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FILED
 Superior Court of California
 County of Los Angeles

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David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE TARIFA, as an individual and on behalf
 of all others similarly situated,

Plaintiff,

vs.

ELLIS FAMILY STORES, LLC, a
 California limited liability company;
 GLENDALE DODGE, LLC, a California
 limited liability company; and DOES 1
 through 10, inclusive,

Defendants.

Case No.: 24STCV13954

**FIRST AMENDED CLASS AND
 REPRESENTATIVE ACTION
 COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);
- (2) **FAILURE TO PAY ALL OVERTIME**
WAGES (LABOR CODE §§ 204, 510,
1194, 1198);
- (3) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512);
- (4) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 516);
- (5) **UNLAWFUL DEDUCTIONS FROM**
EARNED WAGES (LABOR CODE
§§ 221-223);
- (6) **FAILURE TO REIMBURSE FOR**
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802 and 2804);
- (7) **WAGE STATEMENT VIOLATIONS**
(LABOR CODE § 226 *et seq.*);
- (8) **UNFAIR COMPETITION (BUS &**
PROF CODE § 17200 *et seq.*; and

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jose Tarifa (hereinafter “Plaintiff”) on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Ellis Family Stores, LLC, a California limited liability company; Glendale
4 Dodge, LLC, a California limited liability company; and DOES 1 to 10, inclusive (collectively
5 “Defendants”), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff hereby brings this Complaint for recovery of unpaid wages and penalties
8 under California Business and Professions Code § 17200 *et. seq.*, Labor Code §§ 204, 221-223,
9 226, 226.7 *et seq.*, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802,
10 2804, and Industrial Welfare Commission Wage Order 4 (“Wage Order 4”), in addition to seeking
11 declaratory relief and restitution. This Complaint is brought pursuant to California Code of Civil
12 Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor
13 Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

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

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
24 the filing of the Complaint in this action and within the statute of limitations periods applicable
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
28 §§ 204, 221-223, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698

1 *et seq.*, 2802, 2804, and Industrial Welfare Commission Wage Order 4 which sets employment
2 standards for the professional and technical industries.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
5 continue to do) business by selling and repairing automobiles, and employed Plaintiff and other,
6 similarly-situated non-exempt employees within Los Angeles County and the state of California
7 and, therefore, were (and are) doing business in the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
12 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 16) to be subject to the
15 unlawful employment practices, wrongs, injuries and damages complained of herein.

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

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

25 8. At all times mentioned herein, Defendants, and each of them, were members of
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all

members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Defendants operate car dealerships and service centers under the names “Glendale Dodge Chrysler Jeep Ram” and “Alfa Romeo of Glendale.” Plaintiff has been employed by Defendants from approximately February 2020 until the present day, in the non-exempt position of “Auto Tech” (or similarly titled position). Plaintiff’s primary job responsibility as an Auto Tech is to perform internal repairs on cars, such as alignments, transmissions, tire rotations and replacements. Although he works at the Glendale Dodge Chrysler Jeep Ram site, Plaintiff also does repairs on vehicles brought over from Alfa Romeo of Glendale.

10. During Plaintiff’s employment with Defendant, Plaintiff and other non-exempt employees were paid on a piece-rate (or commission) basis, whereby Plaintiff was paid a certain piece-rate (or commission) per repair completed, noted on his pay records as “Dodge Flat Flag Rate” or “Fiat Flat Flag Rate,” depending on which dealership’s cars he worked on. If Plaintiff and other non-exempt employees clocked over a certain number of “flag” hours per pay period, they earned an additional hourly “tech efficiency bonus.” Despite the fact that Plaintiff and other non-exempt employees recorded their actual hours with an electronic timeclock, wages earned for these hours worked were treated as an advance against the employee’s piece-rate/commission earnings, as only those piece-rate/commission earnings in excess of the “hourly wages” were paid out as piece-rate/commission earnings. Plaintiff and other non-exempt employees were pressured and encouraged to be highly productