling operate to toll claims by Aggrieved Employees against
14 Defendants, the PAGA Period should be adjusted accordingly. To the extent that any of the
15 alleged conduct and violations did not affect Plaintiffs during the PAGA period, Plaintiffs
16 seek penalties for those violations that affected other Aggrieved Employees pursuant to
17 *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for publication 12/19/18).

18 43. Plaintiffs bring this case as a representative action seeking penalties for the
19 State of California in a representative capacity, as provided by the Private Attorneys General
20 Act ("PAGA") to the extent permitted by law, and as aggrieved employees who held the
21 positions identified herein and who were subject to Defendants' violations of the Labor Code.
22 A true and correct copy of the June 11, 2020 written notice showing compliance with Labor
23 Code § 2699.3 is attached hereto as **Exhibit A** and demonstrates that the named Plaintiffs are
24 aggrieved employees who have standing to bring a representative action on behalf of the State
25 of California and Labor and Workforce Development Agency (the "LWDA") as private
26 attorney generals. Further a true and correct copy of the November 23, 2020 First Amended
27 written PAGA Notice is attached hereto as **Exhibit B**, (which added the names of Plaintiffs
28

1 Danny Wyhs and Kyna Oliver and added Defendants, Gill Motors, Inc., and Gill Motors Tracy
2 Inc., but added no additional or new claims.) No notice of cure by Defendants was provided
3 and no notice of investigation was received from the LWDA in the statutorily proscribed 65-
4 day period since the mailing of the written notice. Accordingly, Plaintiffs also file this as
5 representative action as specifically permitted and authorized by Labor Code §
6 2699.3(a)(2)(A).

7
8 **FIRST CAUSE OF ACTION**
9 **For Violation of the Private Attorneys General Act of 2004**
10 **California Labor Code §2698, et seq.**
11 **(Against all Defendants and Does 1-25, Inclusive)**

12 44. Plaintiffs re-allege and incorporate by reference all of the foregoing
13 paragraphs, as though fully set forth herein.

14 45. The PAGA expressly establishes that any provision of the California Labor
15 Code which provides for a civil penalty to be assessed and collected by the Labor and
16 Workforce Development Agency (the “LWDA”), or any of its departments, divisions,
17 commissions, boards, agencies or employees for a violation of the California Labor Code
18 may be recovered through a civil action brought by an aggrieved employee on behalf of
19 himself or herself, and other current or former employees.

20 46. Plaintiffs, by their employment with Defendants and Defendants’ violations
21 of the Labor Code as alleged herein, are aggrieved employees with standing to bring an action
22 under the PAGA.

23 47. Plaintiffs’ Amended Complaint avoids the statute of limitations as a potential
24 bar as it rests on the “same general set of facts” as the original complaint under the Relation-
25 Back doctrine first articulated by California’s Supreme Court in *Austin v. Massachusetts*
26 *Bonding and Ins. Co.* (Cal. 1961) 56 Ca. 2d 96; reiterated again in *Smeltzley v. Nicholson*
27 *Mfg. Co.* (1977) 18 Cal. 3d 932 as established law, and as held in a consistent lineage of cases
28 ever since. Here, Plaintiffs’ PAGA Complaint relates back to the original civil class and

1 representative action complaint that was filed against Defendants on August 19, 2020 in this
2 same Court, in which Plaintiffs were named as both class and PAGA representatives.

3 48. The PAGA claims alleged herein are identical and based on the same general
4 facts as those alleged in the original civil class and representative action that was filed on
5 August 19, 2020. Moreover, Plaintiffs seek PAGA civil penalties for the exact same harms
6 and Labor Code violations Plaintiffs factually alleged therein and refer to the same incidents.
7 Most significantly, as Defendants have actively been defending the class action claims since
8 the August 19, 2020 initiation of the original action, Defendants will not be prejudiced by
9 Plaintiffs' present PAGA complaint.

