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Superior Court of California,
County of San Diego
04/26/2024 at 10:34:25 AM
Clerk of the Superior Court
By Amanda Gidron,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

KEVIN CLEMENTE, on behalf of others similarly situated and the State of California under the Private Attorneys General Act,

Plaintiffs,

vs.

OREMOR AUTOMOTIVE GROUP, LLC; OREMOR EUROPEAN, LLC D/B/A MERCEDES BENZ OF EL CAJON; ROMERO AUTOMOTIVE, INC.; OREMOR DEVELOPMENT, LLC; OREMOR FINANCIAL SERVICES, LLC; OREMOR OF CAPISTRANO, LLC; OREMOR OF FONTANA, LLC; OREMOR OF FRESNO, LLC; OREMOR OF GLENDALE, LLC; OREMOR OF ITALY II, LLC; JEEP CHRYSLER OF ONTARIO, INC.; OREMOR OF ONTARIO EN, LLC; OREMOR OF ONTARIO JCDR, LLC; OREMOR OF RIVERSIDE RC, LLC; OREMOR OF RIVERSIDE, LLC; OREMOR OF TEMECULA LX LLC; OREMOR OF TEMECULA, LLC; OREMOR OF TUSTIN, LLC; OREMOR OF VICTORVILLE, LLC; OREMOR OF WOODLAND HILLS, LLC; OREMOR ONTARIO DODGE, INC.; ROMERO MOTORS, LLC; OREMOR MANAGEMENT & INVESTMENT COMPANY; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2024-00019752-CU-OE-CTL

REPRESENTATIVE ACTION COMPLAINT

1. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Plaintiff KEVIN CLEMENTE, on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiff") brings this REPRESENTATIVE ACTION COMPLAINT against Defendants OREMOR AUTOMOTIVE GROUP, LLC; OREMOR EUROPEAN, LLC D/B/A MERCEDES BENZ OF EL CAJON; ROMERO AUTOMOTIVE, INC.; OREMOR DEVELOPMENT, LLC; OREMOR FINANCIAL SERVICES, LLC; OREMOR OF CAPISTRANO, LLC; OREMOR OF FONTANA, LLC; OREMOR OF FRESNO, LLC; OREMOR OF GLENDALE, LLC; OREMOR OF ITALY II, LLC; JEEP CHRYSLER OF ONTARIO, INC.; OREMOR OF ONTARIO EN, LLC; OREMOR OF ONTARIO JCDR, LLC; OREMOR OF RIVERSIDE RC, LLC; OREMOR OF RIVERSIDE, LLC; OREMOR OF TEMECULA LX LLC; OREMOR OF TEMECULA, LLC; OREMOR OF TUSTIN, LLC; OREMOR OF VICTORVILLE, LLC; OREMOR OF WOODLAND HILLS, LLC; OREMOR ONTARIO DODGE, INC.; ROMERO MOTORS, LLC; OREMOR MANAGEMENT & INVESTMENT COMPANY; and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. Plaintiff brings this representative action pursuant to the Private Attorney Generals Act of 2004 ("PAGA") for civil penalties on behalf of the State of California for Defendants' systematic violations of the California Labor Code and IWC Wage Orders.

2. Defendants violated Plaintiff and other aggrieved employees' rights by failing to pay them all wages earned and owed, failing to provide all legally-compliant meal and rest periods and associated premiums, failing to pay all accrued sick leave owed, failing to pay all unused vacation wages owed, failing to timely pay all wages owed during and upon separation of employment, failing to pay all waiting time wages to former employees, failing to reimburse all necessary business expenses, failing to maintain accurate records, failing to provide accurate, itemized wage statements, and failing to provide all employee records upon written request.

3. Defendants required Plaintiff and other aggrieved employees to work off the clock, including during meal periods. Defendants created and maintained an expectation that the aggrieved employees answer calls and text messages at all times but failed to compensate them for the time spent

responding to calls and messages and failed to fully reimburse them for the use of their personal cell phones.

