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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 07 2020

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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.: CIVDS2021084

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

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

Complaint Filed: September 28, 2020

1 Plaintiffs Mark Lujan and Cortney Plaziak (together, “Plaintiffs”) hereby submit this First
2 Amended Complaint (“Complaint”) against Defendants Sonic Automotive, Inc., Ontario L, LLC,
3 and Does 1 through 50 (hereinafter collectively referred to as “Defendants”), on behalf of
4 themselves and a class of all other similarly situated current and former employees of Defendants
5 for civil and 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. Plaintiffs are informed and believe, and based thereon allege, 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. Plaintiffs are informed and believe, and based thereon allege, 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 Mark Lujan is currently
24 employed by Defendants in San Bernardino County.

25 **PARTIES**

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

28 8. Cortney Plaziak began employment with Defendants in about March 2017, in

1 internet sales. Ms. Plaziak's employment ended on or about October 20, 2020.

2 9. Plaintiffs were and are the victims of the policies, practices, and customs of
3 Defendants complained of in this action in ways that have deprived them of the rights guaranteed
4 by California Labor Code sections 226 and 2698 *et seq.*

5 10. Plaintiffs are informed and believe, and based thereon allege, that Sonic
6 Automotive, Inc. is a Delaware corporation with its principal office in Charlotte, North Carolina
7 and does business throughout the State of California, including locations in San Bernardino
8 County, California.

9 11. Plaintiffs are informed and believe, and based thereon allege, that Ontario L, LLC
10 was and is a California limited liability company doing business as Crown Lexus. Plaintiffs are
11 informed and believe, and based thereon allege, that Ontario L, LLC does business in San
12 Bernardino County, California.

13 12. Plaintiffs are informed and believe, and based thereon allege, that at all times
14 herein mentioned Defendants are and were business entities, individuals, and partnerships,
15 licensed to do business and actually doing business in the State of California. As such, and based
16 upon all the facts and circumstances incident to Defendants' business, Defendants are subject to
17 the California Labor Code.

18 13. Plaintiffs do not know the true names or capacities, whether individual, partner or
19 corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said
20 defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
21 complaint when the true names and capacities are known. Plaintiffs are informed and believe and
22 based thereon allege that each of said fictitious defendants was responsible in some way for the
23 matters alleged herein and proximately caused Plaintiffs and members of the general public and
24 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

25 14. At all times herein mentioned, each of said Defendants participated in the doing
26 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
27 Defendants, and each of them, were the agents, servants and employees of each of the other
28 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were

1 acting within the course and scope of said agency and employment.

2 15. Plaintiffs are informed and believe, and based thereon allege, that at all times
3 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
4 joint venturer of, or working in concert with each of the other co-Defendants and was acting
5 within the course and scope of such agency, employment, joint venture, or concerted activity. To
6 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
7 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
8 Defendants.

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

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

19 CLASS ACTION ALLEGATIONS

20 18. **Definition:** The named individual Plaintiffs seek class certification, pursuant to
21 California Code of Civil Procedure section 382. Plaintiffs propose the following classes and
22 subclass (collectively, the “Class”):

- 23 a. All current and former non-exempt employees of Defendants in the State
24 of California who received a wage statement at any time between April 6,
25 2019, through the present (the “Wage Statement Class”);
- 26 b. All current and former non-exempt employees of Defendants in the State
27 of California who earned overtime wages at any time between April 6,
28 2019, through the present (the “Overtime Class”);

c. All current and former non-exempt employees of Defendants in the State of California who earned bonus overtime wages, including but not limited to Production Bonus OT, at any time between April 6, 2019, through the present (the “Bonus OT Subclass”).

19. **Numerosity:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants’ records, including payroll records. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to provide accurate itemized wage statements to employees in violation of Labor Code section 226.

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

21. Defendants uniformly administered a corporate policy, practice of failing to provide accurate itemized wage statements to Plaintiffs and the Class in violation of Labor Code section 226.

