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Attorneys for Plaintiffs Rene Cabrera and Areana Troche

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

RENE CABRERA and AREANA TROCHE,
individually and on behalf of all others similarly
situated and the State of California under the
Private Attorneys General Act,
Plaintiffs,

vs.

UMANSKY AUTOMOTIVE GROUP; U LVS,
LLC dba LIVERMORE SUBARU; U
AUTOMOTIVE HOLDING LVS, LLC; U LVL,
LLC dba LAND ROVER LIVERMORE; U
AUTOMOTIVE HOLDING LVL, LLC; U LVA,
LLC dba AUDI LIVERMORE; U
AUTOMOTIVE HOLDING LVA, LLC; U LVP,
LLC dba LIVERMORE PORSCHE; U
AUTOMOTIVE HOLDING LVP, LLC; U LVH,
LLC dba LIVERMORE HONDA; U
AUTOMOTIVE HOLDING LVH, LLC; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 24CV070868

*Hon. Patrick McKinney
Dept. 18*

**SECOND AMENDED REPRESENTATIVE
ACTION COMPLAINT**

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

1 Plaintiffs RENE CABRERA and AREANA TROCHE, individually and on behalf of all others
2 similarly situated and the State of California under the Private Attorneys General Act (“Plaintiffs”)
3 brings this SECOND AMENDED REPRESENTATIVE ACTION COMPLAINT against Defendants
4 UMANSKY AUTOMOTIVE GROUP; U LVS, LLC DBA LIVERMORE SUBARU; U
5 AUTOMOTIVE HOLDING LVS, LLC; U LVL, LLC dba LAND ROVER LIVERMORE; U
6 AUTOMOTIVE HOLDING LVL, LLC; U LVA, LLC dba AUDI LIVERMORE; U AUTOMOTIVE
7 HOLDING LVA, LLC; U LVP, LLC dba LIVERMORE PORSCHE; U AUTOMOTIVE HOLDING
8 LVP, LLC; U LVH, LLC dba LIVERMORE HONDA; U AUTOMOTIVE HOLDING LVH, LLC;
9 and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

10 **INTRODUCTION**

11 1. This is a representative action filed for wage and hour violations of the California Labor
12 Code against Defendants.

13 2. Defendants failed to pay Plaintiffs and the aggrieved employees all minimum and
14 overtime wages due to unlawful policies and practices of off-the-clock work.

15 3. Defendants failed to provide, authorize, and/or permit Plaintiffs and the aggrieved
16 employees to take all meal and rest periods to which they were entitled.

17 4. Defendants failed to pay all overtime, paid sick leave, and premiums at the regular rate
18 of pay.

19 5. Defendants failed to compensate employees for all non-productive time spent separate
20 from any piece-rate compensation.

21 6. Defendants’ employment policies, practices, and payroll administration systems
22 enabled and facilitated these violations on a company-wide basis with respect to aggrieved employees.

23 **JURISDICTION & VENUE**

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

26 8. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
27 the Superior Court.
28

9. 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.

PARTIES

11. Plaintiff Cabrera is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about September 1, 2020, to Present. Plaintiff Cabrera worked for Defendants as a Journeyman / Automotive Technician.

13. 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), the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

14. Defendant Umansky Automotive Group is a Tennessee business entity that maintains operations and conducts business throughout the State of California, including in this county.

1 16. Defendant U Automotive Holding LVS, LLC is a Delaware limited liability company
2 that maintains operations and conducts business throughout the State of California, including in this
3 county.

4 17. Defendant U LVL, LLC dba Land Rover Livermore is a Delaware limited liability
5 company that maintains operations and conducts business throughout the State of California, including
6 in this county.

7 18. Defendant U Automotive Holding LVL, LLC is a Delaware limited liability company
8 that maintains operations and conducts business throughout the State of California, including in this
9 county.

10 19. Defendant U LVA, LLC dba Audi Livermore is a Delaware limited liability company
11 that maintains operations and conducts business throughout the State of California, including in this
12 county.

13 20. Defendant U Automotive Holding LVA, LLC is a Delaware limited liability company
14 that maintains operations and conducts business throughout the State of California, including in this
15 county.

16 21. Defendant U LVP, LLC dba Livermore Porsche is a Delaware limited liability
17 company that maintains operations and conducts business throughout the State of California, including
18 in this county.

19 22. Defendant U Automotive Holding LVP, LLC is a Delaware limited liability company
20 that maintains operations and conducts business throughout the State of California, including in this
21 county.

22 23. Defendant U LVH, LLC dba Livermore Honda is a Delaware limited liability company
23 that maintains operations and conducts business throughout the State of California, including in this
24 county.

