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Superior Court of California,
County of San Diego
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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN DIEGO

11
12 OSCAR SANTOS BARRERA, as an
aggrieved employee pursuant to the Private
13 Attorneys General Act ("PAGA"), on
behalf of the State of California and other
14 aggrieved employees,

15 Plaintiff,

16 vs.

17 MOSSY AUTOMOTIVE GROUP LEMON
GROVE INC., a California corporation;
18 MAG WEST MOSSY FORD II, LP, a
California limited partnership; MAG WEST
19 MOSSY HONDA II, LP, a California
limited partnership; MAG WEST MOSSY
20 NISSAN II, LP, a California limited
partnership; MAG WEST MOSSY
21 TOYOTA II, LP, a California limited
partnership; MAG WEST MOSSY
22 VOLKSWAGEN II, LP, a California
limited partnership; MOSSY
23 AUTOMOTIVE GROUP, INC., a
California corporation; MOSSY
24 AUTOMOTIVE GROUP II, LLC, a
California limited liability company;
25 MOSSY AUTOMOTIVE GROUP EL
CAJON INC., a California corporation;
26 MOSSY AUTO IMPORTS, a California
corporation; MOSSY FORD, INC., a
27 California corporation; MOSSY HOLDING
COMPANY, INC., a Delaware corporation;
28

Case No.: 37-2020-00042815-CU-OE-CTL

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 MOSSY NISSAN, INC., a California
2 corporation; MOSSY NISSAN CHULA
3 VISTA, a California corporation; MOSSY
4 NISSAN EL CAJON, a California
5 corporation; MOSSY NISSAN
6 ESCONDIDO, a California corporation;
7 MOSSY NISSAN KEARNY MESA, a
8 California corporation; MOSSY NISSAN
9 NATIONAL CITY, a California
10 corporation; MOSSY NISSAN
11 OCEANSIDE, a California corporation;
12 MOSSY NISSAN POWAY, a California
13 corporation; and DOES 1 through 10,
14 inclusive,

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Defendants.

1 Plaintiff Oscar Santos Barrera, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on September 14, 2020, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons in this
3 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
4 and occurrences related to this action occurred in this county.

5 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
6 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
7 attorneys general their current or former employers for various civil penalties for violations of
8 various provisions in the California Labor Code.

9 **THE PARTIES**

10 6. Plaintiff Oscar Santos Barrera is a resident of San Diego, in San Diego County,
11 California. Defendants employed Plaintiff as an hourly paid, non-exempt Detail
12 Technician/Automotive Service Technician from approximately March 2017 to February
13 2020. Plaintiff worked for Defendants at their dealership located in Lemon Grove, California.
14 During his employment, Plaintiff typically worked eight (8) hours or more per day, five (5)
15 days per week, from 7:00 a.m. to 4:00 p.m. or later. At the time his employment ended,
16 Plaintiff was compensated on an hourly basis, plus commissions or bonuses based on
17 productivity (“hourly production bonus”). His job duties included, without limitation,
18 preparing new vehicles for customers, detailing used cars for the lot, mixing and producing
19 cleaning chemicals, and re-stocking the car wash.

20 7. On information and belief, Defendants required some employees, including
21 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of
22 their hire or during their employment. On further information and belief, Defendants’ dispute
23 resolution policy and/or arbitration agreement was and is both procedurally and substantively
24 unconscionable. Specifically, Defendants presented new hires with a Comprehensive
25 Agreement: Employment at-Will and Arbitration Agreement California (“Arbitration
26 Agreement”) during the onboarding process, which had to be reviewed and signed
27 immediately. In fact, upon information and belief, the Arbitration Agreement was one of
28 several documents presented to new employees for signature during the orientation process,

1 including a Comprehensive Agreement, Employee Acknowledgement, and Policy Against
2 Unlawful Harassment, among other documents. Also, employees did not have a meaningful
3 opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to
4 Defendants' employees for them to sign on a take-it or leave-it basis at the time they were
5 hired, along with other on-boarding documents. Further, Defendants did not set forth in the
6 agreement or otherwise provide employees with the rules which will govern the arbitration,
7 instead forcing employees to seek this information out on their own.

8 8. MOSSY AUTOMOTIVE GROUP LEMON GROVE INC. was and is, upon
9 information and belief, a California corporation, and at all times hereinafter mentioned, an
10 employer whose employees are engaged throughout this county and the State of California.

11 9. MAG WEST MOSSY FORD II, LP was and is, upon information and belief, a
12 California limited partnership, and at all times hereinafter mentioned, an employer whose
13 employees are engaged throughout this county and the State of California.

14 10. MAG WEST MOSSY HONDA II, LP was and is, upon information and belief,
15 a California limited partnership, and at all times hereinafter mentioned, an employer whose
16 employees are engaged throughout this county and the State of California.

17 11. MAG WEST MOSSY NISSAN II, LP was and is, upon information and belief,
18 a California limited partnership, and at all times hereinafter mentioned, an employer whose
19 employees are engaged throughout this county and the State of California.

20 12. MAG WEST MOSSY TOYOTA II, LP was and is, upon information and
21 belief, a California limited partnership, and at all times hereinafter mentioned, an employer
22 whose employees are engaged throughout this county and the State of California.

23 13. MAG WEST MOSSY VOLKSWAGEN II, LP was and is, upon information
24 and belief, a California limited partnership, and at all times hereinafter mentioned, an
25 employer whose employees are engaged throughout this county and the State of California.

26 14. MOSSY AUTOMOTIVE GROUP, INC. was and is, upon information and
27 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
28 employees are engaged throughout this county and the State of California.

1 15. MOSSY AUTOMOTIVE GROUP II, LLC was and is, upon information and
2 belief, a California limited liability company, and at all times hereinafter mentioned, an
3 employer whose employees are engaged throughout this county and the State of California.

4 16. MOSSY AUTOMOTIVE GROUP EL CAJON INC. was and is, upon
5 information and belief, a California corporation, and at all times hereinafter mentioned, an
6 employer whose employees are engaged throughout this county and the State of California.

7 17. MOSSY AUTO IMPORTS was and is, upon information and belief, a
8 California corporation, and at all times hereinafter mentioned, an employer whose employees
9 are engaged throughout this county and the State of California.

10 18. MOSSY FORD, INC. was and is, upon information and belief, a California
11 corporation, and at all times hereinafter mentioned, an employer whose employees are
12 engaged throughout this county and the State of California.

13 19. MOSSY HOLDING COMPANY, INC. was and is, upon information and
14 belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose
15 employees are engaged throughout this county and the State of California.

16 20. MOSSY NISSAN, INC. was and is, upon information and belief, a California
17 corporation, and at all times hereinafter mentioned, an employer whose employees are
18 engaged throughout this county and the State of California.

19 21. MOSSY NISSAN CHULA VISTA was and is, upon information and belief, a
20 California corporation, and at all times hereinafter mentioned, an employer whose employees
21 are engaged throughout this county and the State of California.

22 22. MOSSY NISSAN EL CAJON was and is, upon information and belief, a
23 California corporation, and at all times hereinafter mentioned, an employer whose employees
24 are engaged throughout this county and the State of California.

25 23. MOSSY NISSAN ESCONDIDO was and is, upon information and belief, a
26 California corporation, and at all times hereinafter mentioned, an employer whose employees
27 are engaged throughout this county and the State of California.

28 24. MOSSY NISSAN KEARNY MESA was and is, upon information and belief, a

1 California corporation, and at all times hereinafter mentioned, an employer whose employees
2 are engaged throughout this county and the State of California.

3 25. MOSSY NISSAN NATIONAL CITY was and is, upon information and belief,
4 a California corporation, and at all times hereinafter mentioned, an employer whose
5 employees are engaged throughout this county and the State of California.

6 26. MOSSY NISSAN OCEANSIDE was and is, upon information and belief, a
7 California corporation, and at all times hereinafter mentioned, an employer whose employees
8 are engaged throughout this county and the State of California.

9 27. MOSSY NISSAN POWAY was and is, upon information and belief, a
10 California corporation, and at all times hereinafter mentioned, an employer whose employees
11 are engaged throughout this county and the State of California.

12 28. Plaintiff is unaware of the true names or capacities of the Defendants sued
13 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
14 amend the complaint and serve such fictitiously named Defendants once their names and
15 capacities become known.

16 29. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of MOSSY AUTOMOTIVE GROUP LEMON
18 GROVE INC.; MAG WEST MOSSY FORD II, LP; MAG WEST MOSSY HONDA II, LP;
19 MAG WEST MOSSY NISSAN II, LP; MAG WEST MOSSY TOYOTA II, LP; MAG WEST
20 MOSSY VOLKSWAGEN II, LP; MOSSY AUTOMOTIVE GROUP, INC.; MOSSY
21 AUTOMOTIVE GROUP II, LLC; MOSSY AUTOMOTIVE GROUP EL CAJON INC.;
22 MOSSY AUTO IMPORTS; MOSSY FORD, INC.; MOSSY HOLDING COMPANY, INC.;
23 MOSSY NISSAN, INC.; MOSSY NISSAN CHULA VISTA; MOSSY NISSAN EL CAJON;
24 MOSSY NISSAN ESCONDIDO; MOSSY NISSAN KEARNY MESA; MOSSY NISSAN
25 NATIONAL CITY; MOSSY NISSAN OCEANSIDE; and/or MOSSY NISSAN POWAY, at
26 all relevant times.

27 30. Plaintiff is informed and believes, and thereon alleges, that each and all of the
28 acts and omissions alleged herein was performed by, or is attributable to, MOSSY

1 AUTOMOTIVE GROUP LEMON GROVE INC.; MAG WEST MOSSY FORD II, LP; MAG
2 WEST MOSSY HONDA II, LP; MAG WEST MOSSY NISSAN II, LP; MAG WEST
3 MOSSY TOYOTA II, LP; MAG WEST MOSSY VOLKSWAGEN II, LP; MOSSY
4 AUTOMOTIVE GROUP, INC.; MOSSY AUTOMOTIVE GROUP II, LLC; MOSSY
5 AUTOMOTIVE GROUP EL CAJON INC.; MOSSY AUTO IMPORTS; MOSSY FORD,
6 INC.; MOSSY HOLDING COMPANY, INC.; MOSSY NISSAN, INC.; MOSSY NISSAN
7 CHULA VISTA; MOSSY NISSAN EL CAJON; MOSSY NISSAN ESCONDIDO; MOSSY
8 NISSAN KEARNY MESA; MOSSY NISSAN NATIONAL CITY; MOSSY NISSAN
9 OCEANSIDE; MOSSY NISSAN POWAY; and/or DOES 1 through 10 (collectively,
10 “Defendants” or “MOSSY”), each acting as the agent, employee, alter ego, and/or joint
11 venturer of, or working in concert with, each of the other co-Defendants and was acting within
12 the course and scope of such agency, employment, joint venture, or concerted activity with
13 legal authority to act on the others’ behalf. The acts of any and all Defendants were in
14 accordance with, and represent, the official policy of Defendants.

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

19 32. Plaintiff is informed and believes, and thereon alleges, that each of said
20 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
21 omissions, occurrences, and transactions alleged herein.

22 33. Under California law, Defendants are jointly and severally liable as employers
23 for the violations alleged herein because they have each exercised sufficient control over the
24 wages, hours, working conditions, and employment status of Plaintiff and other non-party
25 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
26 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
27 of employment, determined their rate of pay, and maintained their employment records.
28 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work

1 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
2 common-law employment relationship. As joint employers of Plaintiff and other non-party
3 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties and
4 all other relief available to Plaintiff and other non-party Aggrieved Employees under the law.

5 34. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
6 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
7 non-party Aggrieved Employees because Defendants have:

- 8 (a) jointly exercised meaningful control over the work performed by
9 Plaintiff and other non-party Aggrieved Employees;
- 10 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
11 Aggrieved Employees’ wages, hours, and working conditions, including
12 the quantity, quality standards, speed, scheduling, and operative details
13 of the tasks performed by Plaintiff and other non-party Aggrieved
14 Employees;
- 15 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
16 perform work which is an integral part of Defendants’ businesses; and
- 17 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
18 Employees as a matter of economic reality in that Plaintiff and other
19 non-party Aggrieved Employees were dependent on Defendants, who
20 shared the power to set the wages of Plaintiff and other non-party
21 Aggrieved Employees and determined their working conditions, and
22 who jointly reaped the benefits from the underpayment of their wages
23 and noncompliance with other statutory provisions governing their
24 employment.

25 35. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
26 there has existed a unity of interest and ownership between Defendants such that any
27 individuality and separateness between the entities has ceased.

28 36. MOSSY AUTOMOTIVE GROUP LEMON GROVE INC.; MAG WEST

1 MOSSY FORD II, LP; MAG WEST MOSSY HONDA II, LP; MAG WEST MOSSY
2 NISSAN II, LP; MAG WEST MOSSY TOYOTA II, LP; MAG WEST MOSSY
3 VOLKSWAGEN II, LP; MOSSY AUTOMOTIVE GROUP, INC.; MOSSY AUTOMOTIVE
4 GROUP II, LLC; MOSSY AUTOMOTIVE GROUP EL CAJON INC.; MOSSY AUTO
5 IMPORTS; MOSSY FORD, INC.; MOSSY HOLDING COMPANY, INC.; MOSSY
6 NISSAN, INC.; MOSSY NISSAN CHULA VISTA; MOSSY NISSAN EL CAJON; MOSSY
7 NISSAN ESCONDIDO; MOSSY NISSAN KEARNY MESA; MOSSY NISSAN
8 NATIONAL CITY; MOSSY NISSAN OCEANSIDE; MOSSY NISSAN POWAY; and DOES
9 1 through 10 are therefore alter egos of each other.

10 37. Adherence to the fiction of the separate existence of Defendants would permit
11 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
12 from liability for the wrongful acts committed by them under the name MOSSY.

13 38. Plaintiff further alleges, upon information and belief, that Defendants MOSSY
14 AUTOMOTIVE GROUP LEMON GROVE INC.; MAG WEST MOSSY FORD II, LP; MAG
15 WEST MOSSY HONDA II, LP; MAG WEST MOSSY NISSAN II, LP; MAG WEST
16 MOSSY TOYOTA II, LP; MAG WEST MOSSY VOLKSWAGEN II, LP; MOSSY
17 AUTOMOTIVE GROUP, INC.; MOSSY AUTOMOTIVE GROUP II, LLC; MOSSY
18 AUTOMOTIVE GROUP EL CAJON INC.; MOSSY AUTO IMPORTS; MOSSY FORD,
19 INC.; MOSSY HOLDING COMPANY, INC.; MOSSY NISSAN, INC.; MOSSY NISSAN
20 CHULA VISTA; MOSSY NISSAN EL CAJON; MOSSY NISSAN ESCONDIDO; MOSSY
21 NISSAN KEARNY MESA; MOSSY NISSAN NATIONAL CITY; MOSSY NISSAN
22 OCEANSIDE; and MOSSY NISSAN POWAY are alter egos of each other for the following
23 reasons:

- 24 (a) According to their most recent "Statement of Information" forms filed
25 with the California Secretary of State, MOSSY AUTOMOTIVE
26 GROUP LEMON GROVE INC.; MOSSY AUTOMOTIVE GROUP,
27 INC.; MOSSY AUTOMOTIVE GROUP II, LLC; MOSSY
28 AUTOMOTIVE GROUP EL CAJON INC.; MOSSY AUTO

1 IMPORTS; MOSSY FORD, INC.; MOSSY HOLDING COMPANY,
2 INC.; MOSSY NISSAN, INC.; MOSSY NISSAN CHULA VISTA;
3 MOSSY NISSAN EL CAJON; MOSSY NISSAN ESCONDIDO;
4 MOSSY NISSAN KEARNY MESA; MOSSY NISSAN NATIONAL
5 CITY; MOSSY NISSAN OCEANSIDE; and MOSSY NISSAN
6 POWAY share the same Officers, Directors, and Managers, namely,
7 Philip Mossy and John Epps;

8 (b) According to their most recent "Statement of Information" forms filed
9 with the California Secretary of State, MAG WEST MOSSY FORD II,
10 LP; MAG WEST MOSSY HONDA II, LP; MAG WEST MOSSY
11 NISSAN II, LP; MAG WEST MOSSY TOYOTA II, LP; and MAG
12 WEST MOSSY VOLKSWAGEN II, LP share the same General
13 Partner, Philip Mossy;

14 (c) On information and belief, MOSSY AUTOMOTIVE GROUP LEMON
15 GROVE INC.; MOSSY AUTOMOTIVE GROUP II, LLC; MOSSY
16 AUTOMOTIVE GROUP EL CAJON INC.; MOSSY AUTO
17 IMPORTS; MOSSY FORD, INC.; MOSSY NISSAN EL CAJON;
18 MOSSY NISSAN ESCONDIDO; MOSSY NISSAN KEARNY MESA;
19 MOSSY NISSAN NATIONAL CITY; MOSSY NISSAN
20 OCEANSIDE; and MOSSY NISSAN POWAY share the same agent for
21 service of process, "JOHN [W] EPPS;"

22 (d) On information and belief, MAG WEST MOSSY FORD II, LP; MAG
23 WEST MOSSY HONDA II, LP; MAG WEST MOSSY NISSAN II, LP;
24 MAG WEST MOSSY TOYOTA II, LP; MAG WEST MOSSY
25 VOLKSWAGEN II, LP; MOSSY AUTOMOTIVE GROUP, INC.;
26 MOSSY HOLDING COMPANY, INC.; MOSSY NISSAN, INC.; and
27 MOSSY NISSAN CHULA VISTA share the same agent for service of
28 process, "PHILIP [E] MOSSY;"

- (e) According to their most recent “Statement of Information” forms filed with the California Secretary of State, MAG WEST MOSSY FORD II, LP; MAG WEST MOSSY HONDA II, LP; MAG WEST MOSSY NISSAN II, LP; MAG WEST MOSSY TOYOTA II, LP; MAG WEST MOSSY VOLKSWAGEN II, LP; MOSSY AUTOMOTIVE GROUP, INC.; MOSSY AUTOMOTIVE GROUP EL CAJON INC.; MOSSY FORD, INC.; MOSSY NISSAN, INC.; MOSSY NISSAN CHULA VISTA; MOSSY NISSAN EL CAJON; MOSSY NISSAN ESCONDIDO; MOSSY NISSAN KEARNY MESA; MOSSY NISSAN NATIONAL CITY; MOSSY NISSAN OCEANSIDE; and MOSSY NISSAN POWAY share the same entity and mailing addresses, “4625 BRINELL ST., SAN DIEGO, CA 952111”;
- (f) On information and belief, MOSSY AUTOMOTIVE GROUP LEMON GROVE INC.; MAG WEST MOSSY FORD II, LP; MAG WEST MOSSY HONDA II, LP; MAG WEST MOSSY NISSAN II, LP; MAG WEST MOSSY TOYOTA II, LP; MAG WEST MOSSY VOLKSWAGEN II, LP; MOSSY AUTOMOTIVE GROUP, INC.; MOSSY AUTOMOTIVE GROUP II, LLC; MOSSY AUTOMOTIVE GROUP EL CAJON INC.; MOSSY AUTO IMPORTS; MOSSY FORD, INC.; MOSSY HOLDING COMPANY, INC.; MOSSY NISSAN, INC.; MOSSY NISSAN CHULA VISTA; MOSSY NISSAN EL CAJON; MOSSY NISSAN ESCONDIDO; MOSSY NISSAN KEARNY MESA; MOSSY NISSAN NATIONAL CITY; MOSSY NISSAN OCEANSIDE; and MOSSY NISSAN POWAY each utilize similar marketing coloring schemes, fonts, and logo(s) and share a common website at <http://www.mossy.com/>; and
- (g) On information and belief, MOSSY AUTOMOTIVE GROUP LEMON GROVE INC.; MAG WEST MOSSY FORD II, LP; MAG WEST

1 MOSSY HONDA II, LP; MAG WEST MOSSY NISSAN II, LP; MAG
2 WEST MOSSY TOYOTA II, LP; MAG WEST MOSSY
3 VOLKSWAGEN II, LP; MOSSY AUTOMOTIVE GROUP, INC.;
4 MOSSY AUTOMOTIVE GROUP II, LLC; MOSSY AUTOMOTIVE
5 GROUP EL CAJON INC.; MOSSY AUTO IMPORTS; MOSSY
6 FORD, INC.; MOSSY HOLDING COMPANY, INC.; MOSSY
7 NISSAN, INC.; MOSSY NISSAN CHULA VISTA; MOSSY NISSAN
8 EL CAJON; MOSSY NISSAN ESCONDIDO; MOSSY NISSAN
9 KEARNY MESA; MOSSY NISSAN NATIONAL CITY; MOSSY
10 NISSAN OCEANSIDE; and MOSSY NISSAN POWAY utilize the
11 same standardized employment forms and issue the same employment
12 policies.

13 **PAGA REPRESENTATIVE ALLEGATIONS**

14 39. Defendants are a family-owned chain of car dealerships, with approximately 17
15 dealership locations in California. Upon information and belief, Defendants maintain a single,
16 centralized Human Resources (“HR”) department at their corporate headquarters in San
17 Diego, California, which is responsible for the recruiting and hiring of new employees, and
18 communicating and implementing Defendants’ company-wide policies, including timekeeping
19 policies and meal and rest period policies, to employees throughout California.

20 40. In particular, Plaintiff and other non-party Aggrieved Employees, on
21 information and belief, received the same standardized documents and/or written policies.
22 Upon information and belief, the usage of standardized documents and/or written policies,
23 including new-hire documents, indicate that Defendants dictated policies at the corporate level
24 and implemented them company-wide, regardless of their employees’ assigned locations or
25 positions. Upon information and belief, Defendants set forth uniform policies and procedures
26 in several documents provided at an employee’s time of hire.

27 41. Upon information and belief, Defendants maintain a centralized Payroll
28 department at their corporate headquarters in San Diego, California, which processes payroll

1 for all non-exempt, hourly paid employees working for Defendants at their various locations
2 and jobsites in California, including Plaintiff and other non-party Aggrieved Employees.
3 Based upon information and belief, Defendants issue the same formatted wage statements to
4 all non-exempt, hourly paid employees in California, irrespective of their work locations.
5 Upon information and belief, Defendants process payroll for departing employees in the same
6 manner throughout the State of California, regardless of the manner in which each employee's
7 employment ends.

8 42. Defendants continue to employ non-exempt or hourly paid employees in
9 California.

10 43. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
12 and advisors knowledgeable about California labor and wage law, employment and personnel
13 practices, and about the requirements of California law.

14 44. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
15 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
16 were not recorded.

17 45. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
19 receive certain wages for overtime compensation and that they were not receiving certain
20 wages for overtime compensation.

21 46. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
23 be paid at a regular rate of pay, and corresponding overtime rates of pay, that included as
24 eligible income all income derived from commissions, incentive pay, nondiscretionary
25 bonuses, and/or other forms of compensation.

26 47. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 receive at least minimum wages for compensation and that they were not receiving at least

1 minimum wages for work that was required to be done off-the-clock. In violation of the
2 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
3 least minimum wages for work done off-the-clock.

4 48. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that they were obligated to separately compensate Plaintiff and/or other
6 non-party Aggrieved Employees for rest periods and other nonproductive time when paying
7 them on a piece-rate or commission basis at their regular rate of pay. In violation of
8 California law, Defendants failed to separately compensate Plaintiff and/or other non-party
9 Aggrieved Employees for rest periods and other nonproductive time.

10 49. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
13 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
14 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were
15 not provided with all meal periods or payment of one (1) additional hour of pay at their
16 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
17 period.

18 50. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
21 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
22 and permitted to take a compliant rest period. In violation of the California Labor Code,
23 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take
24 compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
25 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
26 they were not authorized and permitted to take a compliant rest period.

27 51. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 receive complete and accurate wage statements in accordance with California law. In
2 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
3 were not provided complete and accurate wage statements.

4 52. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that they had a duty to maintain accurate and complete payroll records in
6 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
7 and intentionally failed to do so.