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

23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiffs suffered the harm alleged in this Complaint in a similar and typical manner as the Class Members. As with other California non-exempt employees, Plaintiffs were not provided proper and accurate itemized wage statements, in violation of Labor Code section 226(a). Specifically, the wage statements Plaintiffs received identified incorrect total hours worked, in violation of Labor Code section 226(a)(2). Calculating the total hours worked based

1 on the actual wages paid results in a sum that is lower than the total hours worked shown on the
2 wage statements. In addition, whenever Plaintiffs were paid overtime, the overtime rate of pay is
3 incorrectly identified as the base rate of pay, in violation of Labor Code section 226(a)(9).
4 Further, when Plaintiffs received Production Bonus OT wages, the rate of pay appears to identify
5 a higher rate of pay than what Plaintiffs actually received, in violation of Labor Code section
6 226(a)(9). Accordingly, Plaintiffs are victims of Defendants' violation of California Labor Code
7 section 226.

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

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

24 26. The prosecution of separate actions by the individual Class Members, even if
25 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
26 to individual Class Members against Defendants and which would establish potentially
27 incompatible standards of conduct for Defendants, and/or (b) adjudications with respect to
28 individual Class Members which would, as a practical matter, be dispositive of the interest of the

1 other Class Members not parties to the adjudications or which would substantially impair or
2 impede the ability of the Class Members to protect their interests. Further, the claims of the
3 individual members of the Class are not sufficiently large to warrant vigorous individual
4 prosecution considering all of the concomitant costs and expenses.

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

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

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 226**

15 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

16 29. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
17 though fully set forth herein.

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

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

1 provided to Plaintiffs and the Class identified a higher number of total hours worked than the sum of
2 all hours actually worked.

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

8 **SECOND CAUSE OF ACTION**

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

10 **(BY PLAINTIFFS, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
11 **AGAINST ALL DEFENDANTS)**

12 33. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
13 though fully set forth herein.

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

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

22 36. On or about October 30, 2020, Cortney Plaziak sent written notice to the LWDA
23 of Defendants' violations of Labor Code section 226(a), pursuant to PAGA. To date, the LWDA
24 has not responded to Ms. Plaziak's written notice.

25 37. As such, pursuant to Labor Code section 2699(a), Plaintiffs seek recovery of any
26 and all applicable civil penalties for Defendants' violation of Labor Code section 226(a) for the
27 time period described above, on behalf of themselves and other Aggrieved Employees.

28 //

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment for themselves and all others on whose
3 behalf this suit is brought against Defendants, jointly and severally, as follows:

- 4 1. For an order certifying the proposed Class;
- 5 2. For an order appointing Plaintiffs as the representatives of the Class;
- 6 3. For an order appointing counsel for Plaintiffs as Class Counsel;
- 7 4. Upon the First Cause of Action, for penalties pursuant to California Labor Code
8 section 226, and for costs and attorneys' fees;
- 9 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
10 to Labor Code sections 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;
- 11 6. On all causes of action for attorneys' fees and costs as provided by California
12 Labor Code sections 226 and 2699, and Code of Civil Procedure section 1021.5; and
- 13 7. For such other and further relief the Court may deem just and proper.
- 14

15 DATED: December 7, 2020

DIVERSITY LAW GROUP, P.C.

16
17 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiffs and the Class

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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On December 7, 2020, I served the following document(s) described as: **FIRST**
11 **AMENDED COMPLAINT FOR DAMAGES** on the interested parties in this action as
12 follows:

13 John P. Boggs
14 jboggs@employerlawyers.com
15 David J. Reese
16 dreese@employerlawyers.com
17 Robert A. Lopez
18 rlopez@employerlawyers.com
19 FINE, BOGGS & PERKINS LLP
20 111 W. Ocean Boulevard, Suite 2400
21 Long Beach, CA 90802

22 *Attorneys for Defendants Sonic Automotive, Inc. and Ontario L, LLC dba Crown Lexus*

23 X BY MAIL: by placing _____ the original or X a true and correct
24 copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
25 attached mailing list. I am readily familiar with the firm's practice for collection and processing
26 of correspondence and other materials for mailing with the United States Postal Service. On this
27 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
28 collection and mailing on this date at the address above following our office's ordinary business
practices. The envelope(s) will be deposited with the United States Postal Service on this date,
in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the
above is true and correct. Executed on December 7, 2020, at Los Angeles, California.

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26 
27 Erika Mejia
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