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Steven Joneson II

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

STEVEN JONESON II an individual,	)	Case No.: 22CECG02366
individually and on behalf of himself and all	)	
others similarly situated, under the Private	)	SECOND AMENDED COMPLAINT
Attorney General Act (PAGA), pursuant to	)	
Labor Code §§ 2698, et seq.	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES MC KOANE ENTERPRISES, INC.	)	
dba CLAWSON MOTORSPORTS, a	)	
California Corporation; and DOES 1-50,	)	
	)	
Defendants.	)	
	)	
_____	)	

Plaintiff, Steven Joneson II, (hereinafter "Plaintiff") alleges as follows:

PARTIES

1. Plaintiff, Steven Joneson II, is an individual who is and at all times relevant to the events alleged herein, residing in the County of Fresno, State of California.

2. Defendant, James Mc Koane Enterprises, Inc. dba Clawson Motorsports (hereinafter "Defendant/Company"), is a California Corporation and operates in Fresno County, California. Plaintiff is informed and believes Defendant also operates under fictitious business names of "Clawson Truck Center," "Clawson Honda of Fresno", and "Clawson Honda-Yamaha-Kawasaki-Suzuki."

3. During all relevant times alleged herein, all relevant events took place in the County of Fresno, State of California.

4. "Doe" Defendants 1 through 50 are sued herein under fictitious names. Their true names and capacities of the Defendants named herein as Does 1-50, inclusive, whether individual, corporate, associate or otherwise, are unknown to the Plaintiff who, therefore, sues such defendants by fictitious names pursuant to California Code of Civil Procedure 474. Plaintiff is informed and believes, and on that basis alleges, that each Defendant sued under such fictitious name is in some manner responsible for the wrongs and the damages as alleged below, and in so acting was functioning as the owner, shareholder, principal, agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent of the Co-Defendants, and in performing the acts mentioned below, was acting, at least in part, within the course and scope of such authority as such agent proxy, servant, partner, joint venture, employee, alter-ego, managing agent and principal with the permission and consent of the Co-Defendants. In accordance with Labor Code § 558.1, Plaintiff reserves the right to add additional individual defendants to the extent any person acting on behalf of an employer has violated, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violated, or caused to be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Code of Civil Procedure §§ 410.10 and Business and Professions Code § 17203. Plaintiff seeks damages in excess of the jurisdictional minimum of this Court, and equitable remedies solely within the jurisdiction of this court.

6. Plaintiff brings this action under the Private Attorney General’s Act (“PAGA”), pursuant to Labor Code §§ 2699 et seq. for violations of the California Labor Code. On May 26, 2022, pursuant to Labor Code § 2699.3(a) on behalf of himself and others, Plaintiff provided written notice by certified mail to Defendant and online to the Labor and Work Force Development Agency (“Agency”) of the factual and legal basis for the labor law violations

1 alleged in this complaint. The case was assigned Case No. LWDA-CM-885945-22. **On March**
2 **15, 2023, Plaintiff served an amended written notice by certified mail to Defendant and**
3 **online to the LWDA of the factual and legal basis for the labor law violations alleged in**
4 **this complaint, amending the initial PAGA notice to add violations of paid sick leave and**
5 **rest period provisions.** Plaintiff hereby incorporates the facts alleged in the PAGA notices.
6 More than 65 days passed after the notice was sent to the Agency and the employer, and the
7 Agency did not provide Plaintiff with a “do not intent to investigate” letter, nor has it indicated
8 that it intends to investigate. Therefore, Plaintiff is authorized to file a civil lawsuit pursuant to
9 Labor Code § 2699.3(a)(2)(A). Plaintiff hereby alleges that Plaintiff’s claims asserted in the
10 PAGA notice were tolled as a matter of law for a period of 65 days. Defendant has not cured its
11 actions.

12 **GENERAL ALLEGATIONS**

13 7. Defendant hired Plaintiff on May 13, 2021 in the position of motorsports sales
14 representative. Defendant is a motorsports dealership in the County of Fresno, State of
15 California, but also owns and operates various vehicle dealerships in the County of Fresno.

16 8. As a motorsport’s sales representative, Plaintiff was guaranteed a base
17 compensation, with the opportunity to earn an additional bonus and/or commission. Defendant
18 and Plaintiff entered into a Compensation Plan, (“Compensation Plan”), which detailed how
19 Plaintiff would earn a commission.

20 9. Pursuant to the Compensation Plan, Plaintiff was entitled to a base compensation
21 of \$15.00 per hour, and was obligated to keep track of all hours worked.

22 10. In addition to the Plaintiff’s base compensation of \$15.00 per hour, Plaintiff was
23 entitled to a Motorsport Bonus or commission, (“Bonus”), in the amount of 15% of gross profit
24 per unit for each unit that Plaintiff sold if Plaintiff a) sold 12 units and b) generated \$17,500 in
25 gross profit per calendar month. During relevant times herein, non-discretionary bonus pay,
26 “spiffs”, and commission pay were not used in computing Plaintiff’s regular rate of pay to
27 determine the proper overtime premium for all overtime hours worked. In other words, Plaintiff
28 was paid an overtime rate below the legally mandated overtime premium rate.

1 11. Likewise, the non-discretionary bonus pay, “spiffs”, and commission pay were
2 not used in computing Plaintiff’s regular rate of compensation for purposes of calculating the
3 proper premium pay for missed meal periods.

4 12. Before being hired by Defendant, Plaintiff had gained experience as a sales
5 manager at car dealership located in Tulare County. Plaintiff’s job duties included hiring,
6 training, and assisting the sales and finance departments in the sale of new vehicles and other
7 used vehicles. Plaintiff’s responsibilities of assisting the finance departments included
8 completing all necessary DMV, legal, and loan paperwork associated with the financing, lease,
9 and cash purchases of new vehicles. Plaintiff’s experience as a sales manager gave him
10 knowledge into what information dealerships are permitted to search using Department of Motor
11 Vehicles (“DMV”) records.

12 13. In or around June 2021, Plaintiff engaged in a protected activity when he verbally
13 disclosed to Defendant’s General Manager, Mike Stovall, that Defendant was charging improper
14 DMV fees to customers. Examples include:

- 15 a. Plaintiff noticed that customers were being charged for a California State Tire
16 Recycle Fee for used motor vehicles, which is a fee only applicable to new motor
17 vehicles.
- 18 b. Some customers were being charged for a registration renewal on used motor
19 vehicles up to \$200 to \$300 dollars when they should only have been charged a
20 \$15 dollar transfer fee.
- 21 c. A customer’s tax rate for the purchase of a motor vehicle is determined by where
22 the customer lives. Plaintiff informed Mr. Stovall that Defendant was writing the
23 customer up at a higher tax rate. Once Defendant noticed that the customer should
24 be at a lower tax rate, instead of taking it off the “out-the-door” sales price,
25 Defendant would lower the tax rate and apply keep add the difference to the sales
26 price to increase the gross profit for Defendant.

27 Plaintiff disclosed to Stovall that Defendant would have some exposure if they were to
28 be audited, and Mr. Stovall informed Plaintiff that he would look into it. However, Plaintiff is

1 informed and believes nothing was ever done to correct these issues. When Plaintiff disclosed
2 this information to Mr. Stovall, who is a person with authority over Plaintiff and who has the
3 authority to investigate and/or correct the above-mentioned violation or noncompliance, Plaintiff
4 had reasonable cause to believe that Defendant violated a state or federal statute, or violated a
5 local, state, or federal rule or regulation. Violations include, but are not limited to, various
6 violations of consumer legal remedy statutes.

7 14. In or around September 2021, Plaintiff was called to the sales manager's office,
8 where one of Plaintiff's sales managers, Ricardo De La Rosa, informed Plaintiff that two
9 employees of Defendant complained to their supervisor, Vicky Strand, that Plaintiff did a "burn
10 out" in his truck in the employee parking lot across the street from Defendant's dealership.
11 Plaintiff contested the allegation. Plaintiff requested an explanation as to how the employees
12 came to the conclusion that it was in fact Plaintiff's vehicle. Mr. De La Rosa informed Plaintiff
13 that one of the complaining employees wrote down Plaintiff's license plate number, gave the
14 license plate number to Vicky Strand, and Vicky Strand then ran Plaintiff's license plate number
15 through Defendant's DMV's database, "DMV Desk", to establish that Plaintiff was the
16 registered owner of the vehicle. Plaintiff then engaged in a protected activity when he:

- 17 a. Informed Ricardo De La Rosa that DMV Desk is for business use only and that it
18 is a violation of the software agreement and against the law to run Plaintiff's
19 license plate number under those circumstances; and
- 20 b. Plaintiff emailed his HR Director, Jennifer Connolly, and told her he needed to
21 speak with her. Plaintiff met with Ms. Connolly in front of Defendant's dealership
22 and complained about running the license plate numbers through the DMV
23 database. Ms. Connolly assured Plaintiff that she would speak with Vicky Strand
24 about the incident.

25 When Plaintiff disclosed this information to Mr. De La Rosa and Ms. Connolly, who are
26 persons with authority over Plaintiff and who have the authority to investigate and/or correct the
27 above-mentioned violation or noncompliance, Plaintiff had reasonable cause to believe that
28 Defendant violated a state or federal statute, or violated a local, state, or federal rule or

1 regulation. Possible violations include, but are not limited to, violations of the Driver's Privacy
2 Protection Act (Title 18 of the U.S. Code, Sections 2721-2725).

3 15. However, this was not last time Plaintiff's license plate was run. Plaintiff
4 witnessed another employee of Defendant, Randy Richie, frequently patrolling Defendant's
5 parking lots trying to figure out which employees were parked in the dealership parking lot. Mr.
6 Ritchie would take pictures of license plates and run the plates through DMV Desk. He would
7 threaten to tow employee cars if they were parked in the dealership parking lot instead of the
8 employee parking lot.

9 16. On another occasion in or around March 2, 2022, one of Plaintiff's supervisors,
10 Joseph Lopez, messaged Plaintiff and asked if Plaintiff was parked in the dealership parking lot.
11 Plaintiff told Mr. Lopez he was in the dealership parking lot because he was on his lunch and had
12 a customer in the showroom. Instead of waiting for the traffic lights on Blackstone Avenue in
13 Fresno, Plaintiff found a spot in the dealership parking lot and chose to park there so that he
14 could meet with his customer as soon as possible and to avoid the customer from having to wait
15 any longer. Mr. Lopez informed Plaintiff that he needed to move his car. Plaintiff explained to
16 Mr. Lopez what happened and Mr. Lopez said he was told by Mr. Richie to tell Plaintiff to move
17 his car. Plaintiff engaged in a protected activity when he explained to Mr. Lopez that if he ran
18 Plaintiff's plate, Plaintiff would be going to the local DMV Investigators office to report Mr.
19 Richie regarding the unlawful use of DMV Desk. Mr. Lopez immediately told Plaintiff's general
20 manager, Mr. Stovall, that Plaintiff wanted to report Mr. Richie to a DMV investigator. Mr.
21 Stovall immediately called Plaintiff into his office with Mr. Lopez being present. During the
22 meeting, Mr. Stovall explained to Plaintiff that because Mr. Richie is part of ownership (married
23 to a family member of the ownership group), they just need to deal with him and "that's the card
24 we are being dealt". Mr. Stovall asked Plaintiff not to report Mr. Richie to the DMV. Plaintiff
25 engaged in protected activity when Plaintiff made the above-mentioned complaint to Mr. Lopez,
26 who is a person with authority over Plaintiff and who has the authority to investigate and/or
27 correct the above-mentioned violation or noncompliance, and also when Plaintiff informed Mr.
28 Stovall of his intent to disclose the information to the DMV, a government agency, regarding

1 Defendant's employees improper use of the DMV Desk software, Plaintiff had reasonable cause
2 to believe that Defendant violated a state or federal statute, or violated a local, state, or federal
3 rule or regulation.

4 17. On or around October 6, 2021, Plaintiff engaged in a protected activity when he
5 asked two coworkers about their wages. Plaintiff was specifically inquiring about Defendant's
6 pay plan and if Defendant paid out their bonuses every two weeks or once a month. Before
7 Plaintiff asked these two co-workers about how their bonuses were paid out, Plaintiff asked one
8 of his supervisors, James Hutchens, if he knew the answer to Plaintiff's question. Mr. Hutchens
9 informed Plaintiff that he did not know the answer to his question. In response to Plaintiff's
10 inquiries, Mr. Hutchens served a written warning to Plaintiff, which stated in pertinent part,
11 "Steve went to almost every sales person on the showroom complaining and being very vocal
12 about an apparent pay discrepancy." In this same written warning, Plaintiff also was criticized
13 for not meeting the minimum standard sales requirement of 12 units for the month of
14 September. However, the employer was aware that Plaintiff missed significant time during the
15 relevant time period because he was taking protected COVID-19 sick leave, and because his
16 production was slowed from consequences of his recent COVID-19 illness.

17 18. In or around March 24, 2022, Plaintiff made protected complaint(s) to HR when
18 HR confronted Plaintiff about supporting a harassment/discrimination claim of another co-
19 worker. Plaintiff's HR Director, Jennifer Connolly, informed Plaintiff that she was "conducting
20 an interview that didn't make [Plaintiff] look good in the eyes of the company." During this
21 meeting with HR, Jennifer Connolly requested to search Plaintiff's personal phone, and asked
22 Plaintiff if he had sued any previous employers. In a direct response to a line of questions from
23 HR, Plaintiff confirmed he encouraged a co-worker to seek legal counsel and to report Defendant
24 to the Labor Board for violating her employment rights (co-worker was out on a medical leave of
25 absence). During this meeting, Plaintiff stated to Jennifer Connolly, "It doesn't sound like they
26 want me to work there anymore." Jennifer Connolly then informed Plaintiff that she would see
27 what they are going to do with Plaintiff. When Plaintiff disclosed to HR that he encouraged the
28 co-worker to seek legal counsel and report Defendant to the Labor Board, Plaintiff had

1 reasonable cause to believe that Defendant violated a state or federal statute, or violated a local,
2 state, or federal rule or regulation.

3 19. Approximately 20 minutes after Plaintiff resumed working following the above-
4 mentioned meeting with HR, Defendant took away Plaintiff's logins and passwords for all of his
5 work related programs. Jennifer Connolly emailed Plaintiff stating, "Clawson management will
6 accept [Plaintiff's] resignation and for [him] to clear out [his] desk and leave the building."
7 When Defendant confirmed Plaintiff encouraged another co-worker to pursue legal claims or
8 possible legal claims against Defendant, Plaintiff was told to resign, effectively terminated
9 Plaintiff. Plaintiff was terminated on March 24, 2022 when he was forced to resign from his
10 employment with Defendant. Plaintiff is informed and believes Plaintiff's inquiry into 1)
11 improper charging of DMV fees to customers, 2) complaints of Defendant's improper use of
12 DMV Desk software; 3) inquiries into Defendant's pay plan, and 4) his confirmation to HR that
13 he encouraged a co-worker to seek legal claims or possible legal claims against Defendant, were
14 motivating reasons for both the adverse treatment and adverse employment actions against
15 Plaintiff termination.

16 20. This lawsuit seeks an injunction, restitution, damages, penalties and equitable
17 relief as provided by California state law including, without limitation: violations of the Labor
18 Code §§ 201, 202, 203, 223, 225.5, 226, 226.6, 226.7 510, 558, 1102.5, 1174, 1174.5, 1194,
19 1197.5, the applicable wage order, and others, as they may appear.

20 **FIRST CAUSE OF ACTION**

21 *Failure to Pay Overtime Wages*

22 (v. JAMES MC KOANE ENTERPRISES, INC.; and DOES 1-50)

23 [Labor Code §§ 510, 1194(a); 2699.5; and
24 the applicable wage order]

25 21. Plaintiff incorporates preceding paragraphs 1-20 as though fully set forth herein.

26 22. Labor Code § 510(a) requires "[a]ny work in excess of eight hours in one
27 workday and any work in excess of 40 hours in any one workweek and the first eight hours
28 worked on the seventh day of work in any one workweek shall be compensated at the rate of no

1 less than one and one-half times the *regular rate of pay* for an employee.” (Italics added) (See
2 also 8 CCR § 11070, section 3(A) [IWC Wage Order No. 7-2001])¹

3 23. While Defendant employed Plaintiff, Plaintiff was paid a base hourly rate. In
4 addition to his base pay, Plaintiff was paid “bonuses,” “spiffs”, and “commissions.” During
5 relevant times herein, the additional pay was not used in computing Plaintiff’s “regular rate of
6 pay” to determine the proper overtime premium for all overtime hours worked. In other words,
7 Plaintiff was paid an overtime rate below the legally mandated overtime premium rate.

8 24. Plaintiff is entitled to the unpaid balance of the full amount of the above-
9 mentioned unpaid overtime wages, plus interest, reasonable attorney’s fees, and costs of suit.
10 Plaintiff brings this action for recovery of overtime wages, interest, costs of suit, and attorneys’
11 fees pursuant to Labor Code § 1194(a).

12 25. Plaintiff has been damaged by the foregoing conduct in an amount subject to
13 proof, within the jurisdictional limits of this Court.

14 26. WHEREFORE, Plaintiff requests payment of unpaid overtime wages in
15 accordance with California Labor Code and IWC Wage Order 7-2001, plus interest pursuant to
16 Labor Code § 218.6.

17 27. WHEREFORE, Plaintiff requests attorneys’ fees and costs pursuant to Labor
18 Code §§ 218.5, 1194(a), 2699(g)(1).

19 28. This cause of action also is brought pursuant to California’s Private Attorney
20 General Act. Therefore, Plaintiff seeks any additional remedies on behalf of himself and others
21 similarly situated in accordance with Labor Code §§ 2698 et seq.

22 **SECOND CAUSE OF ACTION**

23 *Failure to Pay Premium Pay for Missed Meal Periods*
24 (v. JAMES MC KOANE ENTERPRISES, INC.; and DOES 1-50)
25 [Labor Code §§ 226.7, 512, 2699.5; and
26 Section 11 of the applicable wage order]

27 29. Plaintiff incorporates preceding paragraphs 1-28 as though fully set forth herein.

28 30. Labor Code section 226.7(a) provides that “[n]o employer shall require any
employee to work during any meal or rest period mandated by an applicable order of the

¹ To the extent Wage Order No. 4-2001 applies, the overtime provisions would be the same.

