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6 Attorneys for Plaintiff
CAROLINA OLGUIN
7

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

4/22/2024 11:53 AM

By: Jonte Washington, DEPUTY

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO
10

11 CAROLINA OLGUIN, individually and in a
representative capacity,

12 Plaintiff,

13 vs.
14

MOSS BROS. CJD, INC., a California
15 corporation; MOSS BROS. AUTO GROUP,
INC, a California Corporation; JOSE
16 RODRIGUEZ, an individual; and DOES 1
through 10, inclusive,

17 Defendants.
18
19

Case No. CIVSB2413796

COMPLAINT FOR:

- (1) Sexual Harassment
- (2) Sex Discrimination
- (3) Wrongful Termination In Violation
Of Public Policy
- (4) Representative Action Under PAGA

DEMAND FOR JURY TRIAL

1 Plaintiff Carolina Olguin brings this civil action and, on information and belief,
2 alleges as follows:

3 **PARTIES, JURISDICTION, AND VENUE**

4 1. Plaintiff Carolina Olguin (“Plaintiff” or “Olguin”) is an individual and a
5 resident of San Bernardino, California. Plaintiff is also known as Carolina Flores.

6 2. Defendant Moss Bros. CJD, INC. is a California corporation. Defendant Moss
7 Bros. Auto Group, Inc. is a California corporation. Defendant Jose Rodriguez (“Rodriguez”)
8 in an individual and, at all relevant times, was a supervisor at the Company.

9 3. In this pleading, Defendants Moss Bros. CJD, Inc. and Moss Bros. Auto
10 Group, Inc. will be collectively referred to as the “Company” or “Moss Bros.” Moss Bros.
11 operates automobile dealerships in California, which also include service centers and
12 collision repair services. Moss Bros. does business in California, including in San
13 Bernardino County.

14 4. Plaintiff, a former employee, worked for the Company in California. By way
15 of this Complaint, Plaintiff seeks damages in an amount that renders this matter an
16 “unlimited” civil case within the meaning of California law.

17 5. The true names and capacities of the Doe Defendants (Does 1 through 10,
18 inclusive) are unknown to Plaintiff at this time and Plaintiff is informed and believes that
19 they are in some way liable for the illegal conduct, injury, and damages alleged herein. The
20 Doe Defendants are believed to be affiliated entities of Moss Bros., joint employers,
21 responsible executives, or otherwise liable for the conduct complained of herein, whether
22 because of alter-ego status, agency principles, aider and abettor (or co-conspirator) status,
23 statutorily-imposed responsibility, or otherwise.

24 6. The Court has personal jurisdiction over the Company because it is a citizen
25 of this State, the Company does business in this State, and the Company otherwise has
26 minimum contacts with this State. The Court has personal jurisdiction over Rodriguez
27 because he is a citizen of this State, works in this State, and otherwise has minimum contacts
28 with this State. The Court has personal jurisdiction over Plaintiff because she is a resident

1 of California and has sufficient minimum contacts with this State. Venue is proper in San
2 Bernardino County inasmuch as the Company conducts business in San Bernardino County,
3 alleged unlawful conduct and/or its effects occurred in San Bernardino County, and one or
4 more aggrieved employees are residents of/worked in San Bernardino County.

5 7. This pleading invokes all applicable forms of tolling.

6 **GENERAL ALLEGATIONS**

7 **- Civil Rights Violations -**

8 8. Plaintiff, a female, worked for the Company as a non-exempt employee.
9 Among other things, Plaintiff worked as porter and drove customers in a Company courtesy
10 shuttle.

11 9. During her employment at the Company, Plaintiff experienced sexual
12 harassment and sex discrimination. At work, in a male-dominated environment, among
13 others, supervisor Rodriguez engaged in a series of sexually harassing acts, including,
14 without limitation, telling Plaintiff “that’s why I should hire only men and not women,”
15 making demeaning comments about Plaintiff’s appearance and dress, demeaning Plaintiff’s
16 conversations with others as female “gossip,” criticizing her for complaining, yelling at her,
17 and treating her differently than male employees. Rodriguez did not treat male employees
18 in the same negative and offensive way that he treated Plaintiff. Plaintiff alleges that
19 Rodriguez was involved in the decision to terminate her employment.