10 49. Plaintiffs, by virtue of **Exhibits A and B**, have satisfied all prerequisites to
11 serve as representatives of the general public to enforce California's labor laws including,
12 without limitation, the penalty provisions identified in Labor Code § 2699.5. Since the
13 LWDA took no steps within the time period required to intervene and because Defendants
14 took no corrective action to remedy the allegations set forth above, Plaintiffs, as
15 representatives of the people of the State of California, will seek any and all penalties
16 otherwise capable of being collected by the Labor Commission and/or the DLSE. This
17 includes each of the following, as is set forth in Labor Code § 2699.5, which states:

18 "The provisions of subdivision (a) of Section 2699.3 apply to any alleged
19 violation of the following provisions: subdivision (k) of Section 96, Sections
20 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1,
21 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section
22 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226,
23 Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and
24 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections
25 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2,
26 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750,
27 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5,
28 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section
1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of
Section 1198.3, Sections 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 Section
1695.5, Sections 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,

1 paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section
2 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12,
3 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a)
4 of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810,
5 subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.”

6 50. Plaintiffs are informed and believe that Defendants have violated and continue
7 to violate the provisions of the Labor Code and applicable Wage Order

8 51. Pursuant to Labor Code section 2699, any provision of the Labor Code that
9 already provides a civil penalty to be assessed and collected by the Labor and Workforce
10 Development Agency, or any of its departments, divisions, commissions, boards, agencies or
11 employees for violation of the code or does not provide a civil penalty may be recovered
12 through a civil action brought by an aggrieved employee on behalf of himself or herself, and
13 other current or former employees pursuant to the procedures set forth in Labor Code, section
14 2699.3.

15 52. Plaintiffs, on their own behalf, and on behalf of the other similarly situated
16 Aggrieved Employees are “aggrieved employees” because they were employed by the
17 violators (the named Defendants herein and their related Doe affiliates and subsidiaries),
18 during the one-year statutory time period and during such time period, were subject to one or
19 more violations, including Labor Code sections 201-203, 204, 226(a), 226.7, 432.5, 510,
20 512, 1174, 1194(a), 2802 and IWC No. 7, and are therefore properly suited to represent the
21 interests of a PAGA person.

22 53. Plaintiffs are informed and believe that Defendants have violated and continue
23 to violate provisions of the Labor Code and applicable Wage Order No. 7. Despite mailing
24 of **Exhibit A** at least 65-days prior to the filing of the filing of this First Amended Complaint,
25 the LWDA has not notified Plaintiffs that it intends to investigate the alleged Labor Code
26 violations identified in **Exhibit A**, such that, by operation of law Plaintiffs are entitled to
27 commence this cause of action as a representative action under the PAGA. *See Lab. Code*
28 *2699.3(a)(2)(A).*

Failure to Pay Wages

1 54. Labor Code §200(a) defines “wages” as “all amounts for labor performed by
2 employees of every description, whether the amount is fixed or ascertained by the standard
3 of time, task, piece, commission basis or other method of calculation.”

4 55. Plaintiffs and the Aggrieved Employees were at all times subject to
5 California’s laws and regulations protecting employees’ entitlement to be paid and
6 presumption to be paid all wages earned for labor performed, including an hourly wage for
7 each and every hour worked.

8 56. Labor Code § 1194 provides that employees are entitled to wages and
9 compensation for work performed, at the legal rate, including straight time, overtime, and
10 double time.

11 57. Furthermore, under Labor Code §1194, employees must be separately paid an
12 hourly wage for each and every hour worked.

13 58. At all relevant times herein, Defendant was required to compensate Plaintiffs
14 and the Aggrieved Employees wages for all hours worked pursuant to Labor Code §1194.

15 59. By uniformly impeding Plaintiffs and the Aggrieved Employees from
16 recording all the hours they worked and by systemically failing to track and record all of the
17 hours worked by Plaintiff and the Aggrieved Employees, Defendants were able to skim wages
18 from the Plaintiffs and the Aggrieved Employees by not paying them a separate hourly wage
19 for each and every hour worked.

