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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Veronica Navarro, Deputy Clerk

Attorneys for Plaintiff ARTHUR WAYNE BERRY, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former, similarly aggrieved employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ARTHUR WAYNE BERRY, on behalf of
himself and all other similarly aggrieved
employees,

Plaintiff,

v.

EL CAJON MOTORS dba EL CAJON FORD,
a California Corporation; DEALER
OPERATING CONTROL SERVICE, INC., a
Tennessee Corporation Doing Business in
California; HOP, LLC dba HONDA OF
PASADENA, a California Limited Liability
Company; FRONTIER AUTO SALES, INC.
dba FRONTIER TOYOTA, a California
Corporation; and DOES 1- 50, Inclusive,

Defendant,

Case No. 37-2022-00032898-CU-OE-NC

COMPLAINT

**1. Civil Penalties under the Private
Attorneys General Act (PAGA)**

Plaintiff, ARTHUR WAYNE BERRY ("Plaintiff" or "Berry"), as a representative of the State of California and the Labor and Workforce Development Agency (LWDA), and on behalf of Plaintiff and other current and former, similarly aggrieved, employees, complains and alleges as follows:

1 **INTRODUCTION**

2 1. This is a representative action brought by Plaintiff, as a representative of the State
3 of California and the LWDA, and on behalf of Plaintiff and other similarly aggrieved employees,
4 to collect civil penalties for Defendants' Labor Code violations.

5 2. Defendants and Employers, EL CAJON MOTORS dba EL CAJON FORD,
6 DEALER OPERATING CONTROL SERVICE, INC., HOP, LLC dba HONDA OF
7 PASADENA, and FRONTIER AUTO SALES, INC. dba FRONTIER TOYOTA (collectively
8 referred to as "Defendants") violated numerous wage and hour laws with respect to Plaintiff and
9 other aggrieved employees by failing to provide, for example: accurate and itemized wages
10 statements, payment for all hours worked (including regular wages and overtime), failure to
11 provide statutory uninterrupted meal periods, statutory interrupted rest periods, timely payment
12 of wages during employment, and timely payment upon separation of employment.

13 **PARTIES**

14 **The Plaintiff**

15 3. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
16 Diego. Similarly aggrieved, former and/or current employees are those non-exempt employees
17 employed by Defendants during the relevant time period who were subject to the same wage and
18 hour policies/practices as Plaintiff, and thereby suffered similar or substantially similar violations.

19 **The Defendants**

20 4. Defendant EL CAJON MOTORS dba EL CAJON FORD is a California
21 corporation which, at all times relevant herein, existing, doing business and employing
22 individuals in the County of San Diego, State of California.

23 5. Defendant DEALER OPERATING CONTROL SERVICE, INC. is a Tennessee
24 corporation which, at all times relevant herein, existing, doing business and employing
25 individuals in the County of Los Angeles, State of California, with its principal place of business
26 located at 2120 Wilshire Blvd., Suite 400, Santa Monica, California 90403.

27 6. Defendant HOP, LLC dba HONDA OF PASADENA is a California Limited
28 Liability Company which, at all times relevant herein, existing, doing business and employment

1 individuals in the County of Los Angeles, State of California.

2 7. Defendant FRONTIER AUTO SALES, INC. dba FRONTIER TOYOTA is a
3 California corporation which, at all times relevant herein, existing, doing business and employing
4 individuals in the County of Los Angeles, State of California.

5 8. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each
6 of them, exercised control over Plaintiff and Aggrieved Employees' wages, hours, and working
7 conditions.

8 9. The true names and capacities, whether individual, corporate, associate, or
9 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
10 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
11 amend this Complaint to insert the true names and capacities of said Defendants when the same
12 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
13 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
14 therefore liable to Plaintiff as alleged hereinafter.

15 10. Plaintiff is informed and believes, and based thereupon alleges, that at all times
16 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
17 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of
18 the other Defendants, and each of them, and in doing the things alleged herein, were acting at
19 least in part within the course and scope of said agency, employment, conspiracy, joint
20 employment, alter ego status, and/or joint venture and with the permission and consent of each of
21 the other Defendants.

