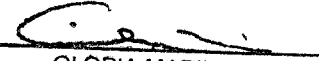


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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 28 2020

BY 
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

MARK LUJAN, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SONIC AUTOMOTIVE, INC., a
Delaware corporation; ONTARIO L,
LLC, a California limited liability
company doing business as CROWN
LEXUS; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **CIV DS 2021084-**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE §
226(a);
- (2) VIOLATION OF CAL. LABOR CODE §§
2698, *ET SEQ.*

DEMAND OVER \$25,000.00

1 Plaintiff Mark Lujan (“Plaintiff”) hereby submits this Class and Representative Action
2 Complaint (“Complaint”) against Defendants Sonic Automotive, Inc., Ontario L, LLC, and Does
3 1 through 50 (hereinafter collectively referred to as “Defendants”), on behalf of himself and a
4 class of all other similarly situated current and former employees of Defendants for civil and
5 statutory penalties under the California Labor Code as follows:

6 **INTRODUCTION**

7 1. This class and representative action is within the Court’s jurisdiction under
8 California Labor Code sections 226 and 2698 *et seq.*

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

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
12 jointly and severally, have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees in Defendants’ failure to provide accurate itemized wage
14 statements to Plaintiff and Class Members.

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

19 **JURISDICTION AND VENUE**

20 5. This Court has jurisdiction over the violations of California Labor Code sections
21 226 and 2698 *et seq.*

22 6. Venue is proper in San Bernardino County because Defendants provide
23 automotive sales and service in San Bernardino County, and Plaintiff is currently employed by
24 Defendants in San Bernardino County.

25 **PARTIES**

26 7. Plaintiff began employment with Defendants in about April 2015. Plaintiff is
27 employed as a service technician.

28 8. Plaintiff was and is the victim of the policies, practices, and customs of

Defendants complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code sections 226 and 2698 *et seq.*

9. Plaintiff is informed and believes, and based thereon alleges, that Sonic Automotive, Inc. is a Delaware corporation with its principal office in Charlotte, North Carolina and does business throughout the State of California, including locations in San Bernardino County, California.

10. Plaintiff is informed and believes, and based thereon alleges, that Ontario L, LLC was and is a California limited liability company doing business as Crown Lexus. Plaintiff is informed and believes, and based thereon alleges, that Ontario L, LLC does business in San Bernardino County, California.

11. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to the California Labor Code.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

14. Plaintiff is informed and believes, and based thereon alleges, that at all times

1 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
2 joint venturer of, or working in concert with each of the other co-Defendants and was acting
3 within the course and scope of such agency, employment, joint venture, or concerted activity. To
4 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
5 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
6 Defendants.

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

10 16. At all times herein mentioned, the acts and omissions of various Defendants, and
11 each of them, concurred and contributed to the various acts and omissions of each and all of the
12 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
13 herein mentioned, Defendants, and each of them, ratified each and every act or omission
14 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
15 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
16 damages as herein alleged.

17 **CLASS ACTION ALLEGATIONS**

18 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
19 California Code of Civil Procedure section 382. Plaintiff proposes the following classes and
20 subclass (collectively, the “Class”):

- 21 a. All current and former non-exempt employees of Defendants in the State
22 of California who received a wage statement at any time between April 6,
23 2019, through the present (the “Wage Statement Class”);
- 24 b. All current and former non-exempt employees of Defendants in the State
25 of California who earned overtime wages at any time between April 6,
26 2019, through the present (the “Overtime Class”);
- 27 c. All current and former non-exempt employees of Defendants in the State
28 of California who earned bonus overtime wages, including but not limited

1 to Production Bonus OT, at any time between April 6, 2019, through the
2 present (the “Bonus OT Subclass”).

3 18. **Numerosity:** The members of the Class are so numerous that joinder of all
4 members would be impractical, if not impossible. The identity of the members of the Class is
5 readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
6 informed and believes, and based thereon alleges, that Defendants failed to provide accurate
7 itemized wage statements to employees in violation of Labor Code section 226.

8 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
9 necessary steps to represent fairly and adequately the interests of the Class defined above.
10 Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the Class and
11 Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past
12 and currently have a number of wage-and-hour class actions pending in California state and
13 federal courts.

14 20. Defendants uniformly administered a corporate policy, practice of failing to
15 provide accurate itemized wage statements to Plaintiff and the Class in violation of Labor Code
16 section 226.

17 21. **Common Question of Law and Fact:** There are predominant common questions
18 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
19 concerning Defendants’ policy and practice of failing to provide proper wage statements to
20 Plaintiff and the Class in violation of Labor Code section 226.