20 60. Through their unlawful and illegal policies and practices, Defendants failed to
21 pay Plaintiffs and the Aggrieved Employees all wages owed to them during the relevant time
22 period.

23
24 **Failure to Pay Overtime Wages**

25 61. At all times relevant herein, Defendants were required to compensate their
26 non-exempt employees minimum wages for all hours worked and overtime wages for all
27 hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek,
28 pursuant to the mandate of Labor Code §510,1194, 1197, and 1198.

1 62. As a pattern and practice, Defendants routinely failed to pay Plaintiffs and
2 the Aggrieved Employees for any hours worked other than their regularly scheduled hours,
3 regardless of how many hours they actually worked, including all hours worked off the
4 clock responding to telephone calls and text messages from managers, colleagues and
5 customers on their own time.

6 63. Plaintiffs and the Aggrieved Employees routinely worked between fifty (50)
7 and eighty (80) hours per week, including Saturdays and Sundays. However, during the
8 relevant period, Defendant failed to compensate Plaintiffs and the Aggrieved Employees for
9 all hours worked, resulting in a failure to pay all overtime wages they were due.

10 **Failure to Provide Keep Accurate Records**

11 64. At all times relevant herein, Defendants were required to keep accurate
12 records showing the names and addresses of all employees employed and showing the hours
13 worked daily and wages earned and paid, pursuant to the mandates of Labor Code §1174.

14 65. As a result of and in addition to Defendants' various Labor Code violations,
15 Defendants failed in their affirmative obligation to maintain accurate records regarding
16 Plaintiffs and the Aggrieved Employees including accurate records of all hours worked and
17 wages paid at their applicable respective corresponding rates of pay in violation of Labor
18 Code §1174.

19 **Failure to Provide Meal Periods and Rest Periods**

20 66. In accordance with the mandates of Labor Code §226.7 and 512, Defendants
21 were required to authorized and permit their non-exempt employees to take a ten-minute
22 rest break for every four (4) hours worked or a major fraction thereof and were further
23 required to provide their non-exempt employees with a 30-minute meal period for every
24 five (5) hours worked.

25 67. As a pattern and practice, Defendants failed to provide Plaintiffs and the
26 Aggrieved Employees with legally mandated meal periods and rest breaks and failed to pay
27
28

1 proper premium pay compensation for such failures in violation of Labor Code §§ 226.7
2 and 512.

3 **Failure to Provide Complete and Accurate Wage Statements**

4 68. Pursuant to the mandate of Labor Code §§ 226 “every employer shall,
5 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
6 either as a detachable part of the check, draft, or voucher paying the employees’ wages or
7 separately when wages are paid by personal check or cash, an accurate itemized statement
8 in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5)
9 net wages earned, (6) the inclusive dates of the period for which the employee is paid...,
10 and (9) all applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate by the employee...”

12 69. As a result of Defendants’ various Labor Code violations, Defendants failed
13 to keep accurate records and failed in their affirmative obligation to provide Plaintiffs and
14 the Aggrieved employees with accurately itemized wage statements regarding the true total
15 number of hours each of them actually worked during each and every pay period, their
16 gross wages earned, all deductions, and net wages earned, along with their applicable
17 corresponding hourly rates, including premium pay for missed rest and/or meal breaks and
18 including overtime rates for each respective hourly rate of overtime worked. The
19 inaccurate wage statements were not caused by inadvertent and occasional clerical
20 mistakes, but rather were the result of a pre-determined, deliberate and uniform deliberate
21 policy and practice of Defendants.

22 **Failure to Timely Pay Wages**

23 70. Pursuant to Labor Code §204, all wages earned by Plaintiffs and the
24 Aggrieved Employees were and are “due and payable twice during each calendar month, on
25 days designated in advance by the employer as regular paydays.” For [l]abor performed
26 between the 1st and 15th days, inclusive of any calendar month” payment is due no later than
27 the 26th day of the month. “... for labor performed between the 16th and the last day, inclusive,
28

1 of any calendar month, payment is due no later than the 10th day of the following month...”
2 By failing to pay Plaintiffs and the Aggrieved Employees properly, Defendants deprived
3 them of timely payment of all wages earned, when due and owing at these regularly schedule
4 intervals throughout the relevant time period in violation of Labor Code §204.

5 **Failure to Pay Wages Due Upon Termination or Separation of Employment**

6 71. Labor Code §§ 201 and 202 require employers such as Defendants to pay their
7 employees all wages due within the time specified by law. California Labor Code § 203
8 provides that if any employer willfully fails to timely pay such wages, the employer must
9 continue to pay the employee’s subject wages until the back wages are paid in full or an
10 action is commenced, up to a maximum of 30 calendar days of wages.

11 72. As alleged supra, the Plaintiffs and certain of the Aggrieved Employees have
12 ceased employment with Defendants during the statutory PAGA period. At the time of
13 separation, each of these individuals was entitled to be paid all wages each was due for all
14 the hours each of them respectively worked, but to date, the representative Plaintiffs, nor the
15 formerly employed Aggrieved Employees have received such compensation.

16 73. Defendants violated Labor Code § 201-203 by failing to pay all accrued wages
17 due to Plaintiffs and the Aggrieved employees who have been discharged or who have quit
18 during the relevant period.

19 **Failure to Reimburse Expenses**

20 74. California Labor Code § 2802 provides than an employer shall indemnify his
21 or her employees for all necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties.

23 75. As alleged supra, Defendants required or require as a condition of
24 employment that Plaintiffs and the Aggrieved Employees utilize their personal cell phones
25 in the daily and routine discharge of their duties to communicate with Defendants managers,
26 supervisors, their customers and their colleagues. Defendants do not and have not reimbursed
27 Plaintiffs and the Class Members for their cell phone expenses.
28

1 76. As a direct result of Defendants' conduct in not reimbursing Plaintiffs and the
2 Aggrieved Employees for personal cell phone expenses necessarily incurred in the discharge
3 of their work-related duties, Defendants have violated Labor Code Section 2802.

4 **Illegal Terms and Conditions of Employment**

5 77. California Labor Code Section 432.5 prohibits employers from requiring any
6 applicant or employee to agree to any illegal employment term or condition.

7 78. As alleged supra, by written policy, effective May 21, 2020, Defendants
8 coerced and forced and continue to coerce and force Plaintiffs and Aggrieved Employees to
9 consent to unlawful deduction or forfeiture of wages to which they are lawfully entitled for
10 "all hours worked," as a penalty for any employee who fails to properly clock in or out.

11 79. Plaintiffs and the Aggrieved Employees suffered and will continue to suffer
12 as a direct and proximate result of Defendants' illegal terms and conditions of employment
13 in violation of Labor Code Section 432.5.

14 **Damages**

15 80. Defendants' actions constitute continuing and ongoing unlawful
16 activity prohibited by the California Labor Code, as alleged and therefore these acts constitute
17 violations of the PAGA.

18 81. Pursuant to California Labor Code § 2699, Plaintiffs request and are
19 entitled to recover from Defendants civil penalties in the amount of a hundred dollars (\$100)
20 for each aggrieved employee per pay period for the initial violation, and two hundred dollars
21 (\$200) for each aggrieved employee per pay period for each subsequent violation; and

22 82. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any
23 other applicable statute.

24 83. As alleged supra, notice of these violations were provided pursuant to
25 Labor Code §2699.3 asking the LWDA if it intends to investigate the alleged violations.
26 More than 65 days have passed since notice was provided and Plaintiffs have not received
27 any notification from the LWDA that it intends to investigate the alleged violations.
28

1 Therefore, the representative Plaintiffs are entitled to prosecute their PAGA claims under
2 Labor Code §2699, et seq.

3 84. The proper measure of damages and penalties under the PAGA is as
4 to all Aggrieved Employees, whether a part of this action or not. Further this claim needs no
5 certification to proceed with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969,
6 970-975.