22 11. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
23 and each of them, including those Defendants named DOES 1-50, acted in concert with one
24 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
25 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
26 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
27 each of them, including those Defendants named as DOES 1-50, formed and executed a
28

1 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
2 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
3 to and actually causing Plaintiff harm.

4 12. Plaintiff is further informed and believes, and thereon alleges, that at all times
5 mentioned herein, Defendants EL CAJON MOTORS dba EL CAJON FORD, DEALER
6 OPERATING CONTROL SERVICE, INC., HOP, LLC dba HONDA OF PASADENA, and
7 FRONTIER AUTO SALES, INC. dba FRONTIER TOYOTA were and are the alter ego of each
8 other, that there exists a unity of interest and ownership between each of them, such that any
9 individuality and separateness between them have ceased. Plaintiff is informed and believe, and
10 thereon allege, that at all times mentioned herein, each Defendant exercised control and
11 dominion over each other with a disregard for the separate legal status of each entity in an attempt
12 to commit the violations set forth herein. Adherence to the separate existence of each Defendant
13 would permit an abuse of the corporate privilege and would sanction fraud and promote injustice.
14 Plaintiff is further informed and believes, and thereon alleges, that at all times mentioned herein,
15 Defendants operated a single integrated enterprise with joint ownership and/or management,
16 shared or common business operations, and shared or common control over Plaintiff and
17 Aggrieved Employees' employment.
18

19 13. Whenever and wherever reference is made in this Complaint to any act or failure
20 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
21 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.
22

JURISDICTION AND VENUE

23 14. Venue is proper in San Diego County, because Defendants maintain its locations
24 and transacts business in this county, the obligations and liability primarily arise in this county,
25 and work was primarily performed by Plaintiff and other aggrieved employees in this county.
26

27 15. The California Superior Court has jurisdiction over this matter. The individual
28 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for
federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional

1 amount required for diversity removal. Further, there is no federal question at issue as the issues
2 herein are based solely on California statutes and law, including, but not limited to, the California
3 Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure,
4 and California Rules of Court.

5 **GENERAL ALLEGATIONS**

6 16. Defendants employed Plaintiff as a “Sales Consultant” beginning in or about
7 January 1994. Between approximately 2014 to 2018, Plaintiff did not work for Defendant, but
8 resumed working for Defendant from the latter half of 2018 until January 15, 2022 . Plaintiff
9 was treated as a nonexempt employee. Plaintiff’s job duties included handling sales and customer
10 service requests via phone call or walk-in, facilitating and negotiating the sale of Defendant’s
11 vehicles. Plaintiff and aggrieved employees would frequently use their personal cell phones to
12 perform sales-related activities including but not limited to calling current and potential clients,
13 taking photos and videos of vehicles and sending this information to potential and current
14 customers, and coordinate sales with potential customers. During his employment, Plaintiff had
15 exemplary work ethic and performance.
16

17 17. On many occasions, Plaintiff and aggrieved employees would work more than 8
18 hours per day or 40 hours per week without overtime pay. Plaintiff and similarly aggrieved
19 employees would not receive all compensable work time or their work time was illegally
20 rounded. Similarly aggrieved employees would be paid overtime at an illegally calculated rate.

21 18. In an effort to curtail labor costs, Defendants regularly and consistently did not
22 staff enough employees to provide sufficient coverage to both maintain their business operations
23 and provide legally mandated meal and rest periods, despite reasonably foreseeable work load,
24 so Plaintiff and similarly aggrieved employees could not take complete, timely and uninterrupted
25 meal and rest breaks because Defendants prioritized completion of daily duties ahead of meal
26 and rest period compliance.

27 19. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
28 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its

1 departments, divisions, commissions, boards, agencies or employees for violation of the code
2 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
3 behalf of himself or herself and other current or former employees pursuant to the procedures
4 specified in Labor Code section 2699.3.

5 20. For all provisions of the Labor Code except those for which a civil penalty is
6 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendant a
7 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
8 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
9 for each subsequent pay period in which Defendant violated these provisions of the Labor Code.