4. As a result, Defendants are subject to civil penalties under PAGA.

JURISDICTION & VENUE

5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

6. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

7. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

8. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff Kevin Clemente

9. Plaintiff Clemente is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about December 5, 2022 to November 8, 2023. Plaintiff worked as a Porter.

10. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th _____ (Mar. 20, 2024, *as modified* Apr. 18, 2024), Plaintiff brings the PAGA claims in this lawsuit exclusively in a non-individual, representative capacity seeking relief on behalf of the State of California and all aggrieved employees.

B. Defendants

11. Defendant OREMOR AUTOMOTIVE GROUP, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

12. Defendant OREMOR EUROPEAN, LLC d/b/a MERCEDES BENZ OF EL CAJON is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

13. Defendant ROMERO AUTOMOTIVE, INC. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

14. Defendant OREMOR DEVELOPMENT, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

15. Defendant OREMOR FINANCIAL SERVICES, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

16. Defendant OREMOR OF CAPISTRANO, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

17. Defendant OREMOR OF FONTANA, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

18. Defendant OREMOR OF FRESNO, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

19. Defendant OREMOR OF GLENDALE, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

20. Defendant OREMOR OF ITALY II, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

21. Defendant JEEP CHRYSLER OF ONTARIO, INC. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

22. Defendant OREMOR OF ONTARIO EN, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

23. Defendant OREMOR OF ONTARIO JCDR, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

24. Defendant OREMOR OF RIVERSIDE RC, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

25. Defendant OREMOR OF RIVERSIDE, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

26. Defendant OREMOR OF TEMECULA LX LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

27. Defendant OREMOR OF TEMECULA, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

28. Defendant OREMOR OF TUSTIN, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

29. Defendant OREMOR OF VICTORVILLE, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

30. Defendant OREMOR OF WOODLAND HILLS, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

31. Defendant OREMOR ONTARIO DODGE, INC. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

32. Defendant ROMERO MOTORS, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

33. Defendant OREMOR MANAGEMENT & INVESTMENT COMPANY is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

34. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

35. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law. For example, Richard J. Romero acts as a managing member, CEO, and/or agent for service of process for each of the named corporate Defendants.

36. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

37. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

38. Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

39. Due to understaffing and the volume of work to be completed as well as the number of customers who needed help, aggrieved employees were not always able to take compliant meal periods and sometimes worked through their off-the-clock meal periods.

40. Moreover, aggrieved employees needed to monitor their phones for calls and texts about work even when they were off the clock, including during meal periods.

41. Defendants failed to pay for aggrieved employees' non-productive rest and recovery periods separately at the proper rate of pay.

42. Rather, Defendants paid its undifferentiated base rate for all of the time that employees were clocked in, including rest periods. This resulted in underpayment of wages whenever aggrieved employees earned non-discretionary bonuses, commissions, shift differentials, or any other short of qualifying renumeration.

43. Defendants failed to pay Plaintiff and other aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

44. As stated above, aggrieved employees worked off the clock due to a combination of large volumes of work and understaffing, and the expectation that they answer calls and texts at all times. Whenever aggrieved employees worked more than eight hours in a day or forty hours in a week and performed work off the clock, Defendants deprived aggrieved employees of overtime wages.

45. Further, Defendants failed to pay overtime at the proper rate because they neglected to include all bonuses, commissions, shift differentials, and other premiums and payments into employees' regular rate of pay.

46. Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. Because Defendants did not record all of the hours that aggrieved employees worked, Defendants did not provide the proper amount of sick leave accrued by the aggrieved employees, or proper notice thereof.

47. Defendants did not provide sick leave pay at the proper rate of pay because they failed to include all bonuses, commissions, shift differentials, and other premiums and payments into employees' regular rate of pay.

48. Similarly, Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Because Defendants did not record all of the hours that aggrieved employees worked, Defendants did not provide the proper number of vacation hours accrued by aggrieved employees.