7 85. Accordingly, Plaintiffs respectfully request that the Court award
8 judgment and relief in their favor including civil penalties under California Labor Code
9 §2699 in the amount of one hundred dollars (\$100) for each Aggrieved Employee per pay
10 period for the initial violation, and two hundred dollars (\$200) for each Aggrieved Employee
11 per pay period for each subsequent violation during the relevant period, according to proof.

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

18 **PRAYER FOR RELIEF**

19 87. WHEREFORE, the representative Plaintiffs pursuant to PAGA pray
20 for judgment as follows:
21

22 88. Upon the PAGA Cause of Action, for civil penalties and wages
23 pursuant to statute as set forth in Labor Code §2698 et seq., for Defendants' violations of
24 Labor Code §§ 201-203, 204, 226(a), 226.7, 432.5, 510, 512, 1174, 1194, 2802 and applicable
25 Wage Order No. 7.

26 89. Upon the PAGA Cause of Action, for attorneys' fees and costs
27 pursuant to Labor Code §2699 and any other applicable statute; and
28

1 90. For such other and further relief the Court may deem just and proper.

2
3 DATED: December 29, 2020

WHITEHEAD EMPLOYMENT LAW

4
5
6 By: _____


JACOB N. WHITEHEAD
Attorney for Plaintiffs and
The Aggrieved Employees

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

EXHIBIT B



November 23, 2020

Via Online Filing

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

Via Certified Mail

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

Via Certified Mail

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

Via First Class Mail and Email

Mr. John P. Boggs
JBoggs@EmployerLawyers.com
Mr. David J. Reese
Dreese@EmployerLawyers.com
FINE, BOGGS & PERKINS, LLP
111 W. Ocean Blvd., Suite 2400
Long Beach, CA 90802

Via First Class Mail

Jagroop S. Gill, CEO
Gill Motors Tracy, Inc.
2266 Kitty Hawk Rd.
Livermore, CA 94511

First Class Mail

Jay Gill, CEO and Secretary of
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

Don Tena, Registered Agent for
Gill Motors, Inc.
6720 Automall Ct.
Gilroy, CA 95020

Via First Class Mail

Jay Gill, CEO
Gill Motors, Inc.
6720 Automall Ct., Gilroy, CA 95020

Via Certified Mail

ROBERT BRUCE BENN, Registered Agent
Gill Motors Tracy, Inc.
2266 KITTY HAWK RD
LIVERMOE CA 94511

Via Certified Mail

Jagroop S. Gill, *also named Registered Agent*
Gill Motors Tracy, Inc.
1100 S. Madera Avenue
Madera, CA 93637

Re: First Amended 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 plaintiffs, Nicole Leshane, Steve Garner, Justin Prasad, Isaac Saldana, Maurice West, Danny Wyhs and Kyna Oliver ("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; and Gill Motors, Inc., a California corporation; and Gill Motors Tracy 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, Maurice West, Danny Wyhs, Kyla Oliver and the Aggrieved Employees’ legal claims are as follows:

The Defendants, RJ Gill Ventures, Inc., Tracy VW, Inc., Gill Motors, Inc., and Gill Motors Tracy, Inc. are all California corporations. Upon information and belief and thereupon Plaintiffs allege that RJ Gill Ventures, Inc. is the holding company for approximately ten or

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.

independent automotive dealerships (branded and marketed as Gill Automotive Group). The named representative Plaintiffs worked at the Tracy VW dealership located at 2605 Auto Plaza Drive, Tracy, CA 95304 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 which are 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.

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 the Tracy VW dealership, 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, (which Plaintiffs assert is never true). 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 Defendants’ practice is completely the contrary. Defendants proactively prohibit them from taking their breaks at all. Defendant constantly monitored employees and made frequent announcements over the PA system that employees *need to keep working*.

In an email dated May 21, 2020, by Robert Benn, the CFO of Gill Automotive Group,² 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 timecards to fix any of these issues.*” Jay Gill, the owner and CEO 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.

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.

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.”

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

JNW/dlp