8 53. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 timely payment of all wages earned upon termination of employment. In violation of the
11 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
12 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
13 compensation for rest periods and other nonproductive time, meal and rest period premiums,
14 and/or reporting time pay, within permissible time periods.

15 54. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 timely payment of wages during their employment. In violation of the California Labor Code,
18 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
19 including, but not limited to, overtime wages, minimum wages, compensation for rest periods
20 and other nonproductive time, meal and rest period premiums, and/or reporting time pay,
21 within permissible time periods.

22 55. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that other non-party Aggrieved Employees were entitled to the portion of
24 wages previously paid and subsequently unlawfully deducted by Defendants.

25 56. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that other non-party Aggrieved Employees were entitled to payment of
27 wages as designated by statute. In violation of the California Labor Code, Defendants secretly
28 paid other non-party Aggrieved Employees lower wages than required by statute while

1 purporting to pay them proper wages.

2 57. Plaintiff is informed and believes, and thereon alleges, that at all time herein
3 mentioned, Defendants knew or should have known that they had a duty to cover the costs and
4 expenses other non-party Aggrieved Employees incurred obtaining mandatory examinations
5 and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

6 58. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 be paid reporting time pay when they reported to work for their scheduled shift but were put to
9 work for less than half of the regular schedule. In violation of the California Labor Code,
10 Defendants did not pay Plaintiff and other non-party Aggrieved Employees all reporting time
11 pay due.

12 59. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 receive reimbursement for all business-related expenses and costs they incurred during the
15 course and scope of their employment and that they did not receive reimbursement of
16 applicable business-related expenses and costs incurred.

17 60. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants knew or should have known that they had a duty to compensate
19 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
20 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
21 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
22 that they were properly denied wages, all in order to increase Defendants' profits.

23 61. At all times herein set forth, PAGA provides that any provision of law under
24 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
25 assessed and collected by the LWDA for violations of the California Labor Code and
26 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
27 civil action brought on behalf of themselves and other current or former employees pursuant
28 to procedures outlined in California Labor Code section 2699.3.

1 62. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
2 person who was employed by the alleged violator and against whom one or more of the
3 alleged violations was committed.”

4 63. Plaintiff and other current and former employees of Defendants are “aggrieved
5 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
6 or former employees and one or more of the alleged violations were committed against them.

7 64. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
8 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
9 following requirements have been met:

- 10 (a) The aggrieved employee shall give written notice by online filing
11 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
12 to the employer of the specific provisions of the California Labor Code
13 alleged to have been violated, including the facts and theories to support
14 the alleged violations.
- 15 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
16 2699.3(a) and any employer response to that notice shall be
17 accompanied by a filing fee of seventy-five dollars (\$75).
- 18 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
19 employer and the aggrieved employee by certified mail that it does not
20 intend to investigate the alleged violation within sixty (60) calendar
21 days of the postmark date of the Employee’s Notice. Upon receipt of
22 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
23 five (65) calendar days of the postmark date of the Employee’s Notice,
24 the aggrieved employee may commence a civil action pursuant to
25 California Labor Code section 2699 to recover civil penalties in addition
26 to any other penalties to which the employee may be entitled.

27 65. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
28 through Plaintiff, may pursue a civil action arising under PAGA for violations of any

1 provision other than those listed in Section 2699.5 after the following requirements have been
2 met:

- 3 (a) The aggrieved employee or representative shall give written notice by
4 online filing to the LWDA and by certified mail to the employer of the
5 specific provisions of the California Labor Code alleged to have been
6 violated (other than those listed in Section 2699.5), including the facts
7 and theories to support the alleged violation.
- 8 (b) An aggrieved employee's notice filed with the LWDA pursuant to
9 2699.3(c) and any employer response to that notice shall be
10 accompanied by a filing fee of seventy-five dollars (\$75).
- 11 (c) The employer may cure the alleged violation within thirty-three (33)
12 calendar days of the postmark date of the notice. The employer shall
13 give written notice by certified mail within that period of time to the
14 aggrieved employee or representative and the agency if the alleged
15 violation is cured, including a description of actions taken, and no civil
16 action pursuant to Section 2699 may commence. If the alleged violation
17 is not cured within the 33-day period, the employee may commence a
18 civil action pursuant to Section 2699.

19 66. On September 14, 2020, Plaintiff provided written notice by online filing to the
20 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
21 Code alleged to have been violated, including facts and theories to support the alleged
22 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
23 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
24 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
25 Plaintiff PAGA Case Number LWDA-CM-806097-20. A true and correct copy of Plaintiff's
26 written notice to the LWDA and Defendants dated September 14, 2020, is attached hereto as
27 "Exhibit 1."

28 67. As of the filing date of this complaint, over 65 days have passed since Plaintiff

1 sent the LWDA Notice described above, and the LWDA has not responded that it intends to
2 investigate Plaintiff's claims, and Defendants have not cured the violations.

3 68. Thus, Plaintiff has satisfied the administrative prerequisites under California
4 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
5 violations of California Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a),
6 226.2, 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

7 69. Labor Code section 558(a) provides "[a]ny employer or other person acting on
8 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial Welfare
10 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
11 dollars (\$50) for each underpaid employee for each pay period for which the employee was
12 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
13 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
14 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
15 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
16 as a private attorney general, seeks assessment and collection of civil penalties under Labor
17 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
18 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
19 and the applicable IWC wage order. Plaintiff, acting in the public interest as a private
20 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
21 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
22 applicable IWC wage order.

23 70. Defendants, at all times relevant to this complaint, were employers or persons
24 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
25 Employees' rights by violating various sections of the California Labor Code as set forth
26 above.

27 71. As set forth below, Defendants have violated numerous provisions of both the
28 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage

1 Order.

2 72. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
3 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
4 private attorney general, seeks assessment and collection of civil penalties for himself, all
5 other non-party Aggrieved Employees, and the State of California against Defendants for
6 violations of California Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a),
7 226.2, 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

8 **FIRST CAUSE OF ACTION**

9 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

10 **(Against all Defendants)**

11 73. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 74. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
14 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
15 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 221,
16 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor
17 Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
18 penalties for violations of those Labor Code sections not found in section 2699.5, including
19 sections 226.2, 516, and 1182.12.

20 75. Defendants’ conduct, as alleged herein, violates numerous sections of the
21 California Labor Code, including, but not limited to, the following:

- 22 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
23 wage order for Defendants’ failure to compensate Plaintiff and other
24 non-party Aggrieved Employees with all required overtime pay and
25 failure to properly calculate the overtime rates paid to Plaintiff and other
26 non-party Aggrieved Employees, as set forth below;
- 27 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
28 applicable IWC wage order for Defendants’ failure to compensate

1 Plaintiff and other non-party Aggrieved Employees with at least
2 minimum wages for all hours worked as set forth below;

3 (c) Violation of Labor Code section 226.2 for Defendant's failure to
4 separately compensate Plaintiff and/or other non-party Aggrieved
5 Employees for rest periods at correct rates of pay and other
6 nonproductive time when paying them on a piece-rate or commission
7 basis, as alleged herein;

8 (d) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
9 applicable IWC wage order for Defendants' failure to provide Plaintiff
10 and other non-party Aggrieved Employees with meal periods, as set
11 forth below;

12 (e) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
13 IWC wage order for Defendants' failure to authorize and permit
14 Plaintiff and other non-party Aggrieved Employees to take rest periods,
15 as set forth below;

16 (f) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
17 wage order for failure to provide accurate and complete wage statements
18 to Plaintiff and other non-party Aggrieved Employees, as set forth
19 below;

20 (g) Violation of Labor Code sections 1174(d), 1198, and the applicable
21 IWC wage order for failure to maintain payroll records as set forth
22 below;

23 (h) Violation of Labor Code section 204 for failure to pay all earned wages
24 during employment as set forth below;

25 (i) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
26 earned wages upon termination as set forth below;

27 (j) Violation of Labor Code sections 221 and 224 for unlawfully deducting
28 a portion of wages previously paid to other non-party Aggrieved

Employees, as set forth below;

- (k) Violation of Labor Code section 223 for secretly paying other non-party Aggrieved Employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (l) Violation of Labor Code section 222.5 for failure to compensate other non-party Aggrieved Employees for mandatory physical examinations and/or drug testing as set forth below;
- (m) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when Plaintiff and other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below; and
- (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

76. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

77. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

78. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and

1 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
2 hours in a workweek.

3 79. The applicable IWC Wage Order further provides that Defendants are and were
4 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
5 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
6 An employee's regular rate of pay includes all remuneration for employment paid to, or on
7 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

8 80. California Labor Code section 510 codifies the right to overtime compensation
9 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
10 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
11 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
12 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
13 in a day on the seventh (7th) day of work.

14 81. During the relevant time period, Defendants willfully failed to pay all overtime
15 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
16 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
17 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
18 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
19 not recorded.

20 82. First, during the relevant period, Defendants had, and continue to have, a
21 company-wide policy and/or practice of strictly limiting the amount of overtime employees
22 could accrue. On information and belief, this limitation on overtime accrual was based on a
23 company-wide policy of staffing dealership locations strictly based on the labor hours or labor
24 budget set by corporate. This policy of limiting overtime, coupled with Defendants'
25 understaffing policy, as well as the assignment of heavy workloads and strict deadlines (*see*
26 *infra*), led Plaintiff and other non-party Aggrieved Employees to work off-the-clock before
27 and after their scheduled shift times in order to complete their assigned tasks.

28 83. As a result of this restriction on overtime accrual, Defendants forced Plaintiff

1 and other non-party Aggrieved Employees to perform work off-the-clock outside of their
2 scheduled shifts, such as preparing new cars and detailing used vehicles. Defendants
3 discouraged and impeded Plaintiff and other non-party Aggrieved Employees from recording
4 hours worked that were outside of their scheduled shifts, upon threat of discipline or verbal
5 reprimand for not completing their assignments while incurring unapproved overtime hours.
6 Alternatively, when Plaintiff and other non-party Aggrieved Employees did not clock out at
7 their designated shift end-times, on information and belief, Plaintiff and other non-party
8 Aggrieved Employees were subject to Defendants' supervisors falsifying their time records in
9 order to prevent employees from accruing additional overtime.

10 84. Thus, Plaintiff and other non-party Aggrieved Employees were required to
11 work off-the-clock performing tasks after their scheduled shifts, but were prevented from
12 accounting for and recording this time in Defendants' timekeeping system. For example, at
13 least once per week, Plaintiff was required to clock out at his designated shift end-time even
14 when he had additional assignments to complete for the day, and would work 2-4 hours after
15 he had clocked out, to complete detailing on all of the vehicles that were to be showcased for
16 sale the following week. Thus, Defendants failed to track all of this time spent working after
17 clocking out, and Plaintiff and other non-party Aggrieved Employees received no
18 compensation for this time.

19 85. Second, as stated, Defendants had, and continue to have, a company-wide
20 policy staffing their dealership locations strictly based on the labor hours or labor budget set
21 by the corporate office. Defendants' use of a labor budget resulted in chronic understaffing,
22 such that there were too few employees on duty to handle the heavy workload, which included
23 weekly deadlines for completing detailing on cars at the dealership. Because Defendants did
24 not employ or staff an adequate number of employees to meet their productivity expectations
25 and failed to provide employees with adequate meal period coverage, Plaintiff and other non-
26 party Aggrieved Employees were assigned heavy workloads, which Defendants knew or
27 should have known could only be met by working additional hours. Plaintiff and other non-
28 party Aggrieved Employees missed meal periods and/or had meal periods cut short or

1 interrupted in order to handle their workloads and their supervisors' demands.