20 10. To exhaust administrative remedies under the California Fair Employment &
21 Housing Act (“FEHA”), Plaintiff submitted an administrative complaint to the California
22 Civil Rights Department, which she amended to include both entities that comprise the
23 Company, and she requested and received a right-to-sue notice. Attached hereto as **Exhibit**
24 **1** is Plaintiff’s exhausted FEHA administrative complaint, which is hereby incorporated by
25 reference. Plaintiff has timely and adequately exhausted her administrative remedies under
26 FEHA.

27 **- Labor Code Violations (PAGA) -**

28 11. At the Company, Plaintiff was paid an hourly wage.

12. During her employment, the Company unlawfully deducted from and deferred paying her earned wages, issued her inaccurate wage statements, failed to reimburse her work-related expenses, and made her agree to terms or conditions of employment that the Company knew were unlawful. Other aggrieved employees experienced the same violations.

13. To exhaust administrative remedies under the California Private Attorneys General Act (“PAGA”) of 2004, Plaintiff submitted a PAGA Notice to the LWDA, attached hereto as **Exhibit 2**. **Exhibit 2** is hereby incorporated by reference into this pleading. Plaintiff’s PAGA Notice was served on the Company via certified mail, and Plaintiff waited the requisite 65-day exhaustion period before filing suit. Plaintiff has timely and adequately exhausted administrative remedies under PAGA.

FIRST CAUSE OF ACTION

Sexual Harassment

(Against The Company, Rodriguez, And Does 1 Through 10, Inclusive)

14. Plaintiff re-alleges and incorporates by reference herein the allegations set forth in Paragraphs 1 through 13 inclusive.

15. The Company is an “employer” within the meaning of FEHA, and Plaintiff was an “employee” of the Company and entitled to the protections of FEHA.

16. Plaintiff worked for the Company. While employed by the Company, she was subjected to harassment based on her sex that created a work environment that was hostile, intimidating, offensive, oppressive, or abusive. The harassing conduct offended, intimidated, and distressed Plaintiff, disturbed her emotional tranquility in the workplace, and undermined her personal sense of well-being.

17. The harassing conduct that Plaintiff experienced was severe or pervasive. A reasonable person in Plaintiff's position would have considered the work environment to be hostile, intimidating, offensive, oppressive or abusive.

18. One or more supervisors of the Company, including Rodriguez, engaged in sexually harassing conduct.

19. Plaintiff was harmed by the harassing conduct, and it was a substantial factor in causing harm to Plaintiff, including, without limitation, emotional distress.

20. The Company is strictly liable for the sexual harassment committed by Rodriguez or any other supervisor. To the extent any sexual harassment was carried out by a co-worker or third parties, the Company is also liable for the harassment because it knew or should have known of the harassment and failed to take immediate and appropriate corrective action.

21. The Company failed to take remedial or corrective action to prevent or deter the harassment, discrimination, and retaliation from occurring. The Company's policies and procedures with regard to sexual harassment were insufficient to prevent the harassment from occurring. The Company failed to take all reasonable steps to prevent the harassment from occurring, and the Company's failure to take such action was a substantial factor in causing Plaintiff harm, including emotional distress.

22. The Company's acts, inactions, and the actions of its personnel of which the Company was aware, were done in callous disregard of the law, Plaintiff's welfare, and the Company's obligation to provide a safe working environment for Plaintiff. These actions were such that they were despicable, and subjected Plaintiff to cruel and unjust hardship in knowing disregard of her rights. These actions were designed to cause (and did cause) injury to Plaintiff. These actions constitute malice and/or oppression, and justify the imposition of punitive damages against the Company.

SECOND CAUSE OF ACTION

Sex Discrimination

(Against The Company, And Does 1 Through 10, Inclusive)

23. Plaintiff re-alleges and incorporates by reference herein the allegations set forth in Paragraphs 1 through 13 inclusive.

24. At all material times, the Company was and is an “employer” within the meaning of FEHA, and Plaintiff was an “employee” of the Company and entitled to the protections of FEHA.