10 21. Defendants' conduct during the PAGA period with respect to Plaintiff and the
11 aggrieved employees violates numerous Labor Code sections as detailed herein.

12 22. Plaintiff alleges that Defendants have engaged in a systematic pattern of wage
13 and hour violations under the California Labor Code and IWC Wage Orders.

14 23. At all relevant times herein, Defendants employed Plaintiff and other aggrieved
15 employees as non-exempt employees holding various positions and who experienced the
16 violations set forth in this Complaint.

17 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and aggrieved employees were entitled to receive
19 wages for all hours worked, including the applicable minimum, regular, and overtime wages,
20 and that they were not receiving all wages earned for work that was required to be performed. In
21 violation of the Labor Code and IWC Wage Orders, Defendants failed to pay Plaintiff and
22 aggrieved employees for all hours worked. Accordingly, Defendants failed to pay Plaintiff and
23 aggrieved employees all earned minimum, regular, and/or overtime compensation.

24 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiff and aggrieved employees were entitled to receive all
26 required meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved
27 employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal
28

1 period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice,
2 and policy of not providing timely meal periods. Defendants failed to pay an additional hour of
3 pay to Plaintiff and aggrieved employees for late meal periods. As a result of Defendants'
4 unlawful policy and practice, Plaintiff and aggrieved employees did not receive all meal periods
5 or payment of one (1) additional hour of pay at Plaintiff's and aggrieved employees' regular rate
6 of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

7 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and aggrieved employees were entitled to receive all
9 required rest periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved
10 employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest
11 period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice,
12 and policy of not providing timely rest periods. Defendants failed to pay an additional hour of
13 pay to Plaintiff and aggrieved employees for each rest periods was not provided or was
14 interrupted. As a result of Defendants' unlawful policy and practice, Plaintiff and aggrieved
15 employees did not receive all required rest periods or payment of one (1) additional hour of pay
16 at Plaintiff's and aggrieved employees' regular rate of pay when they did not receive a timely,
17 uninterrupted 10 minute off-duty rest period.

18 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Plaintiff and certain aggrieved employees were entitled to
20 timely payment of wages due upon separation of employment. In violation of the Labor Code,
21 Plaintiff and certain aggrieved employees did not receive payment of all wages due, within
22 permissible time periods, upon separation of employment.

23 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that Plaintiff and aggrieved employees were entitled to receive
25 itemized wage statements that accurately showed their actual hours worked, total hours worked,
26 number of hours worked at each hourly rate, gross and net wages earned, and correct employer
27 information in accordance with California law. In violation of the Labor Code, Plaintiff and
28

aggrieved employees were not provided with accurate itemized wage statements that accurately reported their gross and net wages earned, total hours worked, each applicable rate of pay in effect during the pay period with the corresponding number of hours worked, and the address of the legal entity that is the employer, among other things.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Defendant was required to maintain accurate records of the hours worked by Plaintiff and aggrieved employees. In violation of the Labor Code, Defendants failed to maintain accurate records of hours worked by Plaintiff and aggrieved employees due to its unfair rounding practices, among other things.

FIRST CAUSE OF ACTION

(Civil Penalties Under the Private Attorneys General Act, Labor Code § 2699 et seq., For Violations of the Labor Code)

30. By this complaint, Plaintiff brings this case as a representative action seeking penalties for himself, the aggrieved employees, and the State of California in a representative capacity, as provided by the PAGA, Labor Code sections 2698 *et seq.* Plaintiff is an aggrieved employee who was employed by Defendants and subject to at least one of the Labor Code violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in his notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198.

31. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice from the LWDA.

32. Prior to filing this complaint, on April 4, 2022, Plaintiff gave written notice of the specific provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. The written notice was given via certified mail to Defendants, and the LWDA by electronically filing the notice via the

1 Department of Industrial Relations website. Plaintiff was given an LWDA case number of
2 LWDA-CM-876933-22. A true and correct copy of Plaintiff's notice to the LWDA and
3 Defendant(s), dated April 4, 2022, is attached hereto as **Exhibit A**.