49. Defendants did not provide vacation pay at the proper rate of pay because they failed to include all bonuses, commissions, shift differentials, and other premiums and payments into employees' vacation pay.

50. Plaintiff and other aggrieved employees were often unable to take fully-compliant meal periods because of understaffing and the volume of work that needed to be completed. For example, when Plaintiff worked at the loaner desk, there were regularly high volumes of customers and only one other employee to help. While Plaintiff started his usual workday at 7 a.m., he often could not take his meal period until 1 p.m. or 1:30 p.m.

51. Even when they were able to take meal periods, aggrieved employees would be interrupted by work or have to remain on duty because they were expected to answer work calls and texts at all times.

52. On some occasions when aggrieved employees missed their meal periods, managers had them sign purported on-duty meal period agreements which were not valid because the nature of

their jobs did not require them to remain on-duty. Rather, aggrieved employees had to remain on-duty for the convenience of Defendants.

53. For the same reasons that they were not able to take all legally-compliant meal periods, Plaintiff and other aggrieved employees were also unable to take full, timely, off-duty rest periods.

54. Despite failing to provide Plaintiff and other aggrieved employees with the opportunity to take all legally-compliant meal and rest periods, Defendants failed to pay all meal and rest period premiums owed. To the extent that Defendants paid any meal and rest period premiums, they failed to do so at employees' regular rate of pay.

55. Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

56. As described above, Defendants did not pay Plaintiff and other aggrieved employees all wages they had earned while working off the clock and did not pay the proper rates of pay for overtime, premiums, and sick leave. These amounts remain outstanding to this day.

57. For those aggrieved employees who separated from employment with Defendants, the untimely payment of wages triggered waiting time penalties under Labor Code sections 201, 202, and 203. However, Defendants have not paid all waiting time penalties owed.

58. Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

59. Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned premiums that were not paid, resulting in an inaccurate

reflection, and recording of "gross wages earned" on those wage statements. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

60. Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages and premiums earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages and premiums.

61. In violation of Labor Code section 2802, Defendants required Plaintiff and other aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and other aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

62. For example, Defendants required Plaintiff and other aggrieved employees to use their personal cell phones for work purposes but did not adequately reimburse them. Plaintiff and other aggrieved employees were required to be members of a group text message chain with other employees for work throughout his employment. Plaintiff and other aggrieved employees also had to call customers with their personal phones, and had to install the company's e-mail and security applications on their phones.

63. Despite the daily and extensive use of his personal cell phone for work, Plaintiff only received three $10 payments for the use of his personal cell phone for the months of August, September, and October 2023. This is inadequate considering the amount of work usage for which Plaintiff had to utilize his phone and the fact that Defendants' "Bring Your Own Device (BYOD) Policy" requires that employees maintain anti-virus software on their personal devices, which by themselves can cost employees more than $10 per month. *See Fig. 1 below*.

Mercedes-Benz
of El Cajon

BRING YOUR OWN DEVICE (BYOD) POLICY

OBJECTIVE
This policy establishes Mercedes Benz of El Cajon (hereinafter referred to as the "Dealership") guidelines for Team Member use of personally owned electronic devices for work-related purposes.

SCOPE
Team Members of the Dealership may have the opportunity to use their personal electronic devices for work purposes when authorized in writing, in advance, by the Team Member and management. Personal electronic devices include personally owned cellphones, smartphones, tablets, laptops, and computers. The use of personal devices is limited to certain Team Members and may be limited based on compatibility of technology.

PROCEDURE
Device protocols
To ensure the security of the Dealership information, authorized Team Members are required to have anti-virus software installed on their personal mobile devices.