25. Before her discharge, supervisor Rodriguez stated, in a blatantly sexist and derogatory manner, “that’s why I should hire only men and not women.”

26. The Company discharged Plaintiff and she was harmed thereby.

27. Plaintiff's sex, female, was a substantial motivating reason for the decision to discharge Plaintiff.

28. Plaintiff's unlawful discharge was a substantial factor in causing her harm, including, without limitation, wage loss and emotional distress.

29. The Company's acts, inactions, and the actions of its personnel of which the Company was aware, were done in callous disregard of the law, Plaintiff's welfare, and the Company's obligation to provide a safe working environment for Plaintiff. These actions were such that they were despicable, and subjected Plaintiff to cruel and unjust hardship in knowing disregard of her rights. These actions were designed to cause (and did cause) injury to Plaintiff. These actions constitute malice and/or oppression, and justify the imposition of punitive damages against the Company.

THIRD CAUSE OF ACTION

Wrongful Termination In Violation Of Public Policy

(Against The Company, And Does 1 Through 10, Inclusive)

30. Plaintiff re-alleges and incorporates by reference herein the allegations set forth in Paragraphs 1 through 13 inclusive.

31. Plaintiff's termination from the Company violated various fundamental and substantial California public policies, including, without limitation, the public policies behind FEHA.

32. The Company's wrongful termination of Plaintiff was a substantial factor in causing Plaintiff harm, including, but not limited to emotional distress, pain and suffering, lost wages, and lost benefits.

33. The Company's acts, inactions, and wrongful termination of Plaintiff were done in callous disregard of the law, and Plaintiff's welfare, and contravened fundamental public policies of the State of California. These actions were such that they were despicable,

1 and subjected Plaintiff to cruel and unjust hardship in knowing disregard of her rights. These
2 actions were designed to cause (and did cause) injury to Plaintiff. These actions constitute
3 malice and/or oppression, and justify the imposition of punitive damages against the
4 Company.

5 **FOURTH CAUSE OF ACTION**

6 Representative Action Under PAGA

7 (Against The Company, And DOES 1 Through 10, Inclusive)

8 34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 13
9 inclusive as though fully set forth herein.

10 35. Pursuant to Labor Code section 2699.3, Plaintiff, on behalf of herself and all
11 other aggrieved employees, brings this action as a non-class representative action under
12 PAGA for civil penalties based on violations of the California Labor Code and the applicable
13 IWC Wage Order(s).

14 36. Plaintiff has timely and adequately exhausted her administrative remedies
15 under PAGA. Plaintiff submitted her PAGA Notice (incorporated in full herein by reference
16 and attached hereto as **Exhibit 2**) to the LWDA, provided a copy of the same to the Company
17 via certified mail, and waited the requisite time-period before filing this PAGA action in
18 court.

19 37. Pursuant to Labor Code section 2699.5, Plaintiff asserts this representative
20 action for civil penalties for the violations alleged in **Exhibit 2**, including, without limitation,
21 for:

- 22 a. Unlawful deductions from, and deferral of, earned wages;
- 23 b. Inaccurate wage statements;
- 24 c. Unreimbursed expenses; and
- 25 d. Illegal agreements.

26 38. Labor Code section 2699(f)(2) provides that the civil penalties recoverable
27 under PAGA are “one hundred dollars (\$100) for each aggrieved employee per pay period
28 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay

1 period for each subsequent violation,” except where the Labor Code specifically provides
2 for another penalty. In addition to the default civil penalties PAGA provides, Plaintiff seeks,
3 through PAGA, any other civil penalties available under the Labor Code (including, without
4 limitation, Labor Code section 226.3) for the above-alleged violations of the Labor Code
5 and/or applicable IWC Wage Order(s).