2 86. Third, Defendants have, on a company-wide basis, failed to adhere to a
3 schedule of meal periods. This company-wide practice, coupled with the heavy workload and
4 pressure from Defendants to complete assigned tasks, impeded Plaintiff and other non-party
5 Aggrieved Employees from taking timely, compliant meal periods. Additionally, Plaintiff and
6 other non-party Aggrieved Employees would be required to respond to text messages and calls
7 on their personal cellular phones from supervisors and management during unpaid meal
8 periods. As a result, Plaintiff and other non-party Aggrieved Employees were not afforded
9 timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled
10 to receive meal periods. Further, on information and belief, because Defendants frowned
11 upon employees accruing meal period penalties, Defendants pressured Plaintiff and other non-
12 party Aggrieved Employees to clock out for meal periods and/or adjusted employee time
13 records to reflect compliant meal periods, regardless of whether they had received a compliant
14 meal period or not, in order to strictly limit meal penalties that Defendants would otherwise
15 owe. Plaintiff was required to clock out within the first five (5) hours of his shift but would
16 work through his meal periods, in order to complete his detailing assignments. Thus, Plaintiff
17 and other non-party Aggrieved Employees performed work during meal periods for which
18 they were not paid. Defendants did not pay Plaintiff and other non-party Aggrieved
19 Employees for the time they continued to perform tasks during meal periods.

20 87. Defendants knew or should have known that, as a result of these company-wide
21 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
22 their assigned duties off-the-clock and during meal periods, and were suffered or permitted to
23 perform work for which they were not paid. Because Plaintiff and other non-party Aggrieved
24 Employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week
25 or more, some of this off-the-clock work qualified for overtime premium pay. Therefore,
26 Plaintiff and other non-party Aggrieved Employees were not paid overtime wages for all of
27 the overtime hours they actually worked.

28 88. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved

1 Employees the correct overtime rate for the recorded overtime hours that they generated. In
2 addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved
3 Employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of
4 remuneration. However, in violation of the California Labor Code, Defendants failed to
5 incorporate all compensation, including commissions, incentive pay, nondiscretionary
6 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for
7 purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and
8 other non-party Aggrieved Employees worked overtime and received these other forms of
9 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
10 required.

11 89. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
12 the balance of overtime compensation as required by California law, violates the provisions of
13 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
14 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
15 2699(a), (f), and (g).

16 **FAILURE TO PAY MINIMUM WAGES**

17 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

18 90. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
19 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
20 to be paid to employees, and the payment of a wage less than the minimum so fixed is
21 unlawful. Compensable work time is defined by the applicable wage order as "the time
22 during which an employee is subject to the control of an employer, and includes all the time
23 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
24 Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

25 91. First, during the relevant time period, Defendants implemented a company-
26 wide compensation plan for commissioned employees that systematically failed to compensate
27 Plaintiff and/or other non-party Aggrieved Employees for all hours worked. As previously
28 stated, Defendants did not accurately record Plaintiff's and/or other non-party Aggrieved

1 Employees' actual hours worked and/or did not pay them for all hours that they worked.
2 Specifically, Defendants required Plaintiff and/or other non-party Aggrieved Employees paid
3 on a commission basis to perform other non-commission producing activities without
4 compensation. Thus, Defendants failed to record the time spent by Plaintiff and/or other non-
5 party Aggrieved Employees on nonproductive tasks (such as cleaning the dealership, waiting
6 for customers, and attending meetings), and, as a result, failed to pay them for all hours
7 worked. Defendants also failed to separately pay other non-party Aggrieved Employees for
8 rest periods.

9 92. Second, as stated above, due to Defendants' restrictions on overtime accrual,
10 Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees
11 for actual hours worked after scheduled shifts, because these hours were not accurately
12 recorded. Additionally, as set forth above, due to Defendants' uniform practices of utilizing
13 labor budgets, resultant understaffing, assignment of heavy workloads, failure to adhere to a
14 schedule of meal periods, and subsequent lack of meal period coverage, Plaintiff and other
15 non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to
16 which they were entitled and were required to work off-the-clock. In addition, Defendants
17 systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual
18 hours worked during unpaid meal periods because these hours were not always correctly
19 recorded. As set forth above, Defendants' policies required Plaintiff and other non-party
20 Aggrieved Employees to clock out for meal periods, even though Plaintiff and other non-party
21 Aggrieved Employees performed additional duties and were subject to Defendants' control
22 during this time.

23 93. Third, Defendants maintained and implemented a company-wide policy of
24 requiring all employees to travel to a medical facility on their own time and using their own
25 personal vehicles to undergo mandatory drug testing and/or physical examinations. At all
26 times, Defendants were in control of scheduling the date and time for the testing and/or
27 physical examinations, selecting the provider or facility where the testing and/or physical
28 examinations were to take place, and determining the scope of the testing and/or physical

1 examinations. Defendants gave other non-party Aggrieved Employees strict instructions to
2 obtain physical examinations and/or drug testing, and other non-party Aggrieved Employees
3 underwent the examinations and/or testing for the sole benefit of Defendants. Other non-party
4 Aggrieved Employees were required to travel in their own personal vehicles or obtain
5 alternate transportation and spend time undergoing Defendants' mandatory physical
6 examinations and/or drug tests. However, Defendants did not compensate other non-party
7 Aggrieved Employees for the time they spent traveling to and undergoing the mandatory drug
8 testing and/or physical examinations.

9 94. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
10 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
11 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
12 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
13 1194, 1197, and 1198.

14 95. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
15 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
16 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
17 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

18 **FAILURE TO COMPENSATE FOR**
19 **REST PERIODS & OTHER NONPRODUCTIVE TIME**
20 **VIOLATION OF LABOR CODE SECTION 226.2**

21 96. At all relevant times herein, California Labor Code section 226.2 requires
22 employers that utilize a piece-rate compensation plan to separately compensate employees for
23 rest and recovery periods and other nonproductive time at or above specified minimum hourly
24 rates. Labor Code section 226.2 further requires that employers provide employees
25 compensated on a piece-rate basis with itemized statements stating the total hours of
26 compensable rest and recovery periods, the rate of compensation, and the gross wages paid for
27 those periods during the pay period, and the total hours of other nonproductive time, as
28 specified, the rate of compensation, and the gross wages paid for that time during the pay

1 period.

2 97. Under California law, employers who pay employees on a commission basis
3 must separately compensate them for rest and recovery periods and other nonproductive time
4 at or above specified minimum hourly rates. *Vaquero v. Stoneledge Furniture, LLC*, 9
5 Cal.App.5th 98, 108 (2017).

6 98. During the relevant time period, Defendants adopted a company-wide
7 compensation plan whereby they have paid Plaintiff and/or other non-party Aggrieved
8 Employees on a commission basis for the detailing, repairing, servicing, and/or sale of
9 vehicles. *See supra*. On information and belief, Defendants did not accurately record their
10 actual hours worked and/or did not pay them for all hours that they worked. Thus, Defendants
11 failed to separately compensate Plaintiff and/or other non-party Aggrieved Employees for all
12 nonproductive time, including, but not limited to, such non-selling activities as cleaning the
13 dealership, waiting for customers, and attending meetings. In addition, Defendants had, and
14 continue to have, a company-wide policy of failing to separately pay other non-party
15 Aggrieved Employees for rest periods as required by law. During the relevant time period, on
16 information and belief, Defendants have not separately paid other non-party Aggrieved
17 Employees paid on a commissions-only basis for rest periods.

18 99. On information and belief, Defendants also failed to provide Plaintiff and/or
19 other non-party Aggrieved Employees with itemized statements listing the total hours of all
20 nonproductive time and total hours of compensable rest periods, and other required details
21 regarding payment for nonproductive time and rest periods. Defendants further did not
22 provide other non-party Aggrieved Employees with itemized statements showing the rates at
23 which they were paid for compensable nonproductive time and rest periods.

24 100. Defendants' failure to separately compensate Plaintiff and/or other non-party
25 Aggrieved Employees for rest periods and other nonproductive time at or above specified
26 minimum hourly rates, as well as Defendants' failure to provide Plaintiff and/or other non-
27 party Aggrieved Employees with the requisite itemized statements, violates Labor Code
28 section 226.2. Plaintiff and/or other non-party Aggrieved Employees are therefore entitled to

1 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

2 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

3 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

4 101. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
5 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff and
6 non-party Aggrieved Employees' employment by Defendants.

7 102. At all relevant times herein set forth, California Labor Code section 512(a)
8 provides that an employer may not require, cause, or permit an employee to work for a period
9 of more than five (5) hours per day without providing the employee with a meal period of not
10 less than thirty (30) minutes, except that if the total work period per day of the employee is
11 not more than six (6) hours, the meal period may be waived by mutual consent of both the
12 employer and the employee. Under California law, first meal periods must start after no more
13 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
14 2012).

15 103. At all relevant times herein set forth, California Labor Code section 226.7,
16 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
17 meal period mandated by an applicable order of the IWC.

18 104. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
19 and the applicable IWC Wage Order also require employers to provide a second meal period
20 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
21 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
22 total hours worked is no more than twelve (12) hours, the second meal period may be waived
23 by mutual consent of the employer and the employee only if the first meal period was not
24 waived.

25 105. As stated, Defendants have, and continue to have, a company-wide policy
26 and/or practice of understaffing pursuant to their labor budget practices, while simultaneously
27 assigning heavy workloads and discouraging employees from incurring overtime, which
28 resulted in a lack of meal period coverage and prevented Plaintiff and other non-party

1 Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were
2 entitled. Additionally, Defendants failed to adhere to a schedule of meal periods, resulting in
3 Plaintiff and other non-party Aggrieved Employees having their meal periods interrupted to
4 return to work or waiting extended periods of time before taking meal periods, due to the
5 workload and pressure to weekly deadlines for finishing detailing on vehicles at the
6 dealership, without incurring overtime. Also, Plaintiff and other non-party Aggrieved
7 Employees were required to respond to calls on their personal cellular phones from
8 supervisors and management during unpaid meal periods. These policies and practices
9 discouraged and impeded Plaintiff and other non-party Aggrieved Employees from taking
10 compliant meal periods.

11 106. As a result of Defendants' practices and/or policies, Plaintiff and other non-
12 party Aggrieved Employees were forced to work in excess of five (5) hours before taking a
13 meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal
14 periods altogether. For example, approximately 1-2 times per week, Plaintiff worked in
15 excess of six (6) or seven (7) hours before taking a meal period, if he took one at all.
16 Moreover, Plaintiff's meal periods were interrupted or shortened once or twice per week in
17 order to respond to his supervisors' requests to detail a car that had just been sold to a
18 customer.

19 107. Additionally, as stated, because Defendants frowned upon employees accruing
20 meal period penalties, upon information and belief, Defendants' management would pressure
21 employees to clock out for meal periods and continue working in order to strictly limit meal
22 penalties that would need to be paid by Defendants. For example, Plaintiff was pressured by
23 his supervisors to clock out and continue working during his meal periods in order to complete
24 this workload, upon threat of verbal discipline if he incurred meal penalties and failed to finish
25 his assignments. Plaintiff would sometimes clock out within the first five (5) hours of his
26 shift but continue performing tasks throughout his entire meal period in order to complete his
27 work assignments; in all, Plaintiff would miss his meal periods 3-4 times per week. Plaintiff
28 and other non-party Aggrieved Employees worked through meal periods or had their meal

1 periods interrupted, because there were not enough employees on duty to handle the workload.

2 108. Moreover, Defendants did not schedule second meal periods and had no policy
3 for permitting Plaintiff and other non-party Aggrieved Employees to take second 30-minute
4 meal periods on days that they worked in excess of ten (10) hours in one day. As a result,
5 Plaintiff and other non-party Aggrieved Employees worked shifts in excess of ten (10) hours
6 or more hours per day without receiving an uninterrupted second 30-minute meal period.
7 Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on
8 days that they were entitled to meal periods and were not relieved of all duties.

9 109. Defendants knew or should have known that as a result of their company-wide
10 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not
11 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
12 knew or should have known that they did not pay Plaintiff and other non-party Aggrieved
13 Employees meal period premium wages when meal periods were missed, late, short, and/or
14 interrupted.

15 110. Defendants also have engaged in a company-wide practice and/or policy of not
16 paying meal period premiums owed when compliant meal periods are not provided. Because
17 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
18 received premium pay for missed, interrupted, or late meal periods. Alternatively, to the
19 extent that Defendants did pay meal period premium wages to Plaintiff and other non-party
20 Aggrieved Employees, they did so at the incorrect rates. Because Defendants did not properly
21 calculate Plaintiff's and other non-party Aggrieved Employees' regular rates of pay by
22 including all remunerations, such as commissions, incentive pay, and/or nondiscretionary
23 bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and
24 resulted in an underpayment of meal period premium wages.