4 33. The LWDA has not provided Plaintiff with any notice that it intends to investigate
5 the violations as alleged in Plaintiff's April 4, 2022 notice, and more than 65 calendar days have
6 elapsed since the postmark date on the notice.

7 34. California Labor Code §§2698-2699.5, in relevant part provides, "any provision
8 of this code that provides for a civil penalty to be assessed and collected by the Labor and
9 Workforce Development Agency...for a violation of this code, may, as an alternative, be
10 recovered through a civil action brought by an aggrieved employee on behalf of himself or
11 herself and other current or former employees pursuant to the procedures specified in Section
12 2699.3."

13 35. As an aggrieved employee, Plaintiff brings this civil action to recover civil
14 penalties for Defendant's Labor Code violations.

15 **FIRST VIOLATION**

16 **(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)**

17 36. Under California Labor Code §512(a), "An employer may not employ an
18 employee for a work period of more than five hours per day without providing the employee
19 with a meal period of not less than 30 minutes, except that if the total work period per day of the
20 employee is no more than six hours, the meal period may be waived by mutual consent of both
21 the employer and employee."

22 37. Defendants violated Labor Code § 512 by failing to provide Plaintiff, and other
23 qualifying employees who worked shifts of greater than five hours, meal periods within the first
24 five hours of the shifts worked. Defendants failed to pay Plaintiff one hour's pay at Plaintiff's
25 regular rate of pay for each day Defendant failed to provide a meal period in compliance with
26 section 512.

27 **SECOND VIOLATION**

1 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

2 38. Under California Labor Code §226.7(b), “An employer shall not require an
3 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
4 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

5 39. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize
6 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
7 of each work period. The authorized rest period time shall be based on the total hours worked
8 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

9 40. Defendants failed to authorize and permit Plaintiff and other employee to take
10 rest periods and mandated by the Wage Order.

11 41. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee
12 one additional hour of pay at the employee’s regular rate of compensation for each workday that
13 the meal or rest or recovery period is not provided.”

14 42. Defendants failed to pay Plaintiff and other employees who were not provided
15 rest periods one hour of pay at their regular rate of pay.

16 **THIRD VIOLATION**

17 **(Failure to Provide Complete and Accurate Wage Statements,**
18 **in Violation of Labor Code Section 226)**

19 43. Under California Labor Code §226(a), an employer is legally obligated to provide
20 its employees, semi-monthly or at the time of payment of wages, “an accurate itemized statement
21 in writing...”

22 44. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
23 for Defendants’ Labor Code violations alleged herein, as well as attorney’s fees and costs, under
24 Labor Code § 2699.

25 **FOURTH VIOLATION**

26 **(Failure to Pay Overtime Wages)**

27 45. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an
28

1 employer is required to compensate employees for all overtime, which is calculated at one and
2 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
3 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
4 workday, with double time for all hours worked in excess of twelve (12) hours in any workday
5 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
6 any workweek.

7 46. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
8 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
9 Labor Code § 2699.

10 **FIFTH VIOLATION**

11 **(Failure to Pay Minimum Wages)**

12 47. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders,
13 payment to an employee of less than the applicable minimum wage for all hours worked in a
14 payroll period is unlawful.

15 48. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
16 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
17 Labor Code § 2699.

18 **SIXTH VIOLATION**

19 **(Failure to Timely Pay Wages During Employment)**

20 49. Pursuant to California Labor Code § 204, for all labor performed between the 1st
21 and 15th days of any calendar month, an employer is required to pay its employees between the
22 16th and 26th day of the month during which the labor was performed. California Labor Code §
23 204 also provides that for all labor performed between the 16th and 26th days of any calendar
24 month, Defendants are required to pay their employees between the 1st and 15th day of the
25 following calendar month. In addition, California Labor Code § 204 provides that all wages
26 earned for labor in excess of the normal work period shall be paid no later than the payday of the
27 next regular payroll period.
28

1 50. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
2 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
3 Labor Code § 2699.

4 **SEVENTH VIOLATION**

5 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

6 51. Pursuant to California Labor Code § 201, 202, and 203, Defendants are required
7 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
8 201 mandates that if an employer discharges an employee, the employee's wages accrued and
9 unpaid at the time of discharge are due and payable immediately.