6 **Future Amendment**

7 39. Plaintiff reserves the right to amend this Complaint to name additional parties,
8 to add additional parties to already pleaded causes of action, and to include additional causes
9 of action/claims which are presently unknown but which are uncovered in the discovery
10 process.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff requests judgment as follows on the above causes of action:

13 **On the First Cause Of Action**

- 14 1. For all recoverable compensatory damages (including economic and non-
15 economic damages) according to proof;
16 2. For punitive damages according to proof; and
17 3. For attorney’s fees and costs as authorized by FEHA and applicable law;

18 **On The Second Cause Of Action**

- 19 4. For all recoverable compensatory damages (including economic and non-
20 economic damages) according to proof;
21 5. For punitive damages according to proof;
22 6. For attorney’s fees and costs as authorized by FEHA and applicable law;

23 **On The Third Cause Of Action**

- 24 7. For all recoverable damages (including economic and non-economic
25 damages) according to proof;

26 **On The Fourth Cause Of Action**

- 27 8. For all forms of civil penalties recoverable under PAGA, and for entry of
28 judgment in favor of Plaintiff and other aggrieved employees;

1 9. For attorney's fees and costs pursuant to PAGA;

2 **On All Causes Of Action**

3 10. For all available interest, including prejudgment and post-judgment interest;

4 11. For costs as authorized by law; and

5 12. For all such other relief as the Court deems just and proper.

6
7 Dated: April 22, 2024

SCHEPPACH BAUER PC

8
9 By: _____

JOHN M. SCHEPPACH
Attorneys for Plaintiff
CAROLINA OLGUIN

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13 **DEMAND FOR JURY TRIAL**

14 Plaintiff demands a trial by jury on all claims and causes of action so triable.

15 Dated: April 22, 2024

SCHEPPACH BAUER PC

16
17 By: _____

JOHN M. SCHEPPACH
Attorneys for Plaintiff
CAROLINA OLGUIN

EXHIBIT 1



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

February 5, 2024

John Scheppach
23181 Verdugo Drive, Suite 105-A
Laguna Hills, CA 92653

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202402-23498602
Right to Sue: Olguin / MOSS BROS. CJD, INC. et al.

Dear John Scheppach:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

February 5, 2024

RE: **Notice of Filing of Discrimination Complaint**
CRD Matter Number: 202402-23498602
Right to Sue: Olguin / MOSS BROS. CJD, INC. et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



Civil Rights Department

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February 5, 2024

Carolina Olguin

[REDACTED]

RE: Notice of Case Closure and Right to Sue
CRD Matter Number: 202402-23498602
Right to Sue: Olguin / MOSS BROS. CJD, INC. et al.

Dear Carolina Olguin:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective February 5, 2024 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Carolina Olguin

CRD No. 202402-23498602

Complainant,

vs.

MOSS BROS. CJD, INC.
8146 Auto Drive
Riverside, CA 92504

Jose Rodriguez
8146 Auto Drive
Riverside, CA 92504

Respondents

1. Respondent **MOSS BROS. CJD, INC.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Jose Rodriguez** individual as Co-Respondent(s).

3. Complainant **Carolina Olguin**, resides in the City of **Yucaipa**, State of **CA**.

4. Complainant alleges that on or about **April 20, 2023**, respondent took the following adverse actions:

Complainant was harassed because of complainant's sex/gender, sexual harassment-hostile environment.

Complainant was discriminated against because of complainant's sex/gender, sexual harassment- hostile environment and as a result of the discrimination was terminated.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment and as a result was terminated.

Additional Complaint Details: Complainant Carolina Olguin ("Ms. Olguin") alleges as follows: Complainant worked at Respondent MOSS BROS. CJD, INC. (the "Company") in California, which business is a car dealership. At work, Ms. Olguin experienced sexual harassment and sex discrimination. At work, in a male-dominated environment, among others, supervisor Jose Rodriguez engaged in a series of sexually harassing acts, including, without limitation, telling Ms. Olguin "that's why I should hire only men and not women," making demeaning comments about Ms. Olguin's appearance and dress, demeaning Ms. Olguin's conversations with others as female "gossip," criticizing her for complaining, yelling at her, and treating her differently than male employees. Ms. Olguin alleges that her termination was unlawful sex discrimination and retaliation, and she has experienced, and continues to experience, damages as a result of her wrongful termination, including, without limitation, emotional distress damages and wage loss. The Company is directly liable for the harassment committed by its supervisors and managers, including Jose Rodriguez, and the Company is liable for harassment committed by any non-supervisory employee because the Company was aware of the harassment and failed to take immediate and appropriate corrective action. /s/ John M. Scheppach, Esq.