1 Industrial Welfare Commission.” “No employer shall employ any person for a work period of
2 more than five (5) hours without a meal period of not less than 30 minutes...” (8 CCR § 11070,
3 section 11(A)) “If an employer fails to provide an employee a meal period in accordance
4 with the applicable provisions of this order, the employer shall pay the employee one (1)
5 hour of pay at the employee's *regular rate of compensation* for each workday that the meal
6 period is not provided.” (Italics added) (*Id.* at section 11(D).)

7 31. While Defendant employed Plaintiff, Plaintiff was paid a base hourly rate. In
8 addition to his base pay, Plaintiff was paid “bonuses,” “spiffs”, and “commissions.” During
9 relevant times herein, the additional pay was not used in computing Plaintiff’s “regular rate of
10 compensation” to determine the proper rate for paying premium pay for missed meal periods. In
11 other words, Plaintiff was paid a rate below the legally mandated rate for proper premium pay.

12 32. By failing to pay proper rates for premium pay, Defendant has violated Labor
13 Code §§ 226.7, 512, and section 11 of IWC Wage Order No. 7-2001.

14 33. Plaintiff has been damaged by the foregoing conduct in an amount subject to
15 proof, within the jurisdictional limits of this Court.

16 34. WHEREFORE, Plaintiffs request relief, including meal period premiums, plus
17 interest, as described herein.

18 35. WHEREFORE, Plaintiff requests attorneys’ fees and costs pursuant to Labor
19 Code § 218.5.

20 **THIRD CAUSE OF ACTION**

21 *Failure to Provide Accurate Itemized Wage Statement Provisions*
22 (v. JAMES MC KOANE ENTERPRISES, INC.; and DOES 1-50)
23 [Labor Code §§ 226; 226.6; 1174; 1174.5; 1175; 2699.5; and
Section 7 of the applicable wage order]

24 36. Plaintiff incorporates preceding paragraphs 1-35 as though fully set forth herein.

25 37. As a result of Defendant not properly paying Plaintiff the proper overtime or meal
26 period premium pay rate, Defendant failed to maintain accurate payroll records and/or issue
27 accurate itemized wage statements in accordance with, *inter alia*, Labor Code §§ 226, 226.6,
28 1174, 1174.5, 1175, and Section 7 of the applicable wage order.

1 38. Labor Code § 226(a) requires Defendant to, without limitation, accurately report
2 total hours worked, the applicable hourly wage rate, and gross wages earned by Plaintiff.
3 Defendant has knowingly and intentionally failed to comply with Labor Code § 226(a) on each
4 and every wage statement provided to Plaintiff, by failing to accurately record the properly
5 hourly rates, and failing to keep and/or provide accurate records.

6 39. Plaintiff has been damaged by the foregoing conduct in an amount subject to
7 proof, within the jurisdictional limits of this Court.

8 40. WHEREFORE, Plaintiff requests payment of damages of all actual damages or
9 penalties for each inaccurate wage statement Defendant issued to Plaintiff in accordance to
10 Labor Code § 226(e). Plaintiff also seeks an injunction in accordance with Labor Code § 226(h)
11 to ensure compliance with section 226 requirements.

12 41. WHEREFORE, Plaintiff requests payment of penalties for each inaccurate wage
13 statement Defendants issued to Plaintiff in accordance to Labor Code §§ 226(e), 226.6, and
14 1174.5.

15 42. WHEREFORE, Plaintiff requests attorneys' fees and costs pursuant to Labor
16 Code §§ 226(e), (h) and 2699(g)(1).

17 43. This cause of action also is brought pursuant to California's Private Attorney
18 General Act. Therefore, Plaintiff seeks any additional remedies on behalf of himself and others
19 similarly situated in accordance with Labor Code §§ 2698 et seq.

20 **FOURTH CAUSE OF ACTION**

21 *Failure to Timely Pay Wages Due at Termination/Waiting Time Penalties*

22 (v. JAMES MC KOANE ENTERPRISES, INC.; and DOES 1-50)

 [Labor Code §§ 201; 202; 203; and 2699.5]

23 44. Plaintiff incorporates preceding paragraphs 1-43 as though fully set forth herein.

24 45. Labor Code §§ 201 and 202 require Defendant to pay Plaintiff all wages due
25 within 24 hours after a discharge or within 72 hours of resignation. Labor Code § 203 provides
26 that if an employer willfully fails to timely pay such wages the employer must, as a penalty,
27 continue to pay the employee's wages until the back wages are paid in full or an action is
28 commenced, for up to 30 days.

1 46. Plaintiff was terminated and/or resigned in lieu of a discharge on March 24, 2022.
2 More than thirty 30 days have passed since Plaintiff's termination, and Plaintiff has not been
3 fully paid for all overtime wages or premium wages (for missed meal periods) due and owing to
4 Plaintiff as described herein. Therefore, Plaintiff seeks waiting time penalties in accordance with
5 labor Code § 203.

6 47. Plaintiff has been damaged by the foregoing conduct in an amount subject to
7 proof, within the jurisdictional limits of this Court.

8 48. WHEREFORE, Plaintiff requests relief, including without limitation, the unpaid
9 wages that were owed at the time of termination.

10 49. WHEREFORE, Plaintiff requests waiting time penalties under Labor Code § 203.

11 50. WHEREFORE, Plaintiff requests attorneys' fees and costs pursuant to Labor
12 Code §§ 218.5 and 2699(g)(1).

13 51. This cause of action also is brought pursuant to California's Private Attorney
14 General Act. Therefore, Plaintiff seeks any additional remedies on behalf of himself and others
15 similarly situated in accordance with Labor Code §§ 2698 et seq.

16 **FIFTH CAUSE OF ACTION**

17 *Unlawful Withholding of Wages*

18 (v. JAMES MC KOANE ENTERPRISES, INC.; and DOES 1-50)

 [Labor Code §§ 223; 225.5]

19 52. Plaintiff incorporates preceding paragraphs 1-51 as though fully set forth herein.

20 53. Labor Code § 223 states: "Where any statute or contract requires an employer to
21 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
22 purporting to pay the wage designated by statute or by contract."

23 54. By way of Defendant's unlawful compensation system described above, Plaintiff
24 was not paid for all wages due and owing under the designated statute and was paid less than
25 what was required by both statute and contract.

26 55. Plaintiff is informed and believes this is an unlawful withholding of wages, in
27 violation of Labor Code § 223. Defendant also failed to include an accounting of these
28 withholdings on wage statements issued to Plaintiff.

1 56. As a motorsport's sales representative, Plaintiff was guaranteed a base
2 compensation, with the opportunity to earn an additional bonus and/or commission. Defendant
3 and Plaintiff entered into a Compensation Plan, ("Compensation Plan"), which detailed how
4 Plaintiff would earn a commission.

5 57. Pursuant to the Compensation Plan, Plaintiff was entitled to a base compensation
6 of \$15.00 per hour, and was obligated to keep track of all hours worked.

7 58. In addition to the Plaintiff's base compensation of \$15.00 per hour, Plaintiff was
8 entitled to a Motorsport Bonus or Commission in the amount of 15% of gross profit per unit for
9 each unit that Plaintiff sold if Plaintiff a) sold 12 units and b) generated \$17,500 in gross profit
10 per calendar month.

11 59. For the time period of March 1, 2022 to March 22, 2022, Plaintiff was credited
12 with selling 6.5 units at \$13,728.16. However, Plaintiff was terminated on March 24, 2022 when
13 he was forced to resign from his employment with Defendant. By terminating Plaintiff, Plaintiff
14 was prevented from completing duties that would have allowed him to complete the conditions
15 necessary to trigger commission wages.

16 60. Plaintiff has been damaged by the foregoing conduct in an amount subject to
17 proof, including a pro rate share of the commissions earned for the last commission cycle, within
18 the jurisdictional limits of this Court. Plaintiff requests relief, including all wages earned, plus
19 interest.

20 61. WHEREFORE, Plaintiff also seeks civil penalties in accordance with Labor Code
21 § 225.5.

22 62. WHEREFORE, Plaintiff seeks attorneys' fees and costs in accordance with Labor
23 Code §§ 218.5 and 2699(g)(1).

24 63. This cause of action also is brought pursuant to California's Private Attorney
25 General Act. Therefore, Plaintiff seeks any additional remedies on behalf of himself and others
26 similarly situated in accordance with Labor Code §§ 2698 et seq.
27
28

(v. JAMES MC KOANE ENTERPRISES, INC.; and DOES 1-50)

64. Plaintiff incorporates preceding paragraphs 1-63 as though fully set forth herein.

66. Plaintiff does not know the precise amount of the compensation due to him.

68. The amount of statutory interest and penalties owed to Plaintiff is based on the amount of compensation owed to Plaintiff. This amount can only be determined by an accounting of books and records, including computerized log in and log out information in the possession of Defendant.

Unfair Competition Law

[Business & Professions Code §§ 17200 et seq.]

71. On information and belief and at all times relevant, Plaintiff alleges that

A. Failing to properly compensate Plaintiff at proper overtime rates by failing to calculate Plaintiff's overtime rate at the "regular rate of pay", thereby depriving Plaintiff of overtime wages;

- 1 B. Failing to properly compensate Plaintiff for missed meal periods by failing to
2 calculate Plaintiff's premium pay rate at the "regular rate of compensation,"
3 thereby depriving Plaintiff of premium wages;
- 4 C. Failing to pay Plaintiff in full within 24 hours after his termination;
- 5 D. Failing to maintain accurate payroll records and/or issue accurate itemized wage
6 statements to Plaintiff;
- 7 E. Other unlawful, unfair and fraudulent actions, within the meaning of Business and
8 Professions Code §§ 17200 *et seq.* directly causing a loss of property and other
9 damage to Plaintiff herein.

10 72. As a result of its unlawful acts, Defendant has reaped unfair benefits and unlawful
11 profits at the expense of Plaintiff. Defendant should be enjoined from this activity and made to
12 disgorge the ill-gotten gains and restore to Plaintiff the wrongfully withheld wages and
13 reimbursements pursuant to Business and Professions Code § 17203 and penalties pursuant to §
14 17202.

15 73. Defendants have been and continue to be unjustly enriched through Defendant's
16 false, fraudulent, unfair and deceptive business practices as alleged herein.

17 74. The unlawful conduct alleged herein is continuing, and there is no indication that
18 Defendant will not continue such activity into the future. Plaintiff alleges that if Defendant are
19 not enjoined from the conduct set forth in this Complaint, they will continue to act unlawfully.

20 75. Plaintiff therefore requests an injunction, requiring Defendant to cease and desist
21 from the practice of failing to pay wages and meal premiums, and ordering restitution to
22 Plaintiffs.

23 76. To the extent permitted by law, Plaintiff requests attorneys' fees and costs in
24 accordance with Code of Civil Procedure § 1021.5.

1 **EIGHTH CAUSE OF ACTION**

2 *Failure to Produce Employment Records*

3 (v. JAMES MC KOANE ENTERPRISES, INC.; and DOES 1-50)

4 [Labor Code § 1198.5]

5 77. Plaintiff incorporates preceding paragraphs 1-76 as though fully set forth herein.

6 78. Labor Code § 1198.5 requires production of certain employment records within
7 30 days of the employee's request of their personnel file. Section 1198.5(a) includes "personnel
8 records that the employer maintains relating the employee's performance or to any grievance
9 concerning the employee."

10 79. In or around April 2022, through Plaintiff's representative, Plaintiff served a
11 request for Plaintiff's personnel file. The production appears to omit certain information,
12 including written discipline related to an October 2021 write-up described above in Paragraph 16
13 of this complaint, nor did it include any documentation concerning Plaintiff's grievances alleged
14 herein.

15 80. Pursuant to Labor Code § 1198.5(k), Plaintiff seeks a civil penalty of \$750.00 for
16 Defendant's failure to produce personnel records. Plaintiff will seek reasonable attorneys' fees
17 and costs in accordance with section 1198.5(l).

18 **NINTH CAUSE OF ACTION**

19 *Retaliation for Discussing Wages*

20 (v. JAMES MC KOANE ENTERPRISES, INC.; and DOES 1-50)

21 [Labor Code § 1197.5(k)(1)]

22 81. Plaintiff incorporates preceding paragraphs 1-80 as though fully set forth herein.