10 52. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
11 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
12 Labor Code § 2699.

13 **EIGHTH VIOLATION**

14 **(Failure to Reimburse Business Expenses)**

15 53. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
16 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
17 Labor Code § 2699.

18 54. Labor Code section 2802 provides that an employer shall indemnify his or her
19 employee for all necessary expenditures or losses incurred by the employee in direct
20 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
21 the employer.

22 55. Defendant failed to indemnify Plaintiff and Aggrieved Employees for all
23 necessary expenditures or losses incurred by Plaintiff and Aggrieved Employees in direct
24 consequence of the discharge of their duties. Specifically, Defendant failed to indemnify Plaintiff
25 and Aggrieved Employees for expenditures they incurred on their behalf, including, but not
26 limited to use of their personal mobile phones, as well as utilizing personal cellular phone data
27 plans, to conduct company business. In violation of the Labor Code, Defendant failed to
28

1 reimburse Plaintiff and Aggrieved Employees for these business-related expenditures.

2 56. By virtue of Defendant's unlawful actions, Plaintiff and the Aggrieved
3 Employees have suffered, and will continue to suffer, damages in amounts which are presently
4 unknown, but will be ascertained according to proof at trial.

5 57. Plaintiff seeks recovery of civil penalties individually, on behalf of the Aggrieved
6 Employees and the State of California for violations of Labor Code section 2802 during the
7 PAGA period, in a sum as provided by the Labor Code and/or other statutes.

8 58. Plaintiff, individually and on behalf of the aggrieved employees and the State of
9 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
10 (g) and Code of Civil Procedure section 1021.

11 **PRAYER FOR RELIEF**

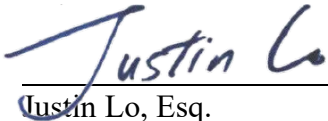
12 **WHEREFORE**, Plaintiff prays for the following relief:

- 13 1. For penalties in an amount according to proof;
14 2. For reasonable attorney's fees and costs pursuant to the PAGA; and
15 3. For such other and further relief as this Court may deem just and proper.
16

17
18 Respectfully Submitted,

19 Dated: August 15, 2022

20 **WORK LAWYERS, PC**

21
22 By: 

23 Justin Lo, Esq.

24 Attorneys for Plaintiff ARTHUR WAYNE
25 BERRY, on behalf of himself and all others
26 aggrieved employees
27
28

EXHIBIT A



NOTICE OF LABOR CODE VIOLATIONS - PAGA
(Labor Code § 2699.3)

DATE April 4, 2022

DELIVERY Online Filing and Certified U.S. Mail

RECIPIENTS California
Workforce Development Agency
PAGAfilings@dir.ca.gov

SUBJECT: ARTHUR WAYNE BERRY v. EL CAJON MOTORS. DBA EL CAJON FORD ET AL — NOTICE OF LABOR CODE VIOLATIONS UNDER CAL. LABOR CODE §2699.3

Dear Representative:

This office represents Arthur Wayne Berry (“Mr. Berry”) with respect to his claims against of El Cajon Motors., DBA El Cajon Ford with joint employers Dealer Operating Control Ser-vice Inc., Hop LLC, dba Honda of Pasadena and Frontier Auto Sales, Inc., dba Frontier Toyota (collectively “Employers”) for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employers by certified mail.

Employers are a corporation doing business in the State of California. Employers employed Mr. Berry until his last date of employment of approximately January 2022 as a non-exempt employee. During his employment with Employers, Mr. Berry was employed as a “Sales Consultant” at Employers’ restaurant located at 1595 E. Main St. El Cajon, CA 9202.

Mr. Berry intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 (“PAGA”). Mr. Berry is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of any of the Employers (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3.