1 VERIFICATION

2 I, **John M. Scheppach**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On February 5, 2024, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Laguna Hills, CA**
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Civil Rights Department

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February 16, 2024

John Scheppach
23181 Verdugo Drive, Suite 105-A
Laguna Hills, CA 92653

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202402-23498602
Right to Sue: Olguin / MOSS BROS. CJD, INC. et al.

Dear John Scheppach:

Attached is a copy of your **amended** complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the CRD. (Cal. Code Regs., tit. 2, § 10022.)

Be advised that the CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Carolina Olguin

CRD No. 202402-23498602

Complainant,

vs.

MOSS BROS. CJD, INC.
8146 Auto Drive
Riverside, CA 92504

Jose Rodriguez
8146 Auto Drive
Riverside, CA 92504

MOSS BROS. AUTO GROUP, INC.
8146 Auto Drive
Riverside, CA 92504

Respondents

1. Respondent **MOSS BROS. CJD, INC.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Jose Rodriguez** individual as Co-Respondent(s).
Complainant is naming **MOSS BROS. AUTO GROUP, INC.** business as Co-Respondent(s).

3. Complainant **Carolina Olguin**, resides in the City of **Yucaipa**, State of **CA**.

4. Complainant alleges that on or about **April 20, 2023**, respondent took the following adverse actions:

Complainant was harassed because of complainant's sex/gender, sexual harassment-hostile environment.

Complainant was discriminated against because of complainant's sex/gender, sexual harassment- hostile environment and as a result of the discrimination was terminated.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment and as a result was terminated.

Additional Complaint Details: Complainant Carolina Olguin ("Ms. Olguin") alleges as follows: Complainant worked at a car dealership in California. During her employment at the dealership, she was employed, or jointly employed, by Respondent MOSS BROS. CJD, INC. and Respondent MOSS BROS. AUTO GROUP, INC. (collectively, the "Company"). At work, Ms. Olguin experienced sexual harassment and sex discrimination. At work, in a male-dominated environment, among others, supervisor Jose Rodriguez engaged in a series of sexually harassing acts, including, without limitation, telling Ms. Olguin "that's why I should hire only men and not women," making demeaning comments about Ms. Olguin's appearance and dress, demeaning Ms. Olguin's conversations with others as female "gossip," criticizing her for complaining, yelling at her, and treating her differently than male employees. Ms. Olguin alleges that her termination was unlawful sex discrimination and retaliation, and she has experienced, and continues to experience, damages as a result of her wrongful termination, including, without limitation, emotional distress damages and wage loss. The Company is directly liable for the harassment committed by its supervisors and managers, including Jose Rodriguez, and the Company is liable for harassment committed by any non-supervisory employee because the Company was aware of the harassment and failed to take immediate and appropriate corrective action. The Company failed to take all reasonable steps to prevent the harassment. /s/ John M. Scheppach, Esq.

1 VERIFICATION

2 I, **John M. Scheppach**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On February 5, 2024, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Laguna Hills, CA**
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EXHIBIT 2

PAGA NOTICE

February 16, 2024

VIA CERTIFIED MAIL TO:

Employer

MOSS BROS. CJD, INC.

Attn: Kelley Cory
Registered Agent For Service of Process
8146 Auto Drive
Riverside, CA 92504

MOSS BROS. AUTO GROUP, INC.

Attn: Kelley Cory
Registered Agent For Service of Process
8146 Auto Drive
Riverside, CA 92504

VIA ONLINE SUBMISSION TO:

State Agency

**The State Of California,
Labor & Workforce Development Agency**

Current Website Address

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html/>

Re: *Carolina Olguin, et al. v. MOSS BROS. CJD, INC., et al.*
PAGA Notice

Dear Employer And The LWDA:

Carolina Olguin (“Olguin”), on behalf of herself and all other aggrieved employees, and through her undersigned representative, hereby provides notice pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 – 2699.5 (“PAGA”), of alleged violations of the California Labor Code committed by MOSS BROS. CJD, INC. and MOSS BROS. AUTO GROUP, INC. (collectively, the “Company” or “Moss Bros.”). Pursuant to the requirements of PAGA, the Labor Code provisions allegedly violated, including the alleged facts and theories in support thereof, are set forth below. All citations herein are to the California Labor Code as it is presently constituted. The Labor Code may be amended in one or more respects after the date of this PAGA Notice.