Fig. 1, excerpt from Defendants' Device Policy

64. Defendants failed to provide all records upon Plaintiff's request as required by Labor Code sections 226, 432, 1198.5, and 1174, and IWC Wage Orders. In response to Plaintiff's written request for his employment records, Defendants failed to produce any of Plaintiff's timekeeping records in violation of the Records section of the applicable IWC Wage Orders.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

65. All outside paragraphs of this Complaint are incorporated into this section.

66. Plaintiff brings this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

67. Plaintiff reserves the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

68. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

69. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3. "

70. Labor Code section 2699(f) provides: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: … (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation."

71. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

72. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

73. On or about **February 20, 2024**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

74. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the "PAGA notice").

75. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's written PAGA notice from the LWDA.

76. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

77. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq*.

78. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.

b. ***Unpaid Hours Worked/Non-Productive, Rest, and Recovery Periods.*** Violation of Labor Code §§ 226.2; IWC Wage Orders.

c. ***Unpaid Overtime***. Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.

d. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.

e. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.

f. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.

g. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.

h. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

i. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.

j. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

k. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.

l. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.

m. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

79. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

a. For recovery of damages in amount according to proof;

b. For all recoverable pre- and post-judgment interest;

c. For this action to be maintained as a representative action under the PAGA;

d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

e. For recovery of all civil penalties and other recoverable amounts under the PAGA;

f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and

g. For such other relief the Court deems just and proper.

Dated: April 26, 2024

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Lauren N. Vega
David X. Lin
Attorneys for Plaintiff Kevin Clemente

<u>EXHIBIT 1</u>

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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February 20, 2024

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Oremor Automotive Group, LLC
1377 Kettering Drive
Ontario, CA 91761

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and Workforce Development Agency

Additional Addressees on Last Pages

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **KEVIN CLEMENTE** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

OREMOR AUTOMOTIVE GROUP, LLC
OREMOR EUROPEAN, LLC d/b/a "MERCEDES BENZ OF EL CAJON"
ROMERO AUTOMOTIVE, INC.
OREMOR DEVELOPMENT, LLC
OREMOR FINANCIAL SERVICES, LLC
OREMOR OF CAPISTRANO, LLC
OREMOR OF FONTANA, LLC
OREMOR OF FRESNO, LLC
OREMOR OF GLENDALE, LLC
OREMOR OF ITALY II, LLC
JEEP CHRYSLER OF ONTARIO, INC.
OREMOR OF ONTARIO EN, LLC
OREMOR OF ONTARIO JCDR, LLC

OREMOR OF RIVERSIDE RC, LLC
OREMOR OF ITALY II, LLC
JEEP CHRYSLER OF ONTARIO, INC.
OREMOR OF ONTARIO EN, LLC
OREMOR OF ONTARIO JCDR, LLC
OREMOR OF RIVERSIDE RC, LLC
OREMOR OF RIVERSIDE, LLC
OREMOR OF TEMECULA LX LLC
OREMOR OF TEMECULA, LLC
OREMOR OF TUSTIN, LLC
OREMOR OF VICTORVILLE, LLC
OREMOR OF WOODLAND HILLS, LLC
OREMOR ONTARIO DODGE, INC.
ROMERO MOTORS, LLC
OREMOR MANAGEMENT & INVESTMENT COMPANY
RICHARD J. ROMERO

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act ("PAGA"). "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Porter from about approximately December 5, 2022 to November 8, 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

> All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "aggrieved employees" and the "PAGA Period").

Plaintiff reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS –

Unpaid Hours Worked/Minimum Wage
Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The "Minimum Wages" sections of the applicable IWC Wage Order provide that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." The foregoing California wage laws require payment of "not less than the applicable minimum wage *for all hours worked* in the payroll period" and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Due to understaffing and the volume of work to be completed as well as the number of customers who needed help, aggrieved employees were not always able to take compliant meal periods and sometimes worked through their off-the-clock meal periods. Moreover, aggrieved employees needed to monitor their phones for calls and texts about work.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 ($50/$100), 1197.1 ($100/$250), 1199 / "Penalties" section of the IWC Wage Orders ($50/$100), and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

<u>Unpaid Hours Worked/Non-Productive, Rest, and Recovery Periods</u>
Violation of Labor Code §§ 226.2; IWC Wage Orders

In addition to the foregoing unpaid wage violations, Defendants also violated Labor Code sections 226.2 and the "Hours and Days of Work," "Minimum Wages," and "Rest Periods" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

<u>Labor Code section 226.2</u>(a)(1) also requires employers to compensate employees for "rest and recovery periods and other non-productive time spent separate from any piece rate compensation." Under Labor Code section 226.2(a)(3), rest and recovery periods must be paid at an hourly rate that is no less than the higher of (i) an average hourly rate taken by dividing an employee's total compensation for the workweek (exclusive of overtime and rest and recovery compensation) by the employee's total hours worked and (ii) the applicable minimum wage. Under Labor Code section 226.2(a)(4), other nonproductive time must be paid at an hourly rate that is no less than the applicable minimum wage.

Furthermore, the "Hours and Days of Work," "Minimum Wages," and "Rest Periods" sections of the applicable IWC Wage Orders—as addressed in *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98—require employers to separately compensate all employees, not just piece-rate employees, for all hours worked, including rest periods and nonproductive time, to comply with California's minimum wage obligations.

Defendants failed to pay for aggrieved employees' rest periods separately. Rather, Defendants paid its undifferentiated base rate for all of the time that employees were clocked in, including rest periods. This resulted in underpayment of wages whenever aggrieved employees earned non-discretionary bonuses, commissions, shift differentials, or any other short of qualifying renumeration.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 ($50/$100), 1197.1 ($100/$250), 1199 / "Penalties" section of the IWC Wage Orders) ($50/$100), and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;" and "any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;" and "any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. As stated above, aggrieved employees worked off-the-clock due to a combination of large volumes of work and understaffing. Some of these off-the-clock hours should have counted towards overtime had they been properly recorded.

Further, Defendants failed to pay overtime at the proper rate because they neglected to include all bonuses, commissions, shift differentials, and other premiums and payments into employees' regular rate of pay.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 ($50/$100), 1199 / "Penalties" section of the IWC Wage Orders) ($50/$100), and 2699

($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee … in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available … for use on either the employee's itemized wage statement … or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. Because Defendants did not record all of the hours that aggrieved employees worked, Defendants did not provide the proper amount of sick leave accrued by the aggrieved employees, or proper notice thereof. Moreover, Defendants did not provide sick leave pay at the proper rate of pay because they failed to include all bonuses, commissions, shift differentials, and other premiums and payments into employees' regular rate of pay.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Vacation Wages
Violation of Labor Code § 227.3

Defendants violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires "whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination."

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Because Defendants did not record all of the hours that aggrieved employees worked, Defendants did not provide the proper number of vacation hours accrued by aggrieved employees. Moreover, Defendants did not provide vacation pay at the proper rate of pay because they failed to include all bonuses, commissions, shift differentials, and other premiums and payments into employees' vacation pay.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Plaintiff and other aggrieved employees were often unable to take fully-compliant meal periods because of understaffing and the volume of work that needed to be completed. For example, when Plaintiff worked at the loaner desk, there were regularly high volumes of customers and only one other employee. While Plaintiff started his usual workday at 7 a.m., he often could not take his meal period until 1 p.m. or 1:30 p.m. In order to meet the demands of their jobs, Plaintiff and other aggrieved employees could not take full, timely, uninterrupted off-duty meal periods.

On some occasions when aggrieved employees missed their meal periods, managers had them sign a "On-Duty Meal Period Agreement" even though the nature of their jobs did not require them to remain on-duty. Rather, aggrieved employees had to remain on-duty for the convenience of Defendants.

Despite failing to provide Plaintiff and other aggrieved employees with the opportunity to take all legally-compliant meal periods, Defendants failed to pay them all meal period premiums owed.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

For the same reasons that they were not able to take all legally-compliant meal periods, Plaintiff and other aggrieved employees were also unable to take full, timely, off-duty rest periods. Due to the high volume of customers and lack of coverage, Plaintiff and other aggrieved employees often missed or worked through their rest periods. Despite failing to provide the aggrieved employees the opportunity to take legally-compliant rest periods, Defendants did not pay all rest period premiums owed.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section … 204 … shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. As described above, Defendants did not pay Plaintiff and other aggrieved employees the legally-required premiums when Defendants failed to provide employees with the opportunity to take legally-compliant meal and rest periods, and failed to pay other wages aggrieved employees were owed. These premiums and wages remain owing to this day.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, and Labor Code section 210 ($100/$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203. As described above, Defendants did not pay Plaintiff and other aggrieved employees the legally-required premiums when Defendants failed to provide employees with the opportunity to take legally-compliant meal and rest periods as well as other wages aggrieved employees were owed. Because these premiums and wages remain owing to this day, long after Plaintiff and other aggrieved employees have separated from their employment, Defendants are liable for waiting time penalties, which also remain unpaid.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages and premiums earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages and premiums.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 ($250/$1,000) and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to "indemnify his or her employee 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that "[a]ny 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."

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

For example, Defendants required Plaintiff and other aggrieved employees to use their personal cell phones for work purposes but did not adequately reimburse them. Plaintiff and other aggrieved employees were required to be members of a group text message chain with other employees for work throughout his employment. Plaintiff and other aggrieved employees also had to call customers with their personal phones, and had to install the company e-mails and security applications on their phones.

Despite the daily and extensive use of his personal cell phone for work, Plaintiff only received three $10 payments for the use of his personal cell phone for the months of August, September, and October 2023. This is inadequate considering the amount of work usage for which Plaintiff had to utilize his phone and the fact that Defendants' "Bring Your Own Device (BYOD) Policy" requires that employees maintain anti-virus software on their personal devices, which by themselves can cost employees more than $10 per month. *See Fig. 1 below.*

Mercedes-Benz
of El Cajon

BRING YOUR OWN DEVICE (BYOD) POLICY

OBJECTIVE
This policy establishes Mercedes Benz of El Cajon (hereinafter referred to as the "Dealership") guidelines for Team Member use of personally owned electronic devices for work-related purposes.

SCOPE
Team Members of the Dealership may have the opportunity to use their personal electronic devices for work purposes when authorized in writing, in advance, by the Team Member and management. Personal electronic devices include personally owned cellphones, smartphones, tablets, laptops, and computers. The use of personal devices is limited to certain Team Members and may be limited based on compatibility of technology.

PROCEDURE
Device protocols
To ensure the security of the Dealership information, authorized Team Members are required to have anti-virus software installed on their personal mobile devices.

Fig. 1, excerpt from Device Policy

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Provide Employee Records
Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." Labor Code section 432 states that "[i]f an employee … signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." Labor Code section 1198.5 grants "[e]very current and former employee, or his or her representative, … the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee's performance or to any grievance concerning the employee." Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available "time records showing when the employee begins and ends each work period" as well as time records showing "[m]eal periods, split shift intervals, and daily hours worked[.]" Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all records upon Plaintiff's request. In response to Plaintiff's written request for his employment records, Defendants failed to produce any of Plaintiff's timekeeping records in violation of the Records section of the applicable IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 ($250/$1,000), 1174.5 ($500), and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate "payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments." Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 ($500) and 2699 ($100/$200), along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE –

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

David X. Lin

Cc Plaintiff Kevin Clemente

Tyler T. Rasmussen
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trasmussen@fisherphillips.com

<u>**ADDITIONAL ADDRESSEES**</u>

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Oremor Financial Services, LLC
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Oremor of Fontana, LLC
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Oremor of Fresno, LLC
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Oremor of Glendale, LLC
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Jeep Chrysler of Ontario, Inc.
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