25 24. Defendant U Automotive Holding LVH, LLC is a Delaware limited liability company
26 that maintains operations and conducts business throughout the State of California, including in this
27 county.

25. 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.

26. 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.

27. 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.

28. 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

29. Defendants failed to pay Plaintiffs and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages and secretly paying a lower wage than provided for by law and/or contract.

30. For example, Defendants regularly compelled Plaintiffs and other aggrieved employees to work off the clock during their meal periods.

31. There were numerous occasions when Plaintiffs noticed that his wage statements reflected fewer hours than he actually worked and less pay than he was owed. Plaintiff Cabrera complained to Defendants, who told him that he would receive true-up payments in the next pay period, but these payments did not appear.

32. According to the terms of Plaintiff Cabrera's employment, he earned a \$32 per hour base "minimum" rate and a \$33 per hour "flat" rate if he exceeded certain productivity metrics. However, Plaintiff Cabrera's "regular" hours were always paid at his base "minimum" rate. When Plaintiff Cabrera requested clarification on how and when his "flat" rate would kick in Defendants never provided him a clear answer.

33. Defendants paid Plaintiffs, and other aggrieved employees, on a piece rate basis, but adjusted his records to reflect hourly pay with a "Bonus Prod" or production bonus amount paid for piece rate wages earned above his hourly rate.

34. While Defendants paid Plaintiffs and other aggrieved employees Rest and Recovery wages separately from his regular wages, they failed to do so at the proper rate. For example, in the pay period of January 1, 2024 to January 15, 2024, Plaintiff Cabrera earned a "Bonus Prod" of \$245.78, but this amount was not properly factored into his rest and recovery wages. *Fig. 1.*

U LVP LLC					
Rene B Cabrera					
Employee ID	7269	Fed Taxable Income	3,078.80	Check Date	January 19, 2024
Location	72-5-5802	Fed Filing Status	M	Period Beginning	January 1, 2024
Hourly	\$33.00	State Filing Status	M-2	Period Ending	January 15, 2024
Earnings	Rate	Hours	Amount	YTD	Deductions
Bonus Prod		0.00	245.78	885.36	DENTAL PPO MET LIFE
HOLIDAY	33.00	8.00	264.00	528.00	MEDICAL KAISER
Meal Premi	33.00	1.00	33.00	66.00	Deductions
OVERTIM		0.12	1.98	9.45	Direct Deposits
REGULAR	32.00	28.12	899.84	2,523.62	J.P. MORGAN CHASE BANK,
Rest Recov	40.72	3.67	149.44	307.84	Total Direct Deposits
TRAINING				33.00	
VACATIO	33.00	48.00	1,584.00	1,584.00	Available Plan Ye
Gross Earnings		88.91	3,178.04	5,937.27	Time Off to Use Us

Fig. 1, wage statement for the pay period Jan. 1 through Jan. 15, 2024.

35. According the to wage statement in *Fig. 1*, Plaintiff Cabrera worked 28.12 "regular" hours, which must include the 0.12 hours of overtime listed, as the row designated for overtime shows a payment of less than one half of Plaintiff Cabrera's regular rate of pay. The average hourly rate, according to the formula in Section 226.2, would therefore be: $[\$245.78 + \$899.84] / 28.12 = \$40.74$, higher than the rate Defendants paid.

1 36. On information and belief, Plaintiffs alleges that Defendants have a policy and practice
2 of secretly paying a lower wage common to other aggrieved employees as well.

3 37. According to the terms of Plaintiff Cabrera's employment he earned a \$32 per hour
4 base "minimum" rate and a \$33 per hour "flat" rate if he exceeded certain productivity metrics.
5 However, Plaintiff Cabrera's "regular" hours were always paid at his base "minimum" rate. When
6 Plaintiff Cabrera requested clarification on how and when his "flat" rate would kick Defendants never
7 provided him a clear answer.

8 38. Defendants maintained an unlawful policy and practice of deducting wages and
9 earnings from Plaintiffs and the aggrieved employees. For example, the Plaintiffs noticed various
10 wage statements showed deductions from previously paid wages.

11 39. To the extent that Defendants' unlawful policies and practices requiring off-the-clock
12 work and time editing resulted in hours worked over 8 hours in a day or 40 hours in a week, this
13 resulted in unpaid overtime.

14 40. Defendants failed to pay Plaintiffs and the aggrieved employees overtime wages and
15 the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

16 41. As described above, Defendants failed to properly record all hours that Plaintiffs and
17 other aggrieved employees worked, resulting in unpaid minimum and regular wages. This illegal
18 practice also resulted in unpaid overtime wages as Plaintiffs and other aggrieved employees regular
19 worked more than eight hours in a day and/or forty hours in a week. Thus, many of the unpaid, off-
20 the-clock hours that the aggrieved employees worked should have counted towards overtime.

