Tuvia Korobkin, Esq. # 268066
tuvia@abramsonlabor.com
Rijenea Appling, Esq. # 346329
rijenea@abramsonlabor.com
ABRAMSON LABOR GROUP
11846 Ventura Boulevard, Suite 100
Studio City, California 91604
Tel: (213) 493-6300
Fax: (213) 723-2522

Attorneys for Plaintiff

Assigned for All Purposes
Judge Lon F. Hurwitz
CX103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

TROY FIELDS, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

IRVINE EUROCARS, LLC dba IRVINE BMW, a California limited liability company; and DOES 1 through 100, Inclusive,

Defendants.

Case No. 30-2023-01319978-CU-OE-CXC

FIRST AMENDED CLASS AND REPRESENTATIVE CLASS ACTION COMPLAINT FOR:

(1) FAILURE TO PAY OVERTIME WAGES (LABOR CODE §§ 204, 510, 558, 1194, 1198);

(2) MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512, 1198);

(3) REST PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 516, 1198);

(4) WAGE STATEMENT VIOLATIONS (LABOR CODE § 226, *et seq.*);

(5) WAITING TIME PENALTIES (LABOR CODE §§ 201-203);

(6) FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE §§ 2802, 2804);

(7) UNFAIR COMPETITION (BUS. & PROF. CODE § 17200, *et seq.*);

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

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

Plaintiff Troy Fields ("Plaintiff"), on behalf of himself and all others similarly situated, hereby brings this Class and Representative Action Complaint against Irvine Eurocars, LLC dba Irvine BMW, a California limited liability company; and Does 1 through 100, inclusive (collectively, "Defendants"), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this class and representative action for recovery of unpaid wages and penalties under California Business and Professions Code section 17200, *et. seq*.; Labor Code sections 201-204, 226, 226.7, 510, 512, 516, 1194, 1198, 2802, 2804, 2698 *et seq*; and Industrial Welfare Commission Wage Order No. 7 ("Wage Order 7"), in addition to seeking declaratory relief and restitution. This class action is brought pursuant to California Code of Civil Procedure section 382. This Court has jurisdiction over Defendants' violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in Orange County. Defendants own, maintain offices, transact business, have an agent or agents within Orange County, and/or otherwise are found within Orange County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 1194, 1198, 2802, 2804, 2698 *et seq.*; California Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 7, which sets

employment standards for employees in the mercantile industry, which includes any business operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do) business as a car dealership, and that they have employed Plaintiff and other similarly situated non-exempt employees within Orange County and the state of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

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

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class Members (as defined in Paragraph 17).

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff was employed by Defendants as a non-exempt employee from approximately October 2020 until approximately May 2022.

10. During Plaintiff's employment with Defendants, Defendants failed to pay Plaintiff and other non-exempt employees' overtime at one and one-half times their "regular rate" of pay. Specifically, Defendants failed to incorporate non-discretionary bonuses, "MONTHL" pay, and/or other forms of pay not excludable from the regular rate (collectively, such forms of pay are referred to herein as "Incentive Pay") when calculating Plaintiff's and other non-exempt employees' regular rate of pay, which caused Defendants to under-pay overtime (and/or double-time) wages. For example, in the pay period of April 1, 2022 to April 15, 2022 (with a check date of April 20, 2022), Plaintiff's wage statement reflects that he earned a $862.50 MONTHL payment, but Defendants failed to incorporate the value of the MONTHL payment in Plaintiff's regular rate of pay when calculating his overtime and failed to pay overtime on the MONTHL payment. As another example, in the pay period of June 1 to 15, 2021, Plaintiff's wage statement reflects that he was paid a MONTHL payment of $637.50 and also worked 7.68 hours of overtime, but Defendants failed to incorporate the value of the MONTHL payment into the "regular rate" and therefore, failed to pay Plaintiff for his overtime hours at the proper rate of pay. As a result of the above, Defendants' failure to incorporate Incentive Pay into the "regular rate" of pay resulted in Plaintiff and other non-exempt employees being under-paid their overtime wages.

11. In addition, Defendants also failed to pay Plaintiff and other non-exempt employees' overtime wages during some pay periods in which their commissions equaled less than 50% of their compensation. For example, in the pay period of May 1, 2021 to May 15, 2021, Plaintiff's wage statement reflects that he earned $1,645.87 in commission, $2,025 in MONTHL pay, and $1,230.18 in regular pay (i.e., commission compensated for approximately 34% of Plaintiff's compensation). The same wage statement reflects that Plaintiff worked 87.87 hours during the pay period, and upon information and belief some of those hours were overtime hours worked by Plaintiff, for which Defendants failed to pay any overtime premium. This practice has resulted in Plaintiff and other non-exempt employees not being paid overtime wages.

12. Defendants have also failed to reimburse Plaintiff and other employees for expenses they incurred in the course of their employment. Specifically, Defendants required Plaintiff to use his personal cellular phone to communicate and set up appointments with clients. When clients called Defendants' phone to speak with Plaintiff, Defendants would transfer the client call to Plaintiff's personal cellular phone. Defendants would also contact Plaintiff on his personal cell phone both during and outside of working hours. Despite requiring Plaintiff to use his personal cellular phone for work-related purposes, Defendants failed to reimburse Plaintiff for any portion of his personal cellular phone bill. As a result of the foregoing, Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

13. Defendants have also failed to provide Plaintiff and other non-exempt employees with all statutorily mandated meal periods due to Defendants' meal period policies/practices. Specifically, the workload imposed on Plaintiff and other non-exempt employees made it impracticable for Plaintiff and other non-exempt employees to take a 30-minute off-duty meal period prior to the end of the fifth hour of work, and/or a second 30-minute meal period on shifts over 10.0 hours. In those instances that Defendants failed to provide Plaintiff and other non-exempt employees with a legally compliant meal period, Defendants failed to pay the meal period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying meal period premiums when Defendants failed to provide a legally compliant meal period.

14. Defendants have also failed to authorize and permit rest periods to Plaintiff and other non-exempt employees. Specifically, Defendants have failed to authorize and permit a 10-minute net rest period for every 4 hours worked or major fraction thereof, as Plaintiff and other non-exempt employees were frequently unable to take the rest periods to which they were entitled as a result of the workload imposed by Defendants. In those instances that Defendants failed to authorize and permit Plaintiff and other non-exempt employees to take a legally compliant rest period, Defendants failed to pay the rest period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants

maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to authorize and permit a legally compliant rest period.

15. As a result of Defendants' failure to pay all overtime wages, as well as Defendants' failure to pay meal and rest period premium wages, Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

16. As a further result of Defendants' failure to pay all overtime wages, as well as Defendants' failure to pay meal and rest period premium wages, Defendants have maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff.

CLASS ACTION ALLEGATIONS

17. Class Definitions: Plaintiff brings this action on behalf of himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

a. The Overtime Class consists of all of the Defendants' current and former non-exempt employees in California who worked more than 8.0 hours in a workday and/or over 40.0 hours in a workweek and (i) received Incentive Pay during a corresponding time period that was not incorporated into the regular rate, and/or (ii) whose commissions equaled less than 50% of their compensation in a pay period and were not paid overtime during that pay period, at any time from four years immediately preceding the filing of this action through the present.

b. The Meal Period Class consists of all of the Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, during the four years immediately preceding the filing of this action through the present.

c. The Rest Period Class consists of all of the Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, at any time from four years immediately preceding the filing of this action through the present.

d. The Wage Statement Class consists of all members of the Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage statement during the one year immediately preceding the filing of this action through the present.

///

e. The Waiting Time Class consists of all members of the Overtime Class, Meal Period Class, and/or Rest Period Class, who are no longer employed by Defendants and whose employment with Defendants ended at any time from three years immediately prior to the filing of this action through the present.

f. The Expense Reimbursement Class consists of all of Defendants' employees who were required to use their personal cellular phones for work-related purposes, at any time from four years prior to the filing of this action through the present.

18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' employment records.

19. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendants' payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;

ii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;

iii. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;

iv. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;

v. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment; and

vi. Whether Defendants properly reimbursed expenses incurred by members of the Expense Reimbursement Class.

20. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' overtime, wage statement, meal period, rest period, expense reimbursement, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

21. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime wages, was subject to Defendants' uniform meal and rest period policies/practices, was furnished with inaccurate wage statements, was deprived of all final wages upon his separation of employment from Defendants, and was not reimbursed for all expenses he incurred in carrying out his job duties for Defendants.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

23. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to

take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by individual class members would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 17 are maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

25. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

26. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an

employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 7, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and Overtime Class members to work overtime hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

27. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

29. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all their hourly non-exempt employees, including Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the California Labor Code and Wage Order 7, for the reasons set forth herein.

30. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 7, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

32. Labor Code §§ 226.7 and 516, and Wage Order 7, § 12 establish the right of

employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

33. As alleged herein, Defendants failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each rest period to which they were entitled while working.

34. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

36. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all wages earned, each rate of pay and all hours worked at each rate of pay, all meal period premium wages, and all rest period premium wages earned, in violation of Labor Code § 226.

37. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their overtime wages and meal and rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

38. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor

Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

<u>FIFTH CAUSE OF ACTION</u>

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

40. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee, or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

41. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including (but not limited to) unpaid overtime wages and unpaid meal and rest period premium wages.

42. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

43. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

///

///

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

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

45. At all relevant times, Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

46. At all relevant times, Defendants were subject to Labor Code § 2804, which states, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

47. Due to Defendants' unlawful policy and practice of requiring employees to use their personal cellular phones for work purposes, and their failure to reimburse Plaintiff and members of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

48. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class suffered damages in sums, which will be shown according to proof.

49. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

50. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

///

///

///

<u>SEVENTH CAUSE OF ACTION</u>

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

52. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all overtime wages due, failing to provide meal periods or pay meal period premium wages, failure to authorize and permit rest periods or pay rest period premium wages, failing to furnish accurate and complete itemized wage statements, failing to reimburse business expenses, and failing to pay all earned wages at separation of employment.

53. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

54. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself, and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

55. The acts complained of herein occurred within the four years immediately preceding the filing of this action. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

///

///

///

<u>EIGHTH CAUSE OF ACTION</u>

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

56. Plaintiff re-alleges and incorporates by reference all previous paragraphs. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq*. Plaintiff, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $50.00 for each initial violation and $100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) $100.00 for each initial violation and $250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) $250.00 for each initial violation of Labor Code § 226 and $1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) $100.00 for each initial violation and $200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

b. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 516, 558, and 1198;

///

c. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;

d. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;

e. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203;

f. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198; and

g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code §§ 1174 and 1198.

57. On or about April 17, 2023, Plaintiff notified Defendant Irvine Eurocars, LLC dba Irvine BMW via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 56 (a)-(g) above. Now that sixty-five days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

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

PRAYER

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

1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiff as representative of the Classes;

3. For an order appointing counsel for Plaintiff as counsel for the Classes;

4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;

6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;

7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;

8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;

9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

10. Upon the Seventh Cause of Action, for restitution to Plaintiff and the members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200, *et seq.*;

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

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

12. Prejudgment interest on all due and unpaid wages and other damages pursuant to California Labor Code §§ 218.6, 1194(a), and 2802(b); Civil Code § 3287; and Art. XV, § 1 of the California Constitution;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226(e), 1194 *et seq.*, 2802(c), 2699(g) and Code of Civil Procedure § 1021.5; and

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

Date: June 22, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By: ______________________
Tuvia Korobkin
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: June 22, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By: ______________________
Tuvia Korobkin
Attorney for Plaintiff