25 111. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
26 Employees compliant meal periods and failed to pay the full meal period premiums due.
27 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
28 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are

1 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
2 (g).

3 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

4 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

5 112. At all relevant times herein set forth, the applicable IWC Wage Order and
6 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other
7 non-party Aggrieved Employees' employment by Defendants.

8 113. At all relevant times, the applicable IWC Wage Order provides that "[e]very
9 employer shall authorize and permit all employees to take rest periods, which insofar as
10 practicable shall be in the middle of each work period" and that the "rest period time shall be
11 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
12 hours or major fraction thereof" unless the total daily work time is less than three and one-half
13 (3½) hours.

14 114. At all relevant times, California Labor Code section 226.7 provides that no
15 employer shall require an employee to work during any rest period mandated by an applicable
16 order of the California IWC. To comply with its obligation to authorize and permit rest
17 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
18 employer must "relinquish any control over how employees spend their break time, and
19 relieve their employees of all duties—including the obligation that an employee remain on
20 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
21 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

22 115. Pursuant to the applicable IWC Wage Order and California Labor Code section
23 226.7, Plaintiff and other non-party Aggrieved Employees are entitled to recover from
24 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
25 required rest period was not authorized and permitted.

26 116. During the relevant time period, Defendants regularly failed to authorize and
27 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
28 period per each four (4) hour period worked or major fraction thereof. As with meal periods,

1 Defendants' company-wide policies and practices, including understaffing and assignment of
2 heavy workloads, prevented Plaintiff and other non-party Aggrieved Employees from being
3 relieved of all duty to take compliant rest periods. Defendants also failed to schedule rest
4 periods at all, which further led to Plaintiff and other non-party Aggrieved Employees not
5 being authorized and permitted to take rest periods.

6 117. Furthermore, upon information and belief, during the relevant time period,
7 Defendants maintained and implemented a company-wide practice and/or policy requiring that
8 Plaintiff and other non-party Aggrieved Employees remain on Defendants' premises during
9 their rest periods. Because Plaintiff and other non-party Aggrieved Employees were restricted
10 from leaving the premises during rest periods, they were denied the ability to use their rest
11 periods freely for their own purposes. Thus, Defendants effectively maintained control over
12 Plaintiff and other non-party Aggrieved Employees during rest periods, and as result of this
13 rest period policy, Defendants did not relinquish control over Plaintiff and other non-party
14 Aggrieved Employees during rest periods.

15 118. As a result of Defendants' practices and policies, Plaintiff and other non-party
16 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
17 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
18 entitled. For example, throughout his employment, Plaintiff missed his rest periods due to
19 Defendants' assignment of heavy workloads, which made it impossible to take rest periods
20 and also complete his work duties in the allotted time.

21 119. Defendants also have engaged in a company-wide practice and/or policy of not
22 paying all rest period premiums owed when compliant rest periods are not authorized or
23 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
24 Employees have not received premium pay for all missed rest periods. Alternatively, to the
25 extent that Defendants did pay rest period premium wages to Plaintiff and other non-party
26 Aggrieved Employees, they did so at the incorrect rates. Because Defendants did not properly
27 calculate Plaintiff's and other non-party Aggrieved Employees' regular rates of pay by
28 including all remunerations, such as commissions, incentive pay, and/or nondiscretionary

bonuses, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

120. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

**FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS
VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

121. At all relevant times herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

122. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

123. First, because Defendants did not record the time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock, deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), and/or failed to provide itemized statements listing the total hours of all nonproductive time and other required details regarding payment for nonproductive time, Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in compliance with section 226(a)(1) and

1 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours
2 worked by Plaintiff and other non-party Aggrieved Employees in violation of section
3 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period
4 and corresponding accurate number of work hours worked at each hourly rate in violation of
5 section 226(a)(9).

6 124. Second, because Defendants did not calculate Plaintiff's and other non-party
7 Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages,
8 Defendants did not list the correct amount of gross wages earned by Plaintiff and other non-
9 party Aggrieved Employees in compliance with section 226(a)(1) and did not list the correct
10 amount of net wages earned by Plaintiff and other non-party Aggrieved Employees in
11 violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly
12 rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of
13 pay for premium wages, in violation of section 226(a)(9).

14 125. Third, and separate from these violations, Defendants issued uniform wage
15 statements to Plaintiff and other non-party Aggrieved Employees that failed to correctly list
16 the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of
17 section 226(a)(8) is to provide California employees with transparency as to the true identity
18 of their employer, to allow the employee to contact their employer during employment in the
19 future for various reasons, including filing an administrative claim, judicial claim, or other
20 action to seek relief against their employer, to obtain unemployment benefits, etc. Plaintiff's
21 and other non-party Aggrieved Employees' wage statements incorrectly list the employer's
22 address as 3615 Lemon Grove Ave., Lemon Grove, CA 91945, but, according to the
23 California Secretary of State's website, the entity "MOSSY AUTOMOTIVE GROUP
24 LEMON GROVE, INC." is listed at a different address, 4555 Mission Bay Drive, San Diego,
25 CA 92109.

26 126. The wage statement deficiencies also include, without limitation, failing to list
27 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
28 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and

1 only the last four digits of his or her social security number or an employee identification
2 number other than a social security number; failing to list the name of the legal entity that is
3 the employer; failing to list the inclusive dates of the period for which aggrieved employees
4 were paid; and/or failing to state all hours worked as a result of not recording or stating hours
5 worked off-the-clock.

6 127. California Labor Code section 1198 provides that the maximum hours of work
7 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
8 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
9 employment of any employees for longer hours than those fixed by the order or under
10 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
11 Wage Order, employers are required to keep accurate time records showing when the
12 employee begins and ends each work period and meal period. During the relevant time
13 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
14 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
15 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
16 and/or policy of falsifying Plaintiff’s and other non-party Aggrieved Employees’ time records
17 by deducting meal periods or recording that compliant meal periods were taken regardless of
18 if or when meal periods were actually taken, and thereby failed to keep accurate records of
19 meal start and end times for Plaintiff and other non-party Aggrieved Employees.
20 Furthermore, in light of Defendants’ failure to provide Plaintiff and other non-party Aggrieved
21 Employees with second 30-minute meal periods to which they were entitled, Defendants kept
22 no records of meal start and end times for second meal periods.

23 128. California Labor Code section 1174(d) provides that “[e]very person employing
24 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
25 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
26 plants or establishments at which employees are employed, payroll records showing the hours
27 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
28 applicable piece rate paid to, employees employed at the respective plants or

1 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
2 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
3 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
4 as a result of failing to record the off-the-clock hours that they worked.

5 129. Because Defendants’ violations of 226(a) and 1174(d) were committed against
6 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
7 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
8 1174.5, and/or 2699(a), (f), and (g).

9 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

10 **VIOLATION OF LABOR CODE SECTION 204**

11 130. At all relevant times herein set forth, California Labor Code section 204
12 requires that all wages earned by any person in any employment between the 1st and the 15th
13 days, inclusive, of any calendar month, other than those wages due upon termination of an
14 employee, are due and payable between the 16th and the 26th day of the month during which
15 the labor was performed. Labor Code section 204 further provides that all wages earned by
16 any person in any employment between the 16th and the last day, inclusive, of any calendar
17 month, other than those wages due upon termination of an employee, are due and payable
18 between the 1st and the 10th day of the following month.

19 131. At all relevant times herein, California Labor Code section 204 also requires
20 that all wages earned for labor in excess of the normal work period shall be paid no later than
21 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
22 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
23 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
24 more than seven (7) calendar days following the close of the payroll period.

25 132. During the relevant time period, Defendants willfully failed to pay Plaintiff and
26 other non-party Aggrieved Employees all wages due to them within any time period specified
27 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
28 wages, compensation for rest periods and other nonproductive time, meal and rest period

1 premium wages, and/or reporting time pay.

2 133. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
3 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

4 **FAILURE TO PAY WAGES UPON TERMINATION**

5 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

6 134. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
7 that if an employer discharges an employee, the wages earned and unpaid at the time of
8 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
9 her employment, his or her wages shall become due and payable not later than seventy-two
10 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
11 his or her intention to quit, in which case the employee is entitled to his or her wages at the
12 time of quitting.

13 135. On information and belief, Defendants had a company-wide practice or policy
14 of paying departing employees their final wages on the next regular pay cycle, instead of
15 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
16 on or about February 8, 2020, Plaintiff notified Defendants of his intention to quit effective
17 February 21, 2020. However, on his last day of work, Defendants only provided him with
18 part of his earned wages on February 21, 2020. On information and belief, Plaintiff did not
19 receive all of his earned commissions and/or bonus payments, which were due and payable
20 immediately on his last day of work, until on or about February 27, 2020. Thus, although
21 Plaintiff provided Defendants with advance notice of his intention to quit, Defendants failed to
22 pay Plaintiff all of his final wages at the time of quitting, in violation of Labor Code section
23 202.

24 136. Additionally, Defendants willfully failed to pay Plaintiff and other non-party
25 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid
26 wages set forth above, including but not limited to, overtime wages, minimum wages,
27 compensation for rest periods and other nonproductive time, meal and rest period premium
28 wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72)

1 hours of their leaving Defendants' employ.

2 137. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
3 who are no longer employed by Defendants their wages earned and unpaid at the time of
4 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
5 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
6 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
7 2699(a), (f), and (g).

8 **COLLECTING OR RECEIVING WAGES ALREADY PAID**

9 **VIOLATION OF LABOR CODE SECTION 221 AND 224**

10 138. At all times relevant herein, California Labor Code section 221 provides that it
11 shall be unlawful for any employer to collect or receive from an employee any part of wages
12 theretofore paid by said employer to said employee. California Labor Code section 224 also
13 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
14 deduction is expressly authorized in writing by the employee."

15 139. During the relevant time period, Defendants unlawfully deducted a portion of
16 wages previously paid to other non-party Aggrieved Employees in violation of California
17 Labor Code section 221. On information and belief, Defendants systematically, and a
18 company-wide basis, maintained a compensation plan that improperly deducted wages from
19 other non-party Aggrieved Employees' wages. Defendants had a company-wide policy of
20 allowing adjustments to be made to employee advances and/or wages, and would deduct
21 commissions or incentives earned from employees' wages after repair orders are marked
22 "closed."¹ Advances against future earned wages were "subject to chargeback upon audit or
23 any adjustment by the Dealership, Manufacturer[,] and/or warranty provider." Advances
24 and/or wages could be adjusted due to reductions in price, returns by customers or
25 manufacturer or warranty provider within the time frame for returns, audit adjustments, and/or

26 ¹ Per Mossy Automotive Technician Compensation Program, effective date Jan. 1,
27 2020: "A Repair Order is not 'closed' until the vehicle has been delivered to the customer and
28 the Dealership has been paid in full on the transaction and all related paperwork is properly
completed and approved for payment by the Customer, Manufacturer and/or warranty
provider. . . ."

1 customer goodwill, among other reasons. These deductions were not expressly authorized in
2 writing by other non-party Aggrieved Employees. Thus, Defendants' policy of deducting
3 these payments from other non-party Aggrieved Employees' wages constitutes an unlawful
4 deduction of wages in violation of California Labor Code sections 221 and 224.

5 140. Defendants' conduct as alleged herein violates California Labor Code sections
6 221 and 224. Other non-party Aggrieved Employees are therefore entitled to recover civil
7 penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

8 **SECRET PAYMENT OF A LOWER WAGE**

9 **VIOLATION OF LABOR CODE SECTION 223**

10 141. At all times, California Labor Code section 223 makes it unlawful for an
11 employer to secretly pay wages lower than required by statute while purporting to pay legal
12 wages.