21 42. Moreover, Defendants failed to pay overtime and double time to Plaintiffs and other
22 aggrieved employees at the "regular rate of pay."

23 43. For example, the wage statement in *Fig. 1* above shows that Plaintiff Cabrera earned a
24 production bonus of \$245.78, but this amount was not properly incorporated into his regular rate of
25 pay of overtime purposes. According to *Fig. 1*, Defendants paid Plaintiff Cabrera \$1.98 for 0.12 hours
26 of overtime, which translates to \$16.5 per hour. Assuming the 0.12 hours of overtime overlaps with
27 the 28.12 "regular" hours paid at \$32 per hour, Defendants paid Plaintiff Cabrera at a rate of \$48.50
28 per hour for his overtime hours.

44. However, Plaintiff Cabrera's should have been paid at 1.5 times his regular rate, which, based on the calculations in the Rest and Recovery Wages section above, is $\$40.74 \times 1.5 = \$61.11$. The rate at which Defendants paid Plaintiff Cabrera fell significantly short.

45. Likewise, on information and belief, Defendants further failed to factor these additional forms of non-discretionary income into Plaintiffs' and the aggrieved employees' regular rate of pay with respect to paid sick leave.

46. For example, in the pay period of January 16 through January 31, 2024, Plaintiff Cabrera took sick leave and was paid at \$33 per hour, only one dollar over his base hourly rate. However, he earned significant production bonuses in that pay period and in the pay periods across the preceding 90 days, which were not properly included in his rate of pay for sick leave purposes.

Fig. 2.

U L V P L L C					
Rene B Cabrera					
Employee ID	7269	Fed Taxable Income	3,305.67	Check Date	February 5, 2024
Location	72-5-5802	Fed Filing Status	M	Period Beginning	January 16, 2024
Hourly	\$33.00	State Filing Status	M-2	Period Ending	January 31, 2024
Earnings	Rate	Hours	Amount	YTD	Deductions
Bonus Prod		0.00	468.99	1,354.35	DENTAL PPO MET LIFE
HOLIDAY				528.00	MEDICAL KAISER
Meal Premi	33.00	1.00	33.00	99.00	Deductions
OVERTIM		0.23	3.73	13.18	Direct Deposits
REGULAR	32.00	59.21	1,894.72	4,418.34	J.P. MORGAN CHASE BANK, N.Y.
Rest Recov	39.91	3.67	146.47	454.31	Total Direct Deposits
SICK	33.00	24.00	792.00	792.00	
TRAINING	33.00	2.00	66.00	99.00	Available Plan Year
VACATIO				1,584.00	Time Off to Use Used
Gross Earnings		90.11	3,404.91	9,342.18	Sick 16.00 24.00
					Vacation 8.00 168.00

Fig. 2, wage statement for the pay period Jan. 16 through Jan. 31, 2024.

47. Defendants failed to provide compliant full, timely, off-duty, uninterrupted meal periods to Plaintiffs and the aggrieved employees.

48. Defendants generally discouraged Plaintiffs and aggrieved employees from taking breaks of any kind due to the high demands of the job, telling employees who wanted a break that there is work to be done.

1 49. Even though Defendants did not provide their employees the opportunity to take all of
2 their legally mandated meal periods, as a matter of policy and practice Defendants failed to pay
3 Plaintiffs and other aggrieved employees all meal period premium wages owed. As described above,
4 Defendants had Plaintiffs and other aggrieved employees clock out for meal periods even when they
5 were unable to take them. This resulted in unpaid wages as well as unpaid meal period premiums.

6 50. When Defendants did pay meal period premiums, they failed to pay at the proper rate
7 of pay. For example, *Fig. 2* above shows that Defendants paid Plaintiff Cabrera a meal premium at
8 \$33. However, Plaintiff Cabrera earned a production bonus of \$468.99 during this period so his regular
9 rate of pay should have included this amount as well as the amounts for this training hours. Hence,
10 Plaintiff Cabrera's regular rate of pay for this period was $[\$468.99 + \$66 + \$1,894.72] / [59.21 + 2] =$
11 **\$39.69.**

12 51. For the same reasons Plaintiffs and the aggrieved employees experienced non-
13 compliant meal periods, they also experienced missed and interrupted rest periods.

14 52. Defendants failed to pay rest period premiums as required by Labor Code section 226.7
15 each time Plaintiffs and the aggrieved employees experienced a noncompliant rest period.