23 82. Labor Code § 1197.5(k)(1) provides in pertinent part, "An employer shall not
24 discharge, or in any manner discriminate or retaliate against, any employee by reason of any
25 action taken by the employee to invoke or assist in any manner the enforcement of this section.
26 An employer shall not prohibit an employee from disclosing the employee's own wages,
27 discussing the wages of others, inquiring about another employee's wages, or aiding or
28 encouraging any other employee to exercise his or her rights under this section."

83. On or around October 6, 2021, Plaintiff engaged in a protected activity when he
asked two of his coworkers about their wages. Plaintiff was specifically inquiring about

1 Defendant's pay plan and if Defendant paid out their bonuses every two weeks or once a month.
2 Before Plaintiff asked the two co-workers about how their bonuses were paid out, Plaintiff asked
3 one of his supervisors, James Hutchens, if he knew the answer to Plaintiff's question. Mr.
4 Hutchens informed Plaintiff that he did not know the answer to his question. In response to
5 Plaintiff's inquiries, Mr. Hutchens served a written warning to Plaintiff, which stated in pertinent
6 part, "Steve went to almost every sales person on the showroom complaining and being very
7 vocal about an apparent pay discrepancy." In this same written warning, Plaintiff also was
8 criticized for not meeting the minimum standard sales requirement of 12 unites for the month of
9 September. However, the employer was aware that Plaintiff missed significant time during the
10 relevant time period because he was taking protected COVID-19 sick leave, and because his
11 production was slowed from consequences of his recent COVID-19 illness.

12 84. WHEREFORE, Plaintiff seeks equitable relief pursuant to Labor Code §
13 1197.5(k)(2).

14 85. WHEREFORE, Plaintiff requests attorneys' fees and costs pursuant to Labor
15 Code § 1197.5(g).

16 **TENTH CAUSE OF ACTION**

17 *Whistleblower Retaliation*

18 (v. JAMES MC KOANE ENTERPRISES, INC.; and DOES 1-50)

19 [Labor Code § 1102.5(b)]

20 86. Plaintiff incorporates preceding paragraphs 1-85 as though fully set forth herein.

21 87. Plaintiff was employed by Defendant.

22 88. In or around June 2021, Plaintiff engaged in a protected activity when he verbally
23 disclosed to Defendant's general manager, Mike Stovall, that Defendant was charging improper
DMV fees to customers. Examples include:

- 24 a. Plaintiff noticed that customers were being charged for a California State Tire
25 Recycle Fee for used motor vehicles, which is a fee only applicable to new motor
26 vehicles.
- 27 b. Some customers were being charged for a registration renewal on used motor
28 vehicles up to \$200 to \$300 dollars when they should only have been charged a
\$15 dollar transfer fee.

1 c. A customer's tax rate for the purchase of a motor vehicle is determined by where
2 the customer lives. Plaintiff informed Mr. Stovall that Defendant was writing the
3 customer up at a higher tax rate. Once Defendant noticed that the customer should
4 be at a lower tax rate, instead of taking it off the "out-the-door" sales price,
5 Defendant would lower the tax rate and apply keep add the difference to the sales
6 price to increase the gross profit for Defendant.

7 Plaintiff disclosed to Mr. Stovall that Defendant would have some exposure if they were
8 to be audited, and Mr. Stovall informed Plaintiff that he would look into it. However, Plaintiff is
9 informed and believes nothing was ever done to correct these issues. When Plaintiff disclosed
10 this information to Mr. Stovall, who is a person with authority over Plaintiff and who has the
11 authority to investigate and/or correct the above-mentioned violation or noncompliance, Plaintiff
12 had reasonable cause to believe that Defendant violated a state or federal statute, or violated a
13 local, state, or federal rule or regulation.

14 89. In or around September 2021, Plaintiff was called to the sales manager's office,
15 where one of Plaintiff's sales managers, Ricardo De La Rosa, informed Plaintiff that two
16 employees of Defendant complained to their supervisor, Vicky Strand, that Plaintiff did a "burn
17 out" in his truck in the employee parking lot across the street from Defendant's dealership.
18 Plaintiff contested the allegation. Plaintiff requested an explanation as to how the employees
19 came to the conclusion that it was in fact Plaintiff's vehicle. Mr. De La Rosa informed Plaintiff
20 that one of the complaining employees, wrote down Plaintiff's license plate number, gave the
21 license plate number to Vicky Strand, and Vicky Strand then ran Plaintiff's license plate number
22 through Defendant's DMV's database, "DMV Desk", to establish that Plaintiff was the
23 registered owner of the vehicle. Plaintiff then engaged in a protected activity when he:

- 24 a. Informed Ricardo De La Rosa that DMV Desk is for business use only and that it
25 is a violation of the software agreement and against California law to run
26 Plaintiff's license plate number under those circumstances; and
27 b. Plaintiff emailed his HR Director, Jennifer Connolly, and told her he needed to
28 speak with her. Plaintiff met with Ms. Connolly in front of Defendant's dealership

1 and complained about running the license plate numbers through the DMV
2 database. Ms. Connolly assured Plaintiff that she would speak with Vicky Strand
3 about the incident.

4 When Plaintiff disclosed this information to Mr. De La Rosa and Ms. Connolly, who are
5 persons with authority over Plaintiff and who have the authority to investigate and/or correct the
6 above-mentioned violation or noncompliance, Plaintiff had reasonable cause to believe that
7 Defendant violated a state or federal statute, or violated a local, state, or federal rule or
8 regulation.

9 90. However, this was not last time Plaintiff's license plate was run. Plaintiff
10 witnessed another employee of Defendant, Randy Richie, frequently patrolling Defendant's
11 parking lots trying to figure out which employees were parked in the dealership parking lot. Mr.
12 Ritchie would take pictures of license plates and run the plates through DMV Desk. He would
13 threaten to tow employee cars if they were parked in the dealership parking lot instead of the
14 employee parking lot.

15 91. On another occasion in or around March 2, 2022, one of Plaintiff's supervisors,
16 Joseph Lopez, texted Plaintiff and asked if Plaintiff was parked in the dealership parking lot.
17 Plaintiff told Mr. Lopez he was in the dealership parking lot because he was on his lunch and had
18 a customer in the showroom. Instead of waiting for the traffic lights on Blackstone Avenue in
19 Fresno, Plaintiff found a spot in the dealership parking lot and chose to park there so that he
20 could meet with his customer as soon as possible, and avoid the customer from having to wait
21 any longer. Mr. Lopez informed Plaintiff that he needed to move his car. Plaintiff explained to
22 him what happened and Mr. Lopez said he was told by Mr. Richie to tell Plaintiff to move his
23 car. Plaintiff engaged in a protected activity when he explained to Mr. Lopez that if he ran
24 Plaintiff's plate, Plaintiff would be going to the local DMV Investigators office to report Randy
25 Richie about his unlawful use of DMV Desk. Mr. Lopez immediately told Plaintiff's general
26 manager, Mr. Stovall, that Plaintiff wanted to report Mr. Richie to a DMV investigator. Mr.
27 Stovall immediately called Plaintiff into his office with Mr. Lopez being present. During the
28 meeting, Mr. Stovall explained to Plaintiff that because Mr. Richie is part of ownership (married

1 to a family member of the ownership group), they just need to deal with Mr. Ritchie and "that's
2 the card we are being dealt". Mr. Stovall asked Plaintiff not to report Mr. Richie to the DMV.
3 Plaintiff engaged in protected activity when he made the above-mentioned complaint to Mr.
4 Lopez, who is a person with authority over Plaintiff and who has the authority to investigate
5 and/or correct the above-mentioned violation or noncompliance, and informed Mr. Stovall of his
6 intent to disclose the information to the DMV, a government agency, regarding Defendant's
7 employees improper use of the DMV Desk software, Plaintiff had reasonable cause to believe
8 that Defendant violated a state or federal statute, or violated a local, state, or federal rule or
9 regulation.

10 92. In or around March 24, 2022, Plaintiff made protected complaint(s) to HR when
11 HR confronted Plaintiff about supporting a harassment/discrimination claim of another co-
12 worker. Plaintiff's HR Director, Jennifer Connolly, informed Plaintiff that she was "conducting
13 an interview that didn't make [Plaintiff] look good in the eyes of the company." During this
14 meeting with HR, Jennifer Connolly requested to search Plaintiff's personal phone, and asked
15 Plaintiff if he had sued any previous employers. In a direct response to a line of questions from
16 HR, Plaintiff confirmed he encouraged a co-worker to seek legal counsel and to report Defendant
17 to the Labor Board for violating her employment rights (co-worker was out on a medical leave of
18 absence). During this meeting, Plaintiff stated to Jennifer Connolly, "It doesn't sound like they
19 want me to work there anymore." Jennifer Connolly then informed Plaintiff that she would see
20 what they are going to do with Plaintiff. When Plaintiff disclosed to HR that he encouraged the
21 co-worker to seek legal counsel and report Defendant to the Labor Board, Plaintiff had
22 reasonable cause to believe that Defendant violated a state or federal statute, or violated a local,
23 state, or federal rule or regulation.

24 93. Approximately 20 minutes after Plaintiff resumed working following the above-
25 mentioned meeting with HR, Defendant took away Plaintiff's logins and passwords for all of his
26 work related programs. Jennifer Connolly emailed Plaintiff stating, "Clawson management will
27 accept [Plaintiff's] resignation and for [him] to clear out [his] desk and leave the building."
28 When Defendant confirmed Plaintiff encouraged another co-worker to pursue legal claims or

possible legal claims against Defendant, Plaintiff was told to resign. Plaintiff was terminated on March 24, 2022 when he was forced to resign from his employment with Defendant. Plaintiff is informed and believes Plaintiff's inquiry into 1) improper charging of DMV fees to customers, 2) complaints of Defendant's improper use of DMV Desk software; 3) inquiries into Defendant's pay plan, and 4) his confirmation to HR that he encouraged a co-worker to seek legal claims or possible legal claims against Defendant, were motivating reasons for both the adverse treatment and adverse employment actions against Plaintiff termination.

94. As a result of Defendant's above-described retaliatory conduct, Plaintiff has suffered and continues to suffer damages in the form of lost wages and other employment benefits, pecuniary benefits, and emotional distress. Plaintiff has been damages by the foregoing conduct in an amount subject to proof, within the jurisdictional limits of this Court.

95. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

96. Plaintiff is informed and believes that Defendant's conduct through its managing agents was willful, malicious, intentional, and oppressive, entitling Plaintiff to punitive damages because Defendant knew that: 1) Plaintiff has a right to be free from a retaliation in terms of his employment; 2) Defendant recklessly failed to anticipate that the preceding conduct would cause emotional distress to Plaintiff; 3) Defendant's failure to protect such rights resulted in emotional distress; 4) by intentionally or recklessly subjecting Plaintiff to said emotional distress, Defendant engaged in conduct that was oppressive, malicious, cruel and unjust. Plaintiff is entitled to recover exemplary and punitive damages from Defendant in an amount according to proof.

97. Plaintiff seeks a civil penalty of \$10,000 pursuant to Labor Code § 1102.5(f). Plaintiff also seeks a penalty under Labor Code § 1103. Plaintiff also seeks an award of reasonable attorneys' fees and costs in accordance with Labor Code § 1102.5(j).

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(v. JAMES MC KOANE ENTERPRISES, INC.; and DOES 1-50)
[California Labor Code §§ 2698 et seq.]

99. Labor Code § 2699(a),(g) authorizes an aggrieved employees, on behalf of themselves and other current and former employees and the general public, to bring a representative civil action to recover civil penalties pursuant to procedures set forth by Labor Code § 2699.3.

101. Plaintiffs are aggrieved employees within the meaning of Labor Code § 2699(c).

102. Plaintiffs seek the following penalties pursuant to PAGA:

- a. Labor Code § 201;
- b. Labor Code § 202;
- c. Labor Code § 203;
- d. Labor Code § 204;
- e. Labor Code § 210;
- f. Labor Code § 223;
- g. Labor Code § 225.5;
- h. Labor Code § 226;
- i. Labor Code § 226.2;
- j. Labor Code § 226.3;
- k. Labor Code § 226.6;
- l. Labor Code § 226.7;**
- m. Labor Code § 233;**
- n. Labor Code § 246;**

1 **106.** Labor Code section 226.7(a) provides that “[n]o employer shall require any
2 employee to work during any meal or rest period mandated by an applicable order of the
3 Industrial Welfare Commission.” IWC Wage Order No. 7-2001, section 12(A) states that
4 “[e]very employer shall authorize and permit all employees to take rest periods ... The
5 authorized rest period time shall be based on the total hours worked daily at the rate of ten
6 (10) minutes net rest time for every (4) hours worked...” (8 CCR § 11070, section 12(A)) “If
7 an employer fails to provide an employee a rest period in accordance with the applicable
8 provisions of this order, the employer shall pay the employee one (1) hour of pay at the
9 employee's *regular rate of compensation* for each workday that the rest period is not
10 provided.” (Italics added) (*Id.* at section 11(D).)