13 142. During the relevant time period, as stated, Defendants implemented a policy of
14 failing to pay for rest periods and other nonproductive time and deducting commission
15 chargebacks or incentive payments from employees' wages, which, on information and belief,
16 resulted in the payment of less than statutorily required wages to other non-party Aggrieved
17 Employees. In doing so, Defendants acted with the intent to deprive other non-party
18 Aggrieved Employees of statutory wages, including, but not limited to, overtime wages,
19 minimum wages, and compensation for rest periods and other nonproductive time, to which
20 they were entitled to under California law. Thus, Defendants paid other non-party Aggrieved
21 Employees lower wages than those they were entitled to while purporting that other non-party
22 Aggrieved Employees were properly paid.

23 143. Defendants' failure to pay other non-party Aggrieved Employees the correct
24 designated wage, while purporting to pay legal wages, is a violation of California Labor Code
25 section 223. Other non-party Aggrieved Employees are therefore entitled to recover civil
26 penalties pursuant to sections 225.5 and/or 2699(a), (f), and (g).

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1 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**

2 **VIOLATION OF LABOR CODE SECTION 222.5**

3 144. At all relevant times herein, California Labor Code section 222.5 requires
4 employers to pay for the costs an employee incurs for obtaining any required medical or
5 physical examination.

6 145. During the relevant time period, Defendants implemented, on a company-wide
7 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo
8 mandatory drug tests and/or physical examinations, but required them to do so at their own
9 expense. As stated, Defendants had a company-wide policy requiring that other non-party
10 Aggrieved Employees travel to a specified medical facility on their own time and use their
11 own means of transportation to undergo drug testing and/or physical examinations. At all
12 times, Defendants were in control of scheduling the date and time for the drug testing and/or
13 physical examinations, selecting the provider/facility where the drug testing and/or physical
14 examinations were to take place, and determining the scope of the drug test and/or physical
15 examinations.

16 146. However, Defendants did not compensate other non-party Aggrieved
17 Employees for the time they spent traveling to and from their drug tests and/or physical
18 examinations, or for the time they spent undergoing the testing and/or examinations, or
19 reimburse them for the travel expenses they incurred getting to and from the medical facilities.
20 Defendants' policy and/or practice of not paying for all costs other non-party Aggrieved
21 Employees incurred obtaining mandatory drug tests and/or physical examinations tests is in
22 violation of California Labor Code section 222.5.

23 147. Other non-party Aggrieved Employees are therefore entitled to recover civil
24 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

25 **FAILURE TO PAY REPORTING TIME PAY**

26 **VIOLATION OF LABOR CODE SECTION 1198**

27 148. California Labor Code section 1198 makes it illegal to employ an employee
28 under conditions of labor that are prohibited by the applicable wage order. California Labor

1 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
2 shall be the . . . standard conditions of labor for employees. The employment of any employee
3 . . . under conditions of labor prohibited by the order is unlawful.”

4 149. California Code of Regulations, Title 8, section 11070(5)(A) provides that
5 “[e]ach workday an employee is required to report for work and does report, but is not put to
6 work or is furnished less than half said employee’s usual or scheduled day’s work, the
7 employee shall be paid for half the usual or scheduled day’s work, but in no event for less
8 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which
9 shall not be less than the minimum wage.” The “primary purpose of the reporting time
10 regulation” is “to guarantee at least partial compensation for employees who report to work
11 expecting to work a specified number of hours, and who are deprived of that amount because
12 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
13 *Cellular*, 209 Cal. App. 4th 556 (2012).

14 150. Upon information and belief, Defendants violated California Labor Code
15 section 1198 and California Code of Regulations, Title 8, section 11070(5), because
16 Defendants failed to pay Plaintiff and other non-party Aggrieved Employees reporting time
17 pay when they reported to work for their scheduled shift but were put to work for less than
18 half of the regular schedule.

19 151. Defendants had a company-wide practice of sending Plaintiff and other non-
20 party Aggrieved Employees home early from their shifts, including before they had worked at
21 least half of their regular shift, but would not pay Plaintiff and other non-party Aggrieved
22 Employees for half of their scheduled shift. For example, 2-3 times per month, Plaintiff was
23 sent home an hour into his shift because business was slow and no cars needed detailing.
24 Although Plaintiff and other non-party Aggrieved Employees would report to work based on
25 the schedule that Defendants provided to them, Defendants would send them home before
26 they had worked at least half of their scheduled shifts without giving them reporting time pay.
27 Accordingly, Plaintiff and other non-party Aggrieved Employees were not properly
28 compensated with reporting time pay in violation of California Labor Code section 1198.

152. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

153. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: "[w]hen the employer requires the use of tools or equipment or they are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft."

154. First, during the relevant time period, Defendants had a company-wide policy of requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal cellular phones and/or cellular data to carry out their job duties, but Defendants failed to fully reimburse them for the costs of their work-related cellular phone expenses. For example, Plaintiff and other non-party Aggrieved Employees were required to use their personal cellular phones to complete their work-related tasks, such as communicating with supervisors regarding work-related matters. Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their personal cellular phones to carry out their work-related responsibilities, Defendants failed to fully reimburse them for this cost.

155. Second, Defendants had a company-wide policy of requiring other non-party Aggrieved Employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses. At all times, Defendants were control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or

1 physical examinations were to take place, and determining the scope of the testing and/or
2 physical examinations. Defendants gave other non-party Aggrieved Employees strict
3 instructions to obtain drug testing and/or physical examinations, and other non-party
4 Aggrieved Employees underwent the examinations and/or testing for the sole benefit of
5 Defendants. Although Defendants required other non-party Aggrieved Employees to use their
6 own vehicles or obtain alternate transportation to undergo physical examinations and/or drug
7 testing, Defendants never reimbursed them for their travel expenses.

8 156. Third, Defendants, on a company-wide basis, required Plaintiff and other non-
9 party Aggrieved Employees to purchase basic tools and supplies that were necessary for
10 completion of assigned tasks. For example, Plaintiff was required to buy a buffer, air blower,
11 cleaning pads, and other tools that were needed in order to perform his work duties. The cost
12 of these tools and supplies totaled \$400-\$500 over the course of Plaintiff's employment.
13 Defendants failed to provide basic tools and supplies to Plaintiff and other non-party
14 Aggrieved Employees, forcing them to procure their own, and failed to reimburse Plaintiff and
15 other non-party Aggrieved Employees for the costs of these tools and supplies.

16 157. Fourth, on a company-wide basis, Defendants failed to provide Plaintiff and
17 other non-party Aggrieved Employees with uniform cleaning services or reimburse them for
18 cleaning expenses incurred. For example, due to the nature of their work, Plaintiff's and other
19 non-party Aggrieved Employees' uniforms would become stained with chemicals and/or
20 acquire an unpleasant odor such that they were unable to mix these clothes in with other
21 laundry. As a result, they had to wash their uniform items separately from any other items,
22 thus incurring additional laundry expenses.

23 158. Defendants could have provided Plaintiff and other non-party Aggrieved
24 Employees with the actual tools for use on the job, such as company phones, company
25 vehicles, detailing tools and supplies, and a laundering service for uniforms. Or, Defendants
26 could have reimbursed employees for their cellular phone, mileage, travel, tools and supplies,
27 and laundry expenses. Instead, Defendants passed these operating costs off onto Plaintiff and
28 other non-party Aggrieved Employees.

159. Defendants' company-wide policy and/or practice of passing on their operating costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other non-party Aggrieved Employees for necessary business-related expenses and costs.

160. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.2 (by failing to separately compensate for rest periods and other nonproductive time); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than required by statute); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical examinations); 1198 (by failing to provide reporting time pay); and 2802 (by failing to reimburse business expenses).

3. For civil penalties, pursuant to California Labor Code sections 210, 225.5,

226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a), 226.2, 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a), 226.2, 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

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

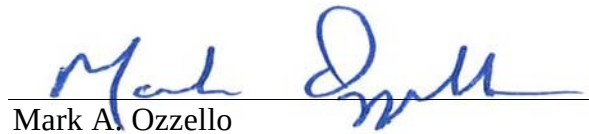
6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: November 20, 2020

Respectfully submitted,

Capstone Law APC

By:



Mark A. Ozzello
Brandon K. Brouillette
Joseph Hakakian

Attorneys for Plaintiff Oscar Santos Barrera

EXHIBIT 1



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September 14, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Oscar Santos Barrera v. Mossy Honda Lemon Grove, et al.*

Dear PAGA Administrator:

This office represents Oscar Santos Barrera in connection with his claims under the California Labor Code. Mr. Santos Barrera was an employee of MOSSY AUTOMOTIVE GROUP LEMON GROVE INC.; MAG WEST MOSSY FORD II, LP; MAG WEST MOSSY HONDA II, LP; MAG WEST MOSSY NISSAN II, LP; MAG WEST MOSSY TOYOTA II, LP; MAG WEST MOSSY VOLKSWAGEN II, LP; MOSSY AUTOMOTIVE GROUP, INC.; MOSSY AUTOMOTIVE GROUP II, LLC; MOSSY AUTOMOTIVE GROUP EL CAJON INC.; MOSSY AUTO IMPORTS; MOSSY FORD, INC.; MOSSY HOLDING COMPANY, INC.; MOSSY NISSAN, INC.; MOSSY NISSAN CHULA VISTA; MOSSY NISSAN EL CAJON; MOSSY NISSAN ESCONDIDO; MOSSY NISSAN KEARNY MESA; MOSSY NISSAN NATIONAL CITY; MOSSY NISSAN OCEANSIDE; and/or MOSSY NISSAN POWAY. For the purpose of this letter, Mr. Santos Barrera collectively refers to these entities as "MOSSY."

The employers may be contacted directly at the addresses below:

MOSSY AUTOMOTIVE GROUP LEMON
GROVE INC.
4555 MISSION BAY DR
SAN DIEGO CA 92109

MAG WEST MOSSY FORD II, LP
4625 BRINELL ST
SAN DIEGO CA 92111

MAG WEST MOSSY HONDA II, LP
4625 BRINELL ST
SAN DIEGO CA 92111

MAG WEST MOSSY NISSAN II, LP
4625 BRINELL ST
SAN DIEGO CA 92111

MAG WEST MOSSY TOYOTA II, LP
4625 BRINELL ST
SAN DIEGO CA 92111

MAG WEST MOSSY VOLKSWAGEN II, LP
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY AUTOMOTIVE GROUP, INC.
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY AUTOMOTIVE GROUP II, LLC
1695 AUTO PARK WAY SOUTH
ESCONDIDO CA 92029

MOSSY AUTOMOTIVE GROUP II, LLC
4555 MISSION BAY DR
SAN DIEGO CA 92109

MOSSY AUTOMOTIVE GROUP EL CAJON INC.
4625 BRINELL STREET
SAN DIEGO CA 92111

MOSSY AUTO IMPORTS
2700 NATIONAL CITY BLVD
NATIONAL CITY CA 91950

MOSSY FORD, INC.
4625 BRINELL STREET
SAN DIEGO CA 92111

MOSSY HOLDING COMPANY, INC.
4555 MISSION BAY DR
SAN DIEGO CA 92109

MOSSY NISSAN, INC.
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY NISSAN CHULA VISTA
4625 BRINELL STREET
SAN DIEGO CA 92111

MOSSY NISSAN EL CAJON
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY NISSAN ESCONDIDO
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY NISSAN KEARNY MESA
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY NISSAN NATIONAL CITY
4625 BRINELL ST
SAN DIEGO CA 92111

MOSSY NISSAN OCEANSIDE
4625 BRINELL STREET
SAN DIEGO CA 92111

MOSSY NISSAN POWAY
4625 BRINELL STREET
SAN DIEGO CA 92111

Mr. Santos Barrera intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Santos Barrera seeks relief on behalf of himself, the State of California, and other persons who are or were employed by MOSSY as a non-exempt, hourly paid or commissions-paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

MOSSY employed Mr. Santos Barrera as a non-exempt, hourly paid employee from approximately March 2017 to February 2020. Mr. Santos Barrera worked for MOSSY as a Detail Technician/Automotive Service Technician at the MOSSY Honda dealership located in Lemon Grove, California. During his employment, Mr. Santos Barrera typically worked eight (8) hours or more per day, five (5) days per week, from 7:00 a.m. to 4:00 p.m. or later. At the time his employment ended, Mr. Santos Barrera was compensated on a hourly basis, plus commissions or bonuses based on productivity ("hourly production bonus"). His job duties included, without limitation, preparing new vehicles for customers, detailing used cars for the lot, mixing and producing cleaning chemicals, and re-stocking the car wash.

MOSSY committed one or more of the following Labor Code violations against Mr. Santos Barrera, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

MOSSY’s Company-Wide and Uniform Payroll and HR Practices

MOSSY AUTOMOTIVE GROUP LEMON GROVE INC.; MOSSY AUTOMOTIVE GROUP, INC.; MOSSY AUTOMOTIVE GROUP EL CAJON INC.; MOSSY AUTO IMPORTS; MOSSY FORD, INC.; MOSSY NISSAN, INC.; MOSSY NISSAN CHULA VISTA; MOSSY NISSAN EL CAJON; MOSSY NISSAN ESCONDIDO; MOSSY NISSAN KEARNY MESA; MOSSY NISSAN NATIONAL CITY; MOSSY NISSAN OCEANSIDE; and/or MOSSY NISSAN POWAY are California corporations. MOSSY HOLDING COMPANY, INC. is a Delaware corporation. MAG WEST MOSSY FORD II, LP; MAG WEST MOSSY HONDA II, LP; MAG WEST MOSSY NISSAN II, LP; MAG WEST MOSSY TOYOTA II, LP; MAG WEST MOSSY VOLKSWAGEN II, LP; and MOSSY AUTOMOTIVE GROUP II, LLC are California limited partnerships and a limited liability company. Together, MOSSY is a family-owned chain of car dealerships, with approximately 17 dealership locations in California. Upon information and belief, MOSSY maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Diego, California, for all non-exempt, hourly paid or commissions-paid employees working for MOSSY in California, including Mr. Santos Barrera and other aggrieved employees. At all relevant times, MOSSY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, commissions-paid employees in California, including Mr. Santos Barrera and other aggrieved employees, regardless of its location or position.

Upon information and belief, MOSSY maintains a centralized Payroll department at its corporate headquarters in San Diego, California, which processes payroll for all non-exempt, hourly paid or commissions-paid employees working for MOSSY in California, including Mr. Santos Barrera and other aggrieved employees. Further, MOSSY issues the same formatted wage statements in the same manner for all non-exempt, hourly paid or commissions-paid employees working in California, including Mr. Santos Barrera and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, MOSSY utilized the same methods and formulas when calculating wages due to Mr. Santos Barrera and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Santos Barrera’s experience and counsel’s review of those records currently available relating to Mr. Santos Barrera’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Santos Barrera reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

MOSSY willfully failed to pay all overtime wages owed to Mr. Santos Barrera and other aggrieved employees. During the relevant time period, Mr. Santos Barrera and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, MOSSY had a company-wide policy and/or practice of strictly limiting the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing dealership locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with MOSSY's understaffing policy, as well as the assignment of heavy workloads and strict deadlines (*see infra*), led Mr. Santos Barrera and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks.

As a result of this restriction on overtime accrual, MOSSY forced Mr. Santos Barrera and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, such as preparing new cars and detailing used vehicles. MOSSY discouraged and impeded Mr. Santos Barrera and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline or verbal reprimand for not completing their assignments while incurring unapproved overtime hours. Alternatively, when Mr. Santos Barrera and other aggrieved employees did not clock out at their designated shift end-times, on information and belief, Mr. Santos Barrera and other aggrieved employees were subject to MOSSY's supervisors falsifying their time records in order to prevent employees from accruing additional overtime.

Thus, Mr. Santos Barrera and other aggrieved employees were required to work off-the-clock performing tasks after their scheduled shifts, but were prevented from accounting for and recording this time in MOSSY's timekeeping system. For example, at least once per week, Mr. Santos Barrera was required to clock out at his designated shift end-time even when he had additional assignments to complete for the day, and would work 2-4 hours after he had clocked out, to complete detailing on all of the vehicles that were to be showcased for sale the following week. Thus, MOSSY failed to track all of this time spent working after clocking out, and Mr. Santos Barrera and other aggrieved employees received no compensation for this time.

Second, as stated, MOSSY had, and continues to have, a company-wide policy staffing its dealership locations strictly based on the labor hours or labor budget set by the corporate office. MOSSY's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload, which included weekly deadlines for completing detailing on cars at the dealership. Because MOSSY did not employ or staff an adequate number of employees to meet their productivity expectations and failed to provide employees with adequate meal period coverage, Mr. Santos Barrera and other aggrieved employees were assigned heavy workloads, which MOSSY knew or should have known could only be met by working additional hours. Mr. Santos Barrera and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and their supervisors' demands.

Third, MOSSY has, on a company-wide basis, failed to adhere to a schedule of meal periods. This company-wide practice, coupled with the heavy workload and pressure from MOSSY to complete assigned tasks, impeded Mr. Santos Barrera and other aggrieved employees from taking timely, compliant meal periods. Additionally, Mr. Santos Barrera and other aggrieved employees would be required to respond to text messages and calls on their personal cellular phones from supervisors and management during unpaid meal periods. As a result, Mr. Santos Barrera and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to

receive meal periods. Further, on information and belief, because MOSSY frowned upon employees accruing meal period penalties, MOSSY pressured Mr. Santos Barrera and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that MOSSY would otherwise owe. Mr. Santos Barrera was required to clock out within the first five (5) hours of his shift but would work through his meal periods, in order to complete his detailing assignments. Thus, Mr. Santos Barrera and other aggrieved employees performed work during meal periods for which they were not paid. MOSSY did not pay Mr. Santos Barrera and other aggrieved employees for the time they continued to perform tasks during meal periods.

MOSSY knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Santos Barrera and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. MOSSY also knew, or should have known, that it did not compensate Mr. Santos Barrera and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Santos Barrera and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Santos Barrera and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. MOSSY's failure to pay Mr. Santos Barrera and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, MOSSY did not pay Mr. Santos Barrera and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, MOSSY paid Mr. Santos Barrera and other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, MOSSY failed to incorporate all remunerations, including commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when Mr. Santos Barrera and other aggrieved employees worked overtime and received these other forms of pay, MOSSY failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Santos Barrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

First, during the relevant time period, MOSSY implemented a company-wide compensation plan for commissioned employees that systematically failed to compensate Mr. Santos Barrera and/or other aggrieved employees for all hours worked. As previously stated, MOSSY did not accurately record Mr. Santos Barrera's and/or other aggrieved employees' actual hours worked and/or did not pay them for all hours that they worked. Specifically, MOSSY required Mr. Santos Barrera and/or other aggrieved

employees paid on a commission basis to perform other non-commission producing activities without compensation. Thus, MOSSY failed to record the time spent by Mr. Santos Barrera and/or other aggrieved employees on nonproductive tasks (such as cleaning the dealership, waiting for customers, and attending meetings), and, as a result, failed to pay them for all hours worked. MOSSY also failed to separately pay other aggrieved employees for rest periods.

Second, as stated above, due to MOSSY's restrictions on overtime accrual, MOSSY systematically failed to pay Mr. Santos Barrera and other aggrieved employees for actual hours worked after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to MOSSY's uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads, failure to adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Mr. Santos Barrera and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. In addition, MOSSY systematically failed to pay Mr. Santos Barrera and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded. As set forth above, MOSSY's policies required Mr. Santos Barrera and other aggrieved employees to clock out for meal periods, even though Mr. Santos Barrera and other aggrieved employees performed additional duties and were subject to MOSSY's control during this time.

Third, during the relevant time period, MOSSY also maintained and implemented a company-wide policy of requiring other aggrieved employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug tests and/or physical examinations. At all times, upon information and belief, MOSSY was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider/facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. MOSSY gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and examinations for the sole benefit of MOSSY. Other aggrieved employees followed MOSSY's instructions and traveled to the medical facility designated by MOSSY, and underwent mandatory drug testing and/or physical examinations. However, MOSSY did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, MOSSY did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, MOSSY did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, MOSSY regularly failed to pay at least minimum wages to Mr. Santos Barrera and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Santos Barrera and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 226.2 – Failure to Separately Compensate for Rest Periods and Other Nonproductive Time

California Labor Code section 226.2 requires employers that utilize a piece-rate compensation plan to separately compensate employees for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates. Labor Code section 226.2 further requires that employers provide employees compensated on a piece-rate basis with itemized statements stating the total hours of

compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and the total hours of other nonproductive time, as specified, the rate of compensation, and the gross wages paid for that time during the pay period. Under California law, employers who pay employees on a commission basis must separately compensate them for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates. *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal.App.5th 98, 108 (2017).

During the relevant time period, MOSSY adopted a company-wide compensation plan whereby it paid Mr. Santos Barrera and/or other aggrieved employees on a commission basis for the detailing, repairing, servicing, and/or sale of vehicles. *See supra*. On information and belief, MOSSY did not accurately record their actual hours worked and/or did not pay them for all hours that they worked. Thus, MOSSY failed to separately compensate Mr. Santos Barrera and/or other aggrieved employees for all nonproductive time, including, but not limited to, such non-selling activities as cleaning the dealership, waiting for customers, and attending meetings. In addition, MOSSY had, and continues to have, a company-wide policy of failing to separately pay other aggrieved employees for rest periods as required by law. During the relevant time period, MOSSY never separately paid other aggrieved employees paid on a commission-only basis for rest periods.

On information and belief, MOSSY also failed to provide Mr. Santos Barrera and/or other aggrieved employees with itemized statements listing the total hours of all nonproductive time and total hours of compensable rest periods, and other required details regarding payment for nonproductive time and rest periods. MOSSY further did not provide other aggrieved employees with itemized statements showing the rates at which they were paid for compensable nonproductive time and rest periods.

MOSSY's failure to separately compensate Mr. Santos Barrera and/or other aggrieved employees for rest periods and other nonproductive time at or above specified minimum hourly rates, as well as MOSSY's failure to provide Mr. Santos Barrera and/or other aggrieved employees with the requisite itemized statements, violates Labor Code section 226.2.

Mr. Santos Barrera and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

As stated, MOSSY had, and continues to have, a company-wide policy and/or practice of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads and discouraging employees from incurring overtime, which resulted in a lack of meal period coverage and prevented Mr. Santos Barrera and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, MOSSY failed to adhere to a schedule of meal periods, resulting in Mr. Santos Barrera and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to weekly deadlines for finishing detailing on vehicles at the dealership, without incurring overtime. Also, Mr. Santos Barrera and other aggrieved employees were required to respond to calls on their personal cellular phones from supervisors and management during unpaid meal periods. These policies and practices discouraged and impeded Mr. Santos Barrera and other aggrieved employees from taking compliant meal periods.

As a result of MOSSY's practices and/or policies, Mr. Santos Barrera and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, approximately 1-2 times per week, Mr. Santos Barrera worked in excess of six (6) or seven (7) hours before taking a meal period, if he took one at all. Moreover, Mr. Santos Barrera's meal periods were interrupted or shortened once or twice per week in order to respond to his supervisors' requests to detail a car that had just been sold to a customer.

Additionally, on information and belief, because MOSSY frowned upon employees accruing meal period penalties, MOSSY's management would pressure employees to clock out for meal periods and continue working in order to strictly limit meal penalties that would need to be paid by MOSSY. For example, Mr. Santos Barrera was pressured by his supervisors to clock out and continue working during his meal periods in order to complete this workload, upon threat of verbal discipline if he incurred meal penalties and failed to finish his assignments. Mr. Santos Barrera would sometimes clock out within the first five (5) hours of his shift but continue performing tasks throughout his entire meal period in order to complete his work assignments; in all, Mr. Santos Barrera would miss his meal periods 3-4 times per week. Mr. Santos Barrera and other aggrieved employees worked through meal periods or had their meal periods interrupted, because there were not enough employees on duty to handle the workload.