16 53. Despite failing to provide employees with the opportunity to take all legally-mandated
17 rest periods, Defendants also failed to pay all premium wages owed in lieu of compliant rest periods.
18 To the extent that any rest period premiums were paid, they were not paid at the proper rate because
19 Defendants failed to include all forms of non-discretionary pay in the regular rate of pay.

20 54. Because Defendants failed to pay all wages and premiums in each pay period in which
21 such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b
22 (for weekly employees, as applicable). Indeed, Defendants failed to pay all premiums, overtime,
23 regular, sick leave, and other earnings within seven calendar days of the close of the payroll period.

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

1 56. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
2 employee wage statements each pay period the applicable hourly rates in effect and the number of
3 hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees.
4 The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the
5 pay stub. Moreover, as seen in Fig. 1 and Fig. 2 above, Defendants failed to list Plaintiff Cabrera's
6 hourly rate for overtime pay.

7 57. Plaintiffs and other aggrieved employees cannot promptly and easily determine from
8 the wage statement alone the wages paid or earned without reference to other documents or
9 information. Indeed, these wage statement violations are significant because they sow confusion
10 among Plaintiffs and other aggrieved employees with respect to what amounts were owed and paid, at
11 what rates, the number of hours worked, and how those amounts were or should be calculated. The
12 wage statements reflect a false statement of earnings and concealed the underlying problems and
13 underpayments of employee wages.

14 58. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
15 employee wage statements each pay period the applicable hourly rates in effect and the number of
16 hours worked at that rate, as Defendant failed to pay all wages and premiums owed to employees. The
17 amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay
18 stub.

19 59. Defendants required Plaintiffs and the aggrieved employees to incur costs for work-
20 related purposes without full reimbursement.

21 60. In direct consequence of their job duties, Plaintiffs and the aggrieved employees
22 unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and
23 practice. For example, Plaintiff Cabrera used his personal tools in order to complete his job duties and
24 was never reimbursed for their use.

25 61. Defendants additionally failed to provide Plaintiffs and the aggrieved employees
26 suitable seating when they were not actively engaged in work that required them not to sit. For
27 example, the only seating available for Plaintiffs and other aggrieved employees to use was in the
28

1 lunch room. However, Defendants actively discouraged Plaintiffs and other aggrieved employees
2 from being in the lunch room and chastised them for not working if they made use of the lunch room.

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

6 63. Plaintiff Cabrera made a formal complaint to Defendants regarding some of the wage
7 and hour violations described in this Complaint, including not being given the opportunity to take off-
8 duty meal and rest periods. However, Plaintiff Cabrera's complaints were left unaddressed. Rather,
9 Defendants retaliated against Plaintiff Cabrera by assigning him less desirable work that nobody else
10 wanted to do.

11 **FIRST CAUSE OF ACTION**

12 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

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

14 **(By Plaintiffs on Behalf of the State and the Aggrieved Employees Against All Defendants)**

15 64. All outside paragraphs of this Complaint are incorporated into this section.

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

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

22 66. Plaintiffs reserves the right to amend, supplement, or add to this description of the
23 aggrieved employees, according to proof.

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

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

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

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

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

18 72. On or about **March 27, 2024**, Plaintiff Cabrera paid the requisite PAGA filing fee and
19 provided written notice (by online electronic filing with the LWDA and by certified mail to
20 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
21 the alleged violations.

22 73. On or about **April 15, 2024**, Plaintiff Troche paid the requisite PAGA filing fee and
23 provided written notice (by online electronic filing with the LWDA and by certified mail to
24 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
25 the alleged violations.

26 74. True and correct copies of Plaintiffs’ written PAGA notices, entitled “Notice of Labor
27 Code Violations” is attached hereto as Exhibit 1 and Exhibit 2 and incorporated by reference as though
28 fully set forth herein (the “PAGA notices”).

1 75. To date, neither Plaintiffs nor Plaintiffs' counsel has received a response to Plaintiffs'
2 written PAGA notices from the LWDA.

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

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

10 78. As set forth in the PAGA notices attached as Exhibit 1 and Exhibit 2 and incorporated
11 into this Complaint, Defendants committed the following violations and are liable for all
12 corresponding civil penalties:

- 13 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
14 1197, 1198; IWC Wage Orders.
- 15 b. ***Unpaid Hours Worked/Non-Productive, Rest, and Recovery Periods.***
16 Violation of Labor Code §§ 226.2; IWC Wage Orders.
- 17 c. ***Secretly Paying a Lower Wage.*** Violation of Labor Code § 223.
- 18 d. ***Unlawful Wage Deductions.*** Violation of Labor Code §§ 221 through 225.
- 19 e. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
20 Orders.
- 21 f. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 22 g. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
23 1198; IWC Wage Orders.
- 24 h. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
25 1198; IWC Wage Orders.
- 26 i. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
27 §§ 204, 204b, 210.
- 28 j. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

- k. **Unreimbursed Employee Expenses.** Violation of Labor Code §§ 2802, 2804.
- l. **Suitable Seating.** Violation of Labor Code §§ 1198; IWC Wage Orders.
- m. **Failure to Maintain Accurate Records.** Violation of Labor Code § 1174; IWC Wage Orders.
- n. **Retaliation.** Violation of Labor Code §§ 98.6 and 1102.5.