11 **107.** While Defendant employed Plaintiff, Plaintiff was paid a base hourly rate. In
12 addition to his base pay, Plaintiff was paid “bonuses,” “spiffs”, and “commissions.” During
13 relevant times herein, the additional pay was not used in computing Plaintiff’s “regular
14 rate of compensation” to determine the proper rate for paying premium pay for missed
15 rest periods. In other words, Plaintiff was paid a rate below the legally mandated rate for
16 proper premium pay if he was entitled to a rest period.

17 **108.** By failing to pay proper rates for premium pay, Defendant has violated
18 Labor Code §§ 226.7, 512, and section 11 of IWC Wage Order No. 7-2001.

19 **109.** Plaintiff has been damaged by the foregoing conduct in an amount subject to
20 proof, within the jurisdictional limits of this Court.

21 **110.** WHEREFORE, Plaintiffs request relief, including rest period premiums,
22 plus interest, as described herein.

23 **111.** WHEREFORE, Plaintiff requests attorneys’ fees and costs pursuant to
24 Labor Code § 218.5.

25 **112.** This cause of action also is brought pursuant to California’s Private Attorney
26 General Act. Therefore, Plaintiff seeks any additional remedies on behalf of himself and
27 others similarly situated in accordance with Labor Code §§ 2698 et seq.
28

THIRTEENTH CAUSE OF ACTION

Failure to Provide Paid Sick Leave at Regular Rate of Pay
(v. JAMES MC KOANE ENTERPRISES, INC.; and DOES 1-50)
[Labor Code §§ 245.5, 246, 2699.5]

113. Plaintiff re-alleges and incorporates by reference the allegations of paragraphs 1 - 112 as if fully stated herein.

114. Labor Code § 245.5(e) provides that, “ ‘[p]aid sick days’ means time that is compensated at the same wage as the employee normally earns during regular work hours and is provided by an employer to an employee for the purposes described in Section 246.5.”

115. Labor Code § 246(l)(1) provides that, “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the *regular rate of pay* for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.”

116. While Defendant employed Plaintiff, Plaintiff was paid a base hourly rate. In addition to his base pay, Plaintiff was paid “bonuses,” “spiffs”, and “commissions.” During relevant times herein, the additional pay was not used in computing Plaintiff’s “regular rate of pay” to determine the proper rate for paying paid sick leave. In other words, Plaintiff was paid a rate below the legally mandated rate for paid sick leave on days he would have utilized paid sick leave.

117. Plaintiff has been damaged by the foregoing conduct in an amount subject to proof, within the jurisdictional limits of this Court.

118. Plaintiff seeks penalties and remedies to the extent permitted by law in accordance with Labor Code § 248.5.

119. Plaintiff also seeks attorneys’ fees and costs in accordance with Labor Code § 233(e). This cause of action also is brought pursuant to California’s Private Attorney General Act. Therefore, Plaintiff seeks any additional remedies on behalf of himself and others similarly situated in accordance with Labor Code §§ 2698 et seq.

1 **WHEREFORE, Plaintiff prays for judgment as follows:**

- 2 a. For compensatory damages, including unpaid wages, in accordance with Labor Code §§
3 218.5, 1194;
- 4 b. Compensatory Damages, including the back pay, front pay, and damages for emotional
5 distress;
- 6 c. For civil penalties pursuant to Labor Code §§ 225.5, 226, 226.6, 1174.5, 1102.5(f), 1103,
7 1198.5;
- 8 d. That Defendant be found to have engaged in unfair competition in violation of Business
9 and Professions Code §§17200 *et seq.*;
- 10 e. That Defendants be ordered and enjoined to provide an accounting and make restitution
11 to Plaintiff, including disgorgement of its wrongfully obtained revenues, earnings, profits,
12 compensation, and benefits pursuant to California Business and Professions Code §§
13 17203 and 17204;
- 14 f. For an injunction requiring Defendants to produce accurate itemized wage statements;
- 15 g. For payment of civil penalties for failure to issue accurate wages statements in
16 accordance with Labor Code § 226(e)(1) and damages as a result of re-creating hours
17 worked;
- 18 h. For an injunction in accordance with Labor Code § 226(h);
- 19 i. For payment of waiting time penalties for non-payment of wages to Plaintiff in
20 accordance with Labor Code §§ 201, 202, 203;
- 21 j. For meal **and rest** period premium pay in accordance with Labor Code §§ 226.7, 512,
22 **and IWC Wage Order No. 7-2001;**
- 23 **k. For proper payment of paid sick leave and applicable penalties in accordance with**
24 **Labor Code §§ 233, 246, 248.5;**
- 25 l. For penalties and compensatory damages and costs and attorneys' fees in favor of
26 Plaintiff and all others similarly situated available under PAGA, Labor Code §§ 2698 *et*
27 *seq.*;
- 28 m. For interest as state law allows;

- 1 n. For punitive damages;
2 o. For attorneys' fees and costs pursuant to Labor Code §§ 218.5, 226(e), 1102.5(j),
3 1194(a), 1198.5(l), 1197.5(g), 2699(g)(1); and
4 p. For such other and further relief as the Court deems just and proper.
5

6 Dated: June 5, 2023

**MICHAEL J. F. SMITH,
A PROFESSIONAL CORPORATION**

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8 By: /s/John L. Migliazzo
9 John L. Migliazzo,
10 Attorney for Plaintiff,
11 Steven Joneson II
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My business address is 1391 West Shaw Avenue, Suite D, Fresno, California 93711. I am employed in Fresno County, California. I am over the age of 18 years and am not a party to this case.

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