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8 Attorneys for Plaintiff Felipe Lemus,
9 on behalf of himself and all “aggrieved employees”
10 pursuant to Labor Code § 2698 *et seq.*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF ORANGE**

13 FELIPE LEMUS, on behalf of himself and all
14 “aggrieved employees” pursuant to Labor
15 Code § 2698 *et seq.*,

16 Plaintiff,

17 v.

18 TUSTIN BUICK GMC, INC., a California
19 corporation, and DOES 1 through 10,
20 inclusive,

21 Defendants.

22 CASE NO: 30-2024-01393192-CU-OE-CJC
23 Judge Theodore Howard

24 **REPRESENTATIVE ACTION COMPLAINT**
25 **FOR PENALTIES PURSUANT TO LABOR**
26 **CODE § 2699(f) FOR VIOLATIONS OF**
27 **LABOR CODE §§ 201, 202, 226(a), 226.7, 227.3,**
28 **246, 510, 512, 1194, AND 2802 AND**
PURSUANT TO LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558

1 Plaintiff FELIPE LEMUS (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of TUSTIN
3 BUICK GMC, INC., a California corporation, and any subsidiaries or affiliated companies
4 (hereinafter referred to as “Defendants”) as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to properly blend bonuses (identified as “PROD BNS” on paystubs)
15 and other non-base hourly wages, earned by Plaintiff and other Aggrieved Employees into
16 their regular rate of pay for purposes of paying them meal and rest period premiums, overtime
17 wages, vacation wages, and sick pay wages at the correct rates, in violation of Labor Code §§
18 226.7, 227.3, 246, 510, 512, 558, and 1194. Defendants pay Plaintiff and other Aggrieved
19 Employees bonuses and other non-base hourly wages; however, Defendants fail to properly
20 blend these wages, and instead pay Plaintiff and other Aggrieved Employees meal and rest
21 period premiums, overtime wages, vacation wages, and sick pay wages based only on the base
22 hourly rate of pay, thus depriving Plaintiff and other Aggrieved Employees of all meal and
23 rest period premiums, overtime wages, and sick pay wages earned. This violates Labor Code
24 §§ 226.7, 227.3, 246, 510, 512, 558, and 1194;

25 b. Failing to pay correct premium wages to Plaintiff and other Aggrieved
26 Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512,
27 and 558, and IWC Wage Order 7-2001. Plaintiff and other Aggrieved Employees are routinely
28 denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every

1 shift worked that exceeds five hours, or a second timely, uninterrupted, 30-minute meal period
2 for every shift worked that exceeds ten hours, but are not paid premium wages of one hour's
3 pay at the proper rate of pay for each missed first or second meal period. Plaintiff and
4 Aggrieved Employees also frequently work through their meal periods (while clocked out),
5 thereby resulting in uncompensated time and unpaid wages. This violates Labor Code §§
6 226.7, 510, 512, 558, and 1194 and IWC Wage Order 7-2001;

7
8 c. Failing to pay correct premium wages to Plaintiff and other Aggrieved
9 Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage
10 Order No. 7-2001. Plaintiff and other Aggrieved Employees are routinely unable to take a 10-
11 minute rest period for every four (4) hours of work or major fraction thereof, but are not paid
12 premium wages of one hour's pay for each missed rest period. Plaintiff and other Aggrieved
13 Employees are simply denied and not authorized to take their legally entitled rest periods and
14 are never paid premium wages for missed rest periods. This violates Labor Code § 226.7 and
15 IWC Wage Order No. 7-2001;

16 d. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
17 business expenses incurred in direct consequence of the discharge of their duties, in violation
18 of Labor Code § 2802 and IWC Wage Order 7-2001, including, but not limited to, the cost to
19 purchase and maintain their own tools necessary to perform their job duties for Defendants.
20 Labor Code § 2802 states that an employer must indemnify its employees for all necessary
21 expenditures or losses incurred by the employee in direct consequence of the discharge of
22 their duties. These instances violate Labor Code § 2802 and IWC Wage Order 7-2001;

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24 e. Failing to provide Plaintiff and all other Aggrieved Employees with wage
25 statements that fully and accurately itemized the requirements set forth in Labor Code §
26 226(a). Plaintiff and other Aggrieved Employees were not paid all wages due, as stated above.
27 As such, the wage statements provided by Defendants failed to accurately state all gross wages
28 earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of

1 Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5)
2 and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding
3 numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3.
4 Furthermore, and independent of the above allegations, the wage statements issued to Plaintiff
5 and Aggrieved Employees fail to set forth all applicable hourly rates in effect during the pay
6 period and the corresponding number of hours worked, in violation of Labor Code §§
7 226(a)(9) and 226.3. Specifically, the wage statements set forth a multitude of rates in effect
8 during the pay period, but it is impossible to determine which rates are applicable; and
9

10 f. Failing to pay certain Aggrieved Employees all wages due, including all
11 accrued, but unused vacation wages, at the separation of their employment based on the time
12 frames required by Labor Code §§ 201-202 and 227.3. As stated above, certain Aggrieved
13 Employees were not paid all wages due during the course of their employment and, as a result
14 of this failure, they were not timely paid all wages due at the separation of their employment,
15 including vacation wages. This violates Labor Code §§ 201-202 and 227.3 and is alleged on
16 behalf of those Aggrieved Employees no longer employed by Defendants.

17 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
18 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

19 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
20 The Labor Code violations alleged against Defendants herein arose in Orange County, California.

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III.
PARTIES

A. Plaintiff

5. Plaintiff FELIPE LEMUS has been employed by Defendants since October 2023 as a non-exempt employee in Orange County, California.

B. Defendant

6. Defendant TUSTIN BUICK GMC, INC., is a California corporation that employed Plaintiff and Aggrieved Employees in Orange County, California.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants is legally attributable to the other Defendants.

9. The Defendants named herein as DOE 1 through DOE 10 are and are persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

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IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, 1194, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to civil penalties subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, 1194, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On February 7, 2024, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of February 7, 2024. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;

3. An award of attorneys' fees pursuant to Labor Code §§ 2699(g)(1) and other applicable law; and

4. Such other and further relief as this Court may deem just and proper.

Dated: April 12, 2024

Respectfully submitted,

GAINES LAW CORPORATION

By:

EVAN S. GAINES
Attorneys for Plaintiff