79. Plaintiffs 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).

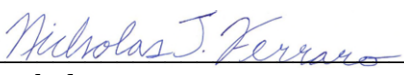
PRAYER

Plaintiffs pray 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 Plaintiffs 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, including (without limitation) under Labor Code § 2699, and Code of Civil Procedure section 1021.5; and
- g. For such other relief the Court deems just and proper.

Dated: January 26, 2026

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro
Lauren N. Vega
Attorneys for Plaintiffs
Rene Cabrera and Areana Troche

EXHIBIT 1

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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Lauren N. Vega
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ATTORNEYS AT LAW
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619-693-7727
619-350-6855 fax
ferrarovega.com

March 27, 2024

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

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

Umansky Automotive Group
2611 Ridgeway Rd.
Memphis, TN 38119

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

Additional Addressees on Last Page

Dear LWDA Officer and Company Representatives:

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

Umansky Automotive Group;
Danny Umansky;
U LVS, LLC dba Livermore Subaru;
U Automotive Holding LVS, LLC;
U LVL, LLC dba Land Rover Livermore;
U Automotive Holding LVL, LLC;
U LVA, LLC dba Audi Livermore;
U Automotive Holding LVA, LLC;
U LVP, LLC dba Livermore Porsche;
U Automotive Holding LVP, LLC;
U LVH, LLC dba Livermore Honda; and
U Automotive Holding LVH, LLC

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 non-exempt, hourly position of Journeyman/Automotive Technician from about September 2020 to Present. 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. For example, Defendants regularly compelled Plaintiff and other aggrieved employees to work off the clock during their meal periods.

Further, there were numerous occasions when Plaintiff noticed that his wage statements reflected fewer hours than he actually worked and less pay than he was owed. Plaintiff complained to Defendants, who told him that he would receive true-up payments in the next pay period, but these payments did not appear.

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 Hours Worked/Non-Productive, Rest, and Recovery Periods
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.

Labor Code section 226.2(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.

Here, Defendants paid Plaintiff on a piece rate basis, but adjusted his records to reflect hourly pay with a “Bonus Prod” or production bonus amount paid for piece rate wages earned above his hourly rate. While Defendants did separately pay Plaintiff Rest and Recovery wages, they failed to do so at the proper rate. For example, in the pay period of January 1, 2024 to January 15, 2024, Plaintiff earned a “Bonus Prod” of \$245.78, but this amount was not properly factored into his rest and recovery wages. *Fig. 1*.

U LVP LLC					
Rene B Cabrera					
Employee ID	7269	Fed Taxable Income	3,078.80	Check Date	January 19, 2024
Location	72-5-5802	Fed Filing Status	M	Period Beginning	January 1, 2024
Hourly	\$33.00	State Filing Status	M-2	Period Ending	January 15, 2024
Earnings	Rate	Hours	Amount	YTD	Deductions
Bonus Prod		0.00	245.78	885.36	DENTAL PPO MET LIFE
HOLIDAY	33.00	8.00	264.00	528.00	MEDICAL KAISER
Meal Premi	33.00	1.00	33.00	66.00	Deductions
OVERTIM		0.12	1.98	9.45	Direct Deposits
REGULAR	32.00	28.12	899.84	2,523.62	J.P. MORGAN CHASE BANK
Rest Recov	40.72	3.67	149.44	307.84	Total Direct Deposits
TRAINING				33.00	
VACATIO	33.00	48.00	1,584.00	1,584.00	Available Plan Year
Gross Earnings		88.91	3,178.04	5,937.27	Time Off to Use Us

Fig. 1, wage statement for the pay period Jan. 1 through Jan. 15, 2024.

According to the wage statement in Fig. 1, Plaintiff worked 28.12 “regular” hours, which must include the 0.12 hours of overtime listed, as the row designated for overtime shows a payment of less than one half of Plaintiff’s regular rate of pay. The average hourly rate, according to the formula in Section 226.2, would therefore be: $[\$245.78 + \$899.84] / 28.12 = \underline{\$40.74}$, higher than the rate Defendants paid.

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.

Secretly Paying a Lower Wage **Violation of Labor Code § 223**

Defendants violated Labor Code section 223 with respect to the aggrieved employees.