This PAGA Notice invokes all available forms of tolling. In addition to the Company, this PAGA Notice is alleged against Does 1 through 10, inclusive, as additional responsible parties, which includes any predecessor, successor, or affiliate entity who was the joint employer of Olguin or who was otherwise responsible for the Labor Code violations herein asserted. If and when such additional responsible parties are ascertained, this PAGA Notice may be amended to name such additional responsible parties, and any such amendment shall relate back to this PAGA Notice.

I. BACKGROUND.

Moss Bros. operates one or more automobile dealerships in California, which dealerships also include service centers and collision repair centers. Olguin was employed by and worked for the Company in California at one of its California dealerships as a non-exempt employee earning an hourly wage. Among other things, she worked as porter and drove customers in a Company courtesy shuttle.

PAGA Group

This PAGA Notice applies to Olguin and all current and former non-exempt employees of the Company who worked in California at any of the Company's locations at any time during the applicable limitations period.

II. ALLEGED LABOR CODE VIOLATIONS.

A. Unlawful Deduction And Deferral Of Wages.

At all applicable times, the Company had, and continues to have, a holiday "savings" program, sometimes referred to as a "Holiday Club." Under the program, employees are pressured and required to have a portion of their periodic wage paychecks or direct deposits withheld and deducted from their take-home pay (e.g., \$20 per paycheck or direct deposit). These deductions are branded by the Company as holiday "savings" that employees will be paid back by the Company during the holiday season, on or around November 21. A form that the Company utilizes for these deductions is a memo addressed to "All Employees" and the instructions at the top state: "Please have all employees completely fill out form and return to Payroll for processing." Nowhere on the form does it state that the Holiday Club is an optional and voluntary program, and nowhere on the form does it give an employee the option to decline to be in the program. Moss Bros. has outwardly treated this program as a mandatory program for its workforce and otherwise pressured employees to join. Furthermore, once an employee's paycheck or direct deposit is deducted for the Holiday Club, employees cannot not freely and easily access their diverted wages in the Holiday Club in the time and manner of their choosing. The deductions for the Holiday Club have been recorded on employee wage statements, oftentimes as "HOLIDAY FUND." There is no indication that employees have earned interest on their Holiday Club contributions.

The Company's Holiday Club has the effect of allowing the Company to retain a portion of employee wages, and pay those wages out much later in the time during a part of the year that is favorable to the Company (after the Fall sale season, when new vehicles are typically introduced, and in the midst of the holiday season, when customers are purchasing vehicles and increasing the cashflow of the Company).

The Company's deduction of employee wages for the Holiday Club/HOLIDAY FUND was, and continues to be, unlawful and violative of Labor Code §§ 204, 207, 212, 223, 224, and 432.5.

The deductions have caused aggrieved employees to not be timely paid at least the applicable California minimum wage for each hour of work (Labor Code §§ 1194, 1194.2, 1197, 1197.1 & 1199), to not be timely paid all the overtime and/or double-time compensation then owed to them (Labor Code §§ 510, 511, & 1198), and to not receive their wages owed to them during employment in the time required by law (Labor Code § 204 & 218). Nor was interest paid on the deferred payment of wages.

B. Inaccurate Wage Statements.

Labor Code section 226, subdivision (a), requires that employers (such as the Company) furnish to their employees, semi-monthly or at the time of each payment of wages, an accurate itemized statement in writing showing the “(1) gross wages earned, (2) total hours worked by the employee ..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, ..., (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, ... , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee[.]”

The Company violated Labor Code section 226 in numerous respects.

First, the Company’s wage statements fail to show the name and address of the legal entity that is the employer. (Labor Code, § 226(a)(8).) The Company’s wage statements contain the generic term “MOSS BROS” with logos for different types of vehicles (e.g., the Dodge Ram logo). The generic term “MOSS BROS” is used by numerous businesses and does not accurately convey the name of the legal entity that is the employer. Moreover, the purported address information is written in exceedingly small font that does not yield a clear and readily discernable address. There is a separate entity named “The Reynolds and Reynolds Company” written in exceedingly small font on wage statements.

Second, the Company’s wage statements routinely fail to accurately itemize the net wages “earned” during the pay period because of the deduction for the Holiday Club/HOLIDAY FUND. (Labor Code, § 226(a)(5)). Among other things, this deduction masks and obscures the net wages earned.

Third, when the Company pays out the Holiday Club/HOLIDAY FUND to aggrieved employees, the corresponding wage statement is inaccurate because it fails to accurately show the inclusive dates of the pay period for which the employee is being paid their earnings (Labor Code, § 226(a)(6)), and it incorrectly reflects their net wages earned for the pay period specified (Labor Code, § 226(a)(5)).

Fourth, the Company’s wage statements fail to accurately itemize the total hours worked on employees’ wage statements. The line where a summation of hours worked would naturally appear includes the notation “TOTAL PAY” (not total hours), and that line captures and includes

the “HOURS” associated with ambiguous pay items that may or may not be for actual hours worked. (Labor Code, § 226(a)(2) & (9).)

As a result of issuing inaccurate and legally-deficient wage statements, the Company also failed to fulfill its recordkeeping obligation under Labor Code section 226(a).

C. Unreimbursed Expenses.

Labor Code section 2802 requires employers to reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer. Aggrieved employees incurred expenses for which they were not reimbursed, including (without limitation) those set forth below, in violation of Labor Code section 2802.

Among other things, aggrieved employees utilized their personal cell phones for work-related communications, tasks, and purposes, but were not reimbursed by the Company. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.) Olguin, for example, had to contact customers on her personal cell phone, and she had to link her phone up with the Company shuttle.

The Company's failure to properly pay the expenses of Olguin and the other aggrieved employees violates and is actionable under Labor Code § 2802(a)-(c).

D. Illegal Agreements.

The Company required Olguin and other aggrieved employees to agree to terms or conditions of employment that are prohibited by California law and which the Company knew were prohibited by California law. (Labor Code § 432.5.) For example, the Company required employees to sign documents which contain broad and illegal restrictive covenants that are prohibited by Business & Professions Code § 16600, and which the Company knew were prohibited by Business & Professions Code § 16600, thus violating Labor Code § 432.5. One such document was labeled a “CONFIDENTIALITY AGREEMENT” and, among other things, it contains illegal non-compete and non-solicitation provisions that are prohibited by California law.

Another document violative of California law, that employees were required to sign, was the Holiday Club documentation discussed above.

III. CIVIL PENALTIES SOUGHT.

For all the above-specified Labor Code violations, Olguin, on behalf of herself and all aggrieved employees, seeks all available civil penalties against the Company that the law allows, including the default civil penalties provided by PAGA, and any civil penalties specifically provided by statute for the alleged Labor Code violations (including, without limitation, Labor Code §§ 210, 225.5, and 226.3, and 558) which are recoverable under PAGA.

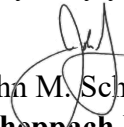
To the extent any other entity under the control of or acting in concert with the Company, or to the extent any owner, director, officer, or managing agent of the Company, caused or

contributed to the Labor Code violations (see, e.g., Labor Code § 558.1), civil penalties are also sought as to such entities or responsible parties to the extent authorized by law.

IV. RESERVATION OF RIGHTS.

Olguin reserves the right to assert claims and theories for Labor Code violations and associated civil penalties that are uncovered through discovery (formal or informal) but which are presently unknown. Olguin reserves the right to amend this PAGA Notice to allege such claims and theories, and to expressly name additional parties including (without limitation) through doe amendments. Any such amendment shall relate back to this PAGA Notice.

Very truly yours,


John M. Scheppach
Scheppach Bauer PC