21 22. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
22 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
23 as the Class Members. As with other California non-exempt employees, Plaintiff was not
24 provided proper and accurate itemized wage statements, in violation of Labor Code section
25 226(a). Specifically, the wage statements Plaintiff received identified incorrect total hours
26 worked, in violation of Labor Code section 226(a)(2). Calculating the total hours worked based
27 on the actual wages paid results in a sum that is lower than the total hours worked shown on the
28 wage statements. In addition, whenever Plaintiff was paid overtime, the overtime rate of pay is

1 incorrectly identified as the base rate of pay, in violation of Labor Code section 226(a)(9).
2 Further, when Plaintiff received Production Bonus OT wages, the rate of pay appears to identify
3 a higher rate of pay than what Plaintiff actually received, in violation of Labor Code section
4 226(a)(9). Accordingly, Plaintiff is a victim of Defendants' violation of California Labor Code
5 section 226.

6 23. The California Labor Code section upon which Plaintiff bases these claims is
7 broadly remedial in nature. These laws and labor standards serve an important public interest in
8 establishing minimum working conditions and standards in California. These laws and labor
9 standards protect the average working employee from exploitation by employers who may seek
10 to take advantage of superior economic and bargaining power in setting onerous terms and
11 conditions of employment.

12 24. The nature of this action and the format of laws available to Plaintiff and
13 members of the Class identified herein make the class action format a particularly efficient and
14 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
15 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
16 advantage since it would be able to exploit and overwhelm the limited resources of each
17 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
18 Member to pursue an individual remedy would also discourage the assertion of lawful claims by
19 employees who would be disinclined to file an action against their former and/or current
20 employer for real and justifiable fear of retaliation and permanent damage to their careers at
21 subsequent employment.

22 25. The prosecution of separate actions by the individual Class Members, even if
23 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
24 to individual Class Members against Defendants and which would establish potentially
25 incompatible standards of conduct for Defendants, and/or (b) adjudications with respect to
26 individual Class Members which would, as a practical matter, be dispositive of the interest of the
27 other Class Members not parties to the adjudications or which would substantially impair or
28 impede the ability of the Class Members to protect their interests. Further, the claims of the

individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

26. Such a pattern, practice and uniform administration of corporate policy regarding illegal payroll practices described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226 and Code of Civil Procedure section 1021.5.

27. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the members of the Plaintiff Class to recovery on the causes of action alleged herein.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

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

29. Defendants failed in their affirmative obligation to provide accurate itemized wage statements. Defendants, as a matter of policy and practice, did not provide accurate records in violation of Labor Code section 226(a).

30. Plaintiff and Class Members were paid on an hourly basis. As such, the wage statements provided to them should have reflected all applicable hourly rates in effect during the pay period and correct total hours worked. The wage statements provided to Plaintiff and the Class failed to accurately identify such information. More specifically, whenever overtime wages were paid to Class Members, the corresponding wage statement did not identify the overtime rate. Instead, the wage statements identified the base rate of pay. Similarly, when Production Bonus OT wages were paid to Class Members, the corresponding wage statements identified a higher rate of pay than the actual rate at which Class Members were paid. In addition, the wage statements provided to Plaintiff and the Class identified a higher total hours worked than the sum of all hours actually worked.

1 31. Such a pattern, practice and uniform administration of corporate policy as
2 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
3 identified herein in a civil action, for all penalties pursuant to Labor Code section 226, including
4 interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor
5 Code section 226.

6 **SECOND CAUSE OF ACTION**

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

8 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
9 **AGAINST ALL DEFENDANTS)**

10 32. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
11 though fully set forth herein.

12 33. Plaintiff brings this cause of action as a proxy for the State of California and in
13 this capacity, seeks penalties on behalf of all Aggrieved Employees from April 6, 2019, through
14 the present, for Defendants' policy and practice of failing to provide proper wage statements in
15 violation of Labor Code section 226(a).

16 34. On or about September 15, 2020, Plaintiff sent written notice to the California
17 Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code
18 section 226(a), pursuant to Labor Code section 2698, *et seq.*, the Private Attorneys General Act
19 ("PAGA"). To date, the LWDA has not responded to Plaintiff's written notice.

20 35. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
21 and all applicable civil penalties for Defendants' violation of Labor Code section 226(a) for the
22 time period described above, on behalf of himself and other Aggrieved Employees.

23 **PRAYER FOR RELIEF**

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

- 26 1. For an order certifying the proposed Class;
27 2. For an order appointing Plaintiff as the representative of the Class;
28 3. For an order appointing counsel for Plaintiff as Class Counsel;

1 4. Upon the First Cause of Action, for penalties pursuant to California Labor Code
2 section 226, and for costs and attorneys' fees;

3 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
4 to Labor Code sections 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

5 6. On all causes of action for attorneys' fees and costs as provided by California
6 Labor Code sections 226 and 2699, and Code of Civil Procedure section 1021.5; and

7 7. For such other and further relief the Court may deem just and proper.
8

9 DATED: September 25, 2020

DIVERSITY LAW GROUP, P.C.

10
11 By: _____

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Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class
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