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ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SANTA BARBARA – NORTH COUNTY**

11
12 YANCEY HEREDIA, on behalf of himself,
the State of California, and all Aggrieved
13 Employees,

14 Plaintiffs,

15 vs.

16 STOWASSER BUICK-GMC, INC., a
17 California corporation; and DOES 1 through
18 100, inclusive,

19 Defendants.

Case No.: 23CV02511

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, et seq.)**

UNLIMITED CIVIL CASE

1 Plaintiff Yancey Heredia (hereinafter “Plaintiff”), on behalf of himself, the State of
2 California, and other aggrieved employees, hereby brings this Representative Action Complaint
3 (“Complaint”) against Stowasser Buick-GMC, Inc., a California corporation; and DOES 1 to 100,
4 inclusive (collectively “Defendants”), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself, all other aggrieved employees, and the State of
7 California, hereby brings this Complaint for recovery of civil penalties under the Private
8 Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”), and Industrial Welfare
9 Commission Wage Order 4 (“Wage Order 4”). The monetary damages that Plaintiff seeks exceed
10 this Court’s jurisdictional minimum.

11 **VENUE**

12 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
13 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in
14 Santa Barbara County. Defendants own, maintain offices, transact business, have agent(s) within
15 Santa Barbara County, and/or otherwise are found within Santa Barbara County, and Defendants
16 are within the jurisdiction of this Court for purposes of service of process.

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
19 Plaintiff was, and currently is, a California resident. Plaintiff was employed by Defendants within
20 the statute of limitations periods applicable to each cause of action pled herein.

21 4. Plaintiff is informed and believes, and based thereon alleges, that during the statute
22 of limitations periods applicable to this action through the present, Defendants did (and continue
23 to do) business and employed Plaintiff and other aggrieved employees within Santa Barbara
24 County and the state of California and, therefore, were (and are) doing business in Santa Barbara
25 County and the State of California.

26 5. Plaintiff does not know the true names or capacities, whether individual, partner,
27 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
28 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to

1 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
2 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
3 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
4 and proximately caused Plaintiff and the other aggrieved employees to be subject to the unlawful
5 employment practices, wrongs, injuries and damages complained of herein.

6 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
7 herein, Defendants were and are the employers of Plaintiff and the other aggrieved employees.

8 7. At all times herein mentioned, each of said Defendants participated in the doing
9 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
10 Defendants, and each of them, were the agents, servants, and employees of each and every one of
11 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
12 were acting within the course and scope of said agency and employment. Defendants, and each
13 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
14 omissions complained of herein.

15 8. At all times mentioned herein, Defendants, and each of them, were members of
16 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
17 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
18 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the other
19 aggrieved employees.

20 **REPRESENTATIVE ACTION ALLEGATIONS**

21 9. Plaintiff worked for Defendants as a non-exempt employee from approximately
22 July 2020 until approximately November 2022.

23 10. During Plaintiff's employment with Defendants, Defendants failed to reimburse
24 Plaintiff and other employees for expenses they incurred in the course of their employment.
25 Specifically, Plaintiff was required to use his personal cellphone to access and answer a daily
26 COVID-19 symptom questionnaire on a website called Hotlink HR. Plaintiff was required to
27 complete and pass this questionnaire before being allowed to work each day. Defendants also
28 required Plaintiff and other employees to clock in and out for their shifts using a cellphone app

1 called NetChex. In addition, Defendants also required Plaintiff and other employees to use their
2 personal cellphones to communicate with managers/supervisors about work related subjects.
3 Despite requiring Plaintiff and other employees to use their personal property for work-related
4 purposes, Defendants failed to reimburse Plaintiff or other employees for any portion of their
5 personal expenses, including any portion of their monthly cell phone bill. On information and
6 belief, these violations continue and are ongoing. As a result of the foregoing, Plaintiff and other
7 employees are entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan's*
8 *Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

9 **FIRST CAUSE OF ACTION**

10 **PRIVATE ATTORNEY GENERAL ACT**

11 **(AGAINST ALL DEFENDANTS)**

12 11. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 12. Defendants have committed several Labor Code violations against Plaintiff and
14 other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor
15 Code § 2698 *et seq.*, and, acting on behalf of himself and other aggrieved employees, brings this
16 representative action against Defendants to recover the civil penalties due to Plaintiff, other
17 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
18 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
19 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
20 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
21 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
22 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
23 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
24 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and
25 \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay
26 period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
27 employee per pay period for those violations of the Labor Code for which no civil penalty is
28 specifically provided, based on the following Labor Code violations:

1 a. Failing to reimburse Plaintiff and other aggrieved employees all necessary
2 business expenditures in violation of Labor Code §§ 2802 and 2804;

3 13. On or about March 28, 2023, Plaintiff notified Defendants via certified mail and
4 notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of
5 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
6 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
7 California Labor Code identified in Paragraph 12 (a). Now that sixty-five days have passed from
8 Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not
9 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
10 administrative requirements for bringing a claim under the Private Attorneys General Act with
11 respect to these violations.

12 14. Based on the foregoing, Plaintiff seeks to represent himself, the State of California,
13 and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all current and
14 former employees who have worked for Defendants in California at any time from one year prior
15 to the submission of Plaintiff’s PAGA notice to the present.

16 15. Plaintiff was compelled to retain the services of counsel to file this court action to
17 protect his interest and the interests of other aggrieved employees, and to assess and collect the
18 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which
19 he is entitled to recover under California Labor Code § 2699(g).

20 **PRAYER**

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

23 16. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
24 employees, and the State of California according to proof pursuant to Labor Code § 2699,
25 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
26 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
27 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
28 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to

1 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
2 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
3 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
4 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
5 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
6 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
7 Labor Code § 2699(f);

8 17. On all causes of action, for attorney's fees and costs as provided by Labor Code §
9 2699(g) and Code of Civil Procedure § 1021.5; and

10 18. For such other and further relief the Court may deem just and proper.

11
12 Dated: June 2, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

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14 By:


Tuvia Korobkin
Attorneys for Plaintiff