Furthermore, MOSSY did not schedule second meal periods and had no policy for permitting Mr. Santos Barrera and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. As a result, Mr. Santos Barrera and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Santos Barrera and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

MOSSY knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Santos Barrera and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. MOSSY further knew or should have known that it did not pay Mr. Santos Barrera and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, MOSSY engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Santos Barrera and other aggrieved employees did not receive premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that MOSSY did pay Mr. Santos Barrera and other aggrieved employees premium pay for missed, late, and interrupted meal periods, MOSSY did not pay Mr. Santos Barrera and other aggrieved employees at the correct rate of pay for premium wages because

MOSSY systematically failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, MOSSY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Santos Barrera and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, MOSSY regularly failed to authorize and permit Mr. Santos Barrera and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, MOSSY's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Santos Barrera and other aggrieved employees from being relieved of all duty to take compliant rest periods. MOSSY also failed to schedule rest periods at all, which further led to Mr. Santos Barrera and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, MOSSY maintained and implemented a company-wide practice and/or policy requiring that Mr. Santos Barrera and other aggrieved employees remain on MOSSY's premises during their rest periods. Because Mr. Santos Barrera and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, MOSSY effectively maintained control over Mr. Santos Barrera and other aggrieved employees during rest periods, and as result of this rest period policy, MOSSY did not relinquish control over Mr. Santos Barrera and other aggrieved employees during rest periods.

As a result of MOSSY's practices and policies, Mr. Santos Barrera and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. Santos Barrera missed his rest periods due to MOSSY's assignment of heavy workloads, which made it impossible to take rest periods and also complete his work duties in the allotted time.

MOSSY also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Santos Barrera and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that MOSSY did pay rest period premium wages to Mr. Santos Barrera and other aggrieved employees, it did so at the incorrect rates. Because MOSSY did not properly calculate Mr. Santos Barrera's and other aggrieved employees' regular rates of pay by including all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, MOSSY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Santos Barrera and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. MOSSY has not provided Mr. Santos Barrera and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, MOSSY has knowingly and intentionally provided Mr. Santos Barrera and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, MOSSY issued uniform wage statements to Mr. Santos Barrera and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, MOSSY violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because MOSSY did not record the time Mr. Santos Barrera and other aggrieved employees spent working off-the-clock, deducted time from Mr. Santos Barrera's and other aggrieved employees' records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), and/or failed to provide itemized statements listing the total hours of all nonproductive time and other required details regarding payment for nonproductive time, MOSSY did not list the correct amount of gross wages and net wages earned by Mr. Santos Barrera and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, MOSSY failed to accurately list the total number of hours worked by Mr. Santos Barrera and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because MOSSY did not calculate Mr. Santos Barrera's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, MOSSY did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, MOSSY also failed to list the correct amount of net wages in violation of section 226(a)(5). MOSSY also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, MOSSY issued uniform wage statements to Mr. Santos Barrera and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Santos Barrera's and other aggrieved employees' wage statements incorrectly list the employer's address as 3615 Lemon Grove Ave., Lemon Grove, CA 91945, but, according to the California Secretary of State's website, MOSSY AUTOMOTIVE GROUP LEMON GROVE, INC. is listed on the California Secretary of State's website with a different address, 4555 Mission Bay Drive, San Diego, CA 92109.

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[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. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), MOSSY willfully failed to maintain accurate payroll records for Mr. Santos Barrera and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, MOSSY failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Santos Barrera and other aggrieved employees, in violation of section 1198. As stated, MOSSY engaged in a company-wide practice and/or policy of falsifying Mr. Santos Barrera's and other aggrieved employees' time records by deducting meal periods or recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Santos Barrera and other aggrieved employees.

Furthermore, in light of MOSSY's failure to provide Mr. Santos Barrera and other aggrieved employees with second 30-minute meal periods to which they were entitled, MOSSY kept no records of meal start and end times for second meal periods.

Because MOSSY failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Santos Barrera and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Santos Barrera and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Santos Barrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, MOSSY failed to pay Mr. Santos Barrera and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, compensation for rest periods and other nonproductive time, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Santos Barrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, MOSSY has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, on or about February 8, 2020, Mr. Santos Barrera notified MOSSY of his intention to quit effective February 21, 2020. However, MOSSY only provided him with part of his earned wages on February 21, 2020. On information and belief, Mr. Santos Barrera did not

receive all of his earned commissions and/or bonus payments, which were due and payable immediately on his last day of work, until on or about February 27, 2020. Thus, although Mr. Santos Barrera provided MOSSY with advance notice of his intention to quit, MOSSY failed to pay Mr. Santos Barrera all of his final wages at the time of quitting, in violation of Labor Code section 202.

Additionally, MOSSY willfully failed to pay Mr. Santos Barrera and other aggrieved employees who are no longer employed by MOSSY all their earned wages, including, but not limited to, overtime wages, minimum wages, compensation for rest periods and other nonproductive time, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving MOSSY's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Santos Barrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, MOSSY unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221.

MOSSY systematically, and on a company-wide basis, maintained a compensation plan that improperly deducted wages from other aggrieved employees' wages. MOSSY had a company-wide policy of allowing adjustments to be made to employee advances and/or wages, and would deduct commissions or incentives earned from employees' wages after repair orders are marked "closed."² Advances against future earned wages were "subject to chargeback upon audit or any adjustment by the Dealership, Manufacturer[,] and/or warranty provider." Advances and/or wages could be adjusted due to reductions in price, returns by customers or manufacturer or warranty provider within the time frame for returns, audit adjustments, and/or customer goodwill, among other reasons. These deductions were not expressly authorized in writing by other aggrieved employees. Thus, MOSSY's policy of utilizing commission chargebacks or deducting incentive payments from other aggrieved employees' wages constitutes an unlawful deduction of wages in violation of California Labor Code sections 221 and 224.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

² Per Mossy Automotive Technician Compensation Program, effective date Jan. 1, 2020: "A Repair Order is not 'closed' until the vehicle has been delivered to the customer and the Dealership has been paid in full on the transaction and all related paperwork is properly completed and approved for payment by the Customer, Manufacturer and/or warranty provider"

During the relevant time period, as stated above, MOSSY implemented a policy of failing to pay for rest periods and other nonproductive time and deducting commission chargebacks or incentive payments from employees' wages, which, on information and belief, resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, MOSSY acted with the intent to deprive other aggrieved employees of statutory wages, including, but not limited to, minimum wages and compensation for rest periods and other nonproductive time, to which they were entitled to under California law. Thus, MOSSY paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, MOSSY implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug tests and/or physical examinations, but required them to do so at their own expense. As stated, MOSSY had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, MOSSY was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider/facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug test and/or physical examinations. During the relevant time period, as stated, other aggrieved employees followed MOSSY's instructions and underwent drug testing and/or physical examinations.

However, MOSSY did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. MOSSY's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled

day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

MOSSY violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5), because MOSSY failed to pay Mr. Santos Barrera and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule. MOSSY had a company-wide practice of sending Mr. Santos Barrera and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Santos Barrera or other aggrieved employees for half of their scheduled shift. For example, 2-3 times per month, Mr. Santos Barrera was sent home an hour into his shift because business was slow and no cars needed detailing. Although Mr. Santos Barrera and other aggrieved employees would report to work based on the schedule that MOSSY provided to them, MOSSY would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Santos Barrera and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Santos Barrera and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, MOSSY, on a company-wide basis, required that Mr. Santos Barrera and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. Santos Barrera and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing work-related matters with supervisors. Although MOSSY required Mr. Santos Barrera and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, MOSSY failed to reimburse them for this cost.

Second, as stated, MOSSY had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. MOSSY maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, MOSSY was in control of scheduling the date and time for the testing and/or examination, selecting the provider or facility where the testing and/or examination was to

take place, and determining the scope of the testing and/or examination. MOSSY gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and examinations for the sole benefit of MOSSY. Although MOSSY required other aggrieved employees to undergo drug testing and/or physical examinations, MOSSY failed to reimburse them for their travel expenses.

Third, MOSSY, on a company-wide basis, has required Mr. Santos Barrera and other aggrieved employees to purchase basic tools and supplies that were necessary for completion of assigned tasks. For example, Mr. Santos Barrera was required to buy a buffer, air blower, cleaning pads, and other tools that were needed in order to perform his work duties. The cost of these tools and supplies totaled \$400-\$500 over the course of Mr. Santos Barrera's employment. Thus, MOSSY failed to provide basic tools and supplies to Mr. Santos Barrera and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Santos Barrera and other aggrieved employees for the costs of these tools and supplies.

Fourth, on a company-wide basis, MOSSY failed to provide Mr. Santos Barrera and other aggrieved employees with uniform cleaning services or reimburse them for cleaning expenses incurred. For example, due to the nature of their work, Mr. Santos Barrera's and other aggrieved employees' uniforms would become stained with chemicals and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from any other items, thus incurring additional laundry expenses.

MOSSY could have provided Mr. Santos Barrera and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, detailing tools and supplies, and a laundering service for uniforms, or, MOSSY could have reimbursed employees for their travel, mileage, tools and supplies, and laundry expenses. Instead, MOSSY passed these operating costs off onto Mr. Santos Barrera and other aggrieved employees.

Thus, MOSSY had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Santos Barrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." MOSSY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Santos Barrera's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Santos Barrera seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Santos Barrera, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California

against MOSSY for violations of California Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a), 226.2, 226.7, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Santos Barrera seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Santos Barrera's reasonable attempt to settle his dispute with MOSSY prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform MOSSY of Mr. Santos Barrera's aforementioned grievances and the proposed remedies as detailed below, while affording MOSSY a reasonable opportunity to satisfy Mr. Santos Barrera's demands.

Demand is hereby made that MOSSY shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. MOSSY shall pay Mr. Santos Barrera and all other aggrieved employees employed by MOSSY at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. MOSSY shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and compensation for rest periods and other nonproductive time, provided lawful meal and rest periods, and paid reporting time pay.
3. MOSSY shall conduct a survey or interview all current and former aggrieved employees in California who worked for MOSSY in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mandatory medical examinations, travel, cellular phone, tools and supplies, and laundering expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. MOSSY shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. MOSSY also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. MOSSY shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for MOSSY's benefit, including, but not limited to, costs of mandatory medical examinations, travel, cellular phone, supplies and tools, and laundering expenses, as required by Labor Code sections 222.5 and 2802.
6. MOSSY shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful practice of utilizing commission chargebacks and deducting incentive payments, including unlawful deductions (Labor Code sections 221 and 224) and secret payment of lower wages (Labor Code section 223).

7. MOSSY shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. MOSSY shall provide Mr. Santos Barrera and all aggrieved employees employed by MOSSY at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. MOSSY shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. MOSSY shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, 1199, and 2699, and Wage Order No. 7-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Mao Shiokura

Copy: MOSSY AUTOMOTIVE GROUP LEMON GROVE INC. (via U.S. Certified Mail); MAG WEST MOSSY FORD II, LP (via U.S. Certified Mail); MAG WEST MOSSY HONDA II, LP (via U.S. Certified Mail); MAG WEST MOSSY NISSAN II, LP (via U.S. Certified Mail); MAG WEST MOSSY TOYOTA II, LP (via U.S. Certified Mail); MAG WEST MOSSY VOLKSWAGEN II, LP (via U.S. Certified Mail); MOSSY AUTOMOTIVE GROUP, INC. (via U.S. Certified Mail); MOSSY AUTOMOTIVE GROUP II, LLC (via U.S. Certified Mail); MOSSY AUTOMOTIVE GROUP EL CAJON INC. (via U.S. Certified Mail); MOSSY AUTO IMPORTS (via U.S. Certified Mail); MOSSY FORD, INC. (via U.S. Certified Mail); MOSSY HOLDING COMPANY, INC. (via U.S. Certified Mail); MOSSY NISSAN, INC. (via U.S. Certified Mail); MOSSY NISSAN CHULA VISTA (via U.S. Certified Mail); MOSSY NISSAN EL CAJON (via U.S. Certified Mail); MOSSY NISSAN ESCONDIDO (via U.S. Certified Mail); MOSSY NISSAN KEARNY MESA (via U.S. Certified Mail); MOSSY NISSAN NATIONAL CITY (via U.S. Certified Mail); MOSSY NISSAN OCEANSIDE (via U.S. Certified Mail); MOSSY NISSAN POWAY (via U.S. Certified Mail)