Paul F. Dyke, John R. Blake, Klayton Belden and Andrew L. Breech (hereinafter “managing agents”) were and are officers, corporate agents, executives, directors, and/or owners of



respectfully El Cajon Motors, Dealer Operating Control Service, Inc., and Hop LLC, dba Honda of Pasadena. Among other things, these managing agents operated and controlled El Cajon Motors., DBA El Cajon Ford, and Dealer Operating Control Service, Inc., personally and specifically established and enforced the employee and other policies for El Cajon Motors, Dealer Operating Control Service, Inc., and Hop LLC, dba Honda of Pasadena, otherwise, continue to cause the wage and hourly violations and other wrongs alleged. The managing agents are responsible for all wage and hourly violations and other wrongs perpetrated upon Complainant and other aggrieved employees.

On information and belief, managing agents have control over the disbursement, maintenance, and accounting for all unpaid wages due and owing to its employees, and thus caused and/or ratified the under paying of employer's employees. Employer and managing agents caused and/or ratified the violations pursuant to Labor Code Sections 558, 558.1, and 1197.1, making them jointly and severally liable as individuals with the corporate entities.

As detailed below, Employers violated several of California's wage and hour laws during Mr. Berry employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the Industrial Welfare Commission Wage Orders ("IWC Wage Order") including inter alia, IWC Wage Order No. 5. The claims made on behalf of Mr. Berry and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION.

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Mr. Berry and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employers regularly required Mr. Berry and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Berry and Aggrieved Employees to: (1) respond to Employers and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Mr. Berry and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Berry and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.



In addition to requiring Mr. Berry and Aggrieved Employees to perform work off-the-clock without compensation, Employers also failed to accurately record the actual time worked by Mr. Berry and Aggrieved Employees, which resulted in a failure to pay Mr. Berry and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employers failed to pay overtime to Mr. Berry and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employers have failed to pay Mr. Berry and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Mr. Berry and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employers failed to provide Mr. Berry and Aggrieved Employees with legally compliant 30-minute meal periods. Employers required Mr. Berry and Aggrieved Employees to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Mr. Berry and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Mr. Berry and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Mr. Berry and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Berry and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Mr. Berry and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Mr. Berry and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Mr. Berry



and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Mr. Berry and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person verbal interruptions; and (7) Employers' policy and culture prevented Mr. Berry and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Mr. Berry and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), 512(a) and 1198.

Mr. Berry and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS.

Employers failed to authorize and permit Mr. Berry and Aggrieved Employees take legally compliant 10-minute periods. Employers required Mr. Berry and Aggrieved Employees to work through rest periods. Mr. Berry and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Berry and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Berry and Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Berry and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Mr. Berry and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Mr. Berry and other Aggrieved



Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Mr. Berry and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Mr. Berry and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in person verbal interruptions; and (7) Employers' policy and culture prevented Mr. Berry and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Mr. Berry and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), and 1198.

Mr. Berry and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT.

As to each pay period, Employers have failed to timely pay all wages earned because Mr. Berry and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Mr. Berry and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS.

As a result of the practices described above, the wage statements provided to Mr. Berry and Aggrieved Employees never included the actual hours worked, the name and address of the legal employing entity, and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Mr. Berry and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS.

Employers have failed to maintain accurate records relating to Mr. Berry and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per



payroll period. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 1198.5 and 1174(d).

Mr. Berry and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 5 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Mr. Berry and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the use of his personal cell phone to complete work tasks and coordinate sales with potential customers.

Accordingly, Employers violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.

Mr. Berry and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; and attorneys' fees and costs.

8. FAILURE TO PAY VACATION TIME.

Pursuant to California Labor Code section 227.3, “. . .whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.” During the relevant time period, Employers failed to pay Mr. Berry and other Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment. Accordingly, Employers have violated California Labor Code section 227.3.

Mr. Berry and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; California Labor Code section 227 penalties; and attorneys' fees and costs.

9. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT.



Upon the termination of employment Mr. Berry and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Mr. Berry and Aggrieved Employees to work off-the-clock without compensation, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Mr. Berry and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Mr. Berry and Aggrieved Employees for accrued vacation time they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Mr. Berry and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

Therefore, on behalf of himself, the State of California and all Aggrieved Employees, Mr. Berry may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Sincerely,


JUSTIN LO ESQ.



Notice provided to Employer via Certified Mail

John R. Blake
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El Cajon, CA 92021

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