Labor Code section 223 provides that “it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” According to the terms of Plaintiff’s employment, he earned a \$32 per hour base “minimum” rate and a \$33 per hour “flat” rate if he exceeded certain productivity metrics. However, Plaintiff’s “regular” hours

were always paid at his base “minimum” rate. When Plaintiff requested clarification on how and when his “flat” rate would kick in Defendants never provided him a clear answer.

On information and belief, Plaintiff alleges that Defendants have a policy and practice of secretly paying a lower wage common to other aggrieved employees as well.

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.

Unlawful Wage Deductions **Violation of Labor Code §§ 221 through 225**

Defendants violated Labor Code sections 221 through 225 with respect to the aggrieved employees.

Labor Code section 221 renders it “unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code section 222 renders it illegal to unlawfully withhold any part of wages agreed upon from the employee. Labor Code section 222.5 renders it unlawful to deduct from employee compensation, or require employee payment, for pre-employment medical or physical examination taken as a condition of employment.

Defendants maintained an unlawful policy and practice of deducting wages and earnings from Plaintiff and the aggrieved employees. For example, Plaintiff noticed some of his wage statements contained deductions for previously paid wages.

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 225.5 (\$100/\$200), 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 described above, Defendants failed to properly record all hours that Plaintiff and other aggrieved employees worked, resulting in unpaid minimum and regular wages. This illegal practice also resulted in unpaid overtime wages as Plaintiff and other aggrieved employees regular worked more than eight hours in a day and/or forty hours in a week. Thus, many of the unpaid, off-the-clock hours that the aggrieved employees worked should have counted towards overtime.

Moreover, Defendants failed to pay overtime and double time at the “regular rate of pay.” For example, the wage statement in *Fig. 1* above shows that Plaintiff earned a production bonus of \$245.78, but this amount was not properly incorporated into his regular rate of pay for overtime purposes. According to *Fig. 1*, Defendants paid Plaintiff \$1.98 for 0.12 hours of overtime, which translates to \$16.5 per hour. Assuming the 0.12 hours of overtime overlaps with the 28.12 “regular” hours paid at \$32 per hour, Defendants paid Plaintiff at a rate of \$48.50 per hour for his overtime hours.

However, Plaintiff’s should have been paid at 1.5 times his regular rate, which, based on the calculations in the Rest and Recovery Wages section above, is $\$40.74 \times 1.5 = \underline{\$61.11}$. The rate at which Defendants paid Plaintiff fell significantly short.

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. Due to Defendants’ failure to record and pay for all hours worked, as described above, Defendants failed to credit Plaintiff and other aggrieved employees with all of the sick leave hours they had accrued.

Defendants failed to include all qualifying forms of remuneration into Plaintiff’s rate of pay for sick leave purposes. For example, in the pay period of January 16 through January 31, 2024, Plaintiff took sick leave and was paid at \$33 per hour, only one dollar over his base hourly rate. However, he earned significant production bonuses in that pay period and in the pay periods across the preceding 90 days, which were not properly included in his rate of pay for sick leave purposes. *Fig. 2*.

U LVP LLC					
Rene B Cabrera					
Employee ID	7269	Fed Taxable Income	3,305.67	Check Date	February 5, 2024
Location	72-5-5802	Fed Filing Status	M	Period Beginning	January 16, 2024
Hourly	\$33.00	State Filing Status	M-2	Period Ending	January 31, 2024
Earnings	Rate	Hours	Amount	YTD	Deductions
Bonus Prod		0.00	468.99	1,354.35	DENTAL PPO MET LIFE
HOLIDAY				528.00	MEDICAL KAISER
Meal Premi	33.00	1.00	33.00	99.00	Deductions
OVERTIM		0.23	3.73	13.18	Direct Deposits
REGULAR	32.00	59.21	1,894.72	4,418.34	J.P. MORGAN CHASE BANK, N.
Rest Recov	39.91	3.67	146.47	454.31	Total Direct Deposits
SICK	33.00	24.00	792.00	792.00	Available Plan Year
TRAINING	33.00	2.00	66.00	99.00	Time Off
VACATIO				1,584.00	to Use
Gross Earnings		90.11	3,404.91	9,342.18	Used
					Sick 16.00 24.00
					Vacation 8.00 168.00

Fig. 2, wage statement for the pay period Jan. 16 through Jan. 31, 2024.

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.

Defendants failed to provide compliant full, timely, off-duty, uninterrupted meal periods to Plaintiff and other aggrieved employees. Defendants generally discouraged employees from taking breaks of any kind, saying that there is work to be done.

Even though Defendants did not provide their employees the opportunity to take all of their legally mandated meal periods, as a matter of policy and practice Defendants failed to pay Plaintiff and other aggrieved employees all meal period premium wages owed. As described above, Defendants had Plaintiff and other aggrieved employees clock out for meal periods even when they were unable to take them. This resulted in unpaid wages as well as unpaid meal period premiums.

When Defendants did pay meal period premiums, they failed to pay at the proper rate of pay. For example, *Fig. 2* shows that Defendants paid Plaintiff a meal premium at \$33. However, Plaintiff earned a production bonus of \$468.99 during this period so his regular rate of pay should have included this amount as well as the amounts for this training hours. Hence, Plaintiff's regular rate of pay for this period was $[\$468.99 + \$66 + \$1,894.72] / [59.21 + 2] = \underline{\$39.69}$.

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 fraction 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 all of the reasons described in the Meal Periods section above, Defendants did not provide Plaintiff and other aggrieved employees the opportunity to take rest periods. Despite failing to provide employees with the opportunity to take all legally-mandated rest periods, Defendants also failed to pay all premium wages owed in lieu of compliant rest periods. To the extent that any rest period premiums were paid, they were not paid at the proper rate because Defendants failed to include all forms of non-discretionary pay in the 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.

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. Indeed, Defendants failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each payday.

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.

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 wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. Moreover, as seen in *Fig. 1* and *Fig. 2* above, Defendants failed to list Plaintiff’s hourly rate for overtime pay.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or 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, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

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. Plaintiff used his personal tools in order to complete his job duties and was never reimbursed for their use.

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.

Suitable Seating Violations
Violation of Labor Code §§ 1198; IWC Wage Orders

When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties, including during rest and recovery periods. Labor Code section 1198 provides that: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the

standard conditions of labor for employees. The employment of any employee for hours longer than those fixed by the order or under conditions of labor prohibited by the order is unlawful and provides for civil penalties.” The Seating requirements section of the applicable IWC Wage Orders specifically require "All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats" and "when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

Defendants failed to provide Plaintiff and other aggrieved employees proper seating for the times when they were not actively engaged in work that required them not to sit. For example, the only seating available for Plaintiff to use was in the lunch room. However, Defendants actively discouraged Plaintiff and other aggrieved employees from being in the lunch room and chastised him for not actively working when he made use of the lunch room.

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) and the IWC Wage Orders 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.

Retaliation
Violation of Labor Code §§ 98.6 and 1102.5

Defendants violated Labor Code sections 98.6 and 1102.5 by retaliating against Plaintiff for making complaints about workplace conditions.

Section 98.6 provides that an employer shall not “discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to their rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that they are owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded them.”

Section 1102.5 provides that no employer, or person acting on behalf of an employer, shall “make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.”

Plaintiff made a formal complaint to Defendants regarding some of the wage and hour violations described in this notice, including not being given the opportunity to take off-duty meal and rest periods. However, Plaintiff's complaints were left unaddressed. Rather, Defendants retaliated against Plaintiff by assigning him less desirable work that nobody else wanted to do.

Sections 98.6 and 1102.5 each provide for \$10,000 in civil penalties in addition to whatever other remedies Plaintiff may recover. Labor Code §§ 98.6(b)(3), 1102.5(e)(1). Plaintiff will seek recovery of civil penalties under each section as well as other compensatory, statutory, and punitive damages.

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,

A handwritten signature in black ink, appearing to read "David Lin", with a stylized flourish at the end.

David X. Lin

Cc Plaintiff Rene Cabrera

ADDITIONAL ADDRESSEES

Danny Umansky

6001 Umansky Cove
Memphis, TN 38119

U LVS, LLC dba Livermore Subaru

3200 Las Positas Rd
Livermore, CA 94551

U Automotive Holding LVS, LLC

6001 Umansky Cove
Memphis, TN 38119

U LVL, LLC dba Land Rover Livermore

3200 Las Positas Rd
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U Automotive Holding LVL, LLC

6001 Umansky Cove
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U LVA, LLC dba Audi Livermore

3200 Las Positas Rd
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U Automotive Holding LVA, LLC

6001 Umansky Cove
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U LVP, LLC dba Livermore Porsche;

3100 Las Positas Rd
Livermore, CA 94551

U Automotive Holding LVP, LLC

6001 Umansky Cove
Memphis, TN 38119

U LVH, LLC dba Livermore Honda

3200 Las Positas Rd
Livermore, CA 94551

U Automotive Holding LVH, LLC

6001 Umansky Cove
Memphis, TN 38119

EXHIBIT 2



JUSTICE FOR WORKERS

3600 WILSHIRE BOULEVARD, SUITE 1815, LOS ANGELES, CA 90010

TEL: (323) 922-2000

FAX: (323) 922-2000

www.JusticeForWorkers.com

April 14, 2024

VIA PAGA ONLINE FILING ONLY

California Labor and Workforce Development Agency

Attn: PAGA Administrator

455 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

<https://dir.tfaforms.net/308>

**Re: *Areana Troche v. U LVP, LLC, et al.*
Notice of Private Attorneys General Act Claim**

Dear PAGA Administrator:

This office has been retained by aggrieved employee Areana Troche ("Plaintiff") concerning a representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* ("PAGA") against U LVP, LLC; U LVH, LLC; U LVL, LLC; U LVA, LLC; and U LVS, LLC (including any and all affiliates, subsidiaries, parents, directors, officers, managing agents, and executive employees) (collectively referred to as "Defendants") for violations of California wage and hour laws. Plaintiff seeks civil penalties for violations of the Labor Code and all other remedies available under PAGA.

Plaintiff seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the notice requirements of Labor Code § 2699.3.

Defendants own and operate automobile dealerships in Livermore, California. Defendants employed Plaintiff as an hourly-paid, non-exempt employee from approximately September 2022 to February 2024 as a service advisor at Defendants' Honda dealership in Livermore, California. The "aggrieved employees" that Plaintiff seeks civil penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California.

Based on the following facts and theories, Defendants violated and/or continue to violate, among other provisions of the Labor Code and applicable wage law, California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.7, 246, 256, 510, 512, 516, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, and 2802, and IWC Wage Orders including Wage Order 7-2001.

Labor Code §§ 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Plaintiff and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week but were not paid overtime compensation at the regular rate of pay because Defendants failed to incorporate multiple rates of pay and/or all non-discretionary remuneration, including commissions and piece rates, into the regular rate of pay.

Labor Code §§ 226.7, 512, 516, and the Wage Orders require employers to pay an employee one additional hour of pay at the employee's regular rate of compensation for each meal or rest period that is not provided. During the relevant time period, Defendants required Plaintiff and other aggrieved employees to work during meal and rest periods and failed to compensate them properly and at the regular rate of compensation for non-compliant meal and rest periods by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including commissions and piece rates, into the regular rate of compensation.

Labor Code § 246 mandates employers to comply with various requirements with respect to the provision of paid sick leave to employees. During the relevant time period, Defendants improperly calculated the sick leave rate of pay owed to Plaintiff and other aggrieved employees by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including commissions and piece rates, into the sick leave pay rate calculation.

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees all wages due to them within any time period specified by Labor Code §§ 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

Labor Code § 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. Labor Code § 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees all wages due to them within any time period specified by Labor Code § 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

Labor Code § 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Defendants did not provide Plaintiff and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Defendants were in violation of Labor Code § 226(a). The violations include, but are not limited to, the failure to include the total hours worked, including time spent working off the clock and during meal and rest periods, failure to state the correct gross and net wages earned for all time worked, piece-rate information, and failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code § 1174 requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, 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. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Defendants failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Plaintiff and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

Labor Code § 2802 requires an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, but not limited to, use of their personal cellphones to communicate with shuttle drivers by text messaging.

Labor Code § 226.2 applies to employees who are compensated on a piece-rate basis for any work performed during a pay period and requires employers to establish compensation and wage statement requirements for rest and recovery periods and "other nonproductive time" for piece-rate employees. During the relevant time period, Defendants violated Labor Code § 226.2 by failing to properly compensate aggrieved employees for non-productive time and rest/recovery periods and failed to properly incorporate piece rates into the regular rate of pay for rest/recovery periods.

Therefore, on behalf of all aggrieved employees, Plaintiff seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the LWDA, for violation of the Labor Code pursuant to PAGA. Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this letter) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA and employer an opportunity to investigate the claims and/or take any action they deem appropriate. If the LWDA and Defendants elect not to take any action with respect to any of the foregoing claims, Plaintiff will seek these penalties in a civil action on behalf of all aggrieved employees within one year of the date of this letter as allowed by law.

If you have any questions, please contact me at the phone number or address below:

William C. Sung
JUSTICE FOR WORKERS, P.C.
3600 Wilshire Boulevard
Suite 1815
Los Angeles, CA 90010
Office: 323-922-2000
Fax: 323-922-2000
Email: william@justiceforworkers.com

Thank you for your attention to this matter.

Very truly yours,



William C. Sung
JUSTICE FOR WORKERS, P.C.

Cc: Via USPS Certified Mail – Return Receipt Requested

U LVP, LLC
National Registered Agents, Inc.
Agent for Service of Process
330 N. Brand Blvd., Ste 700
Glendale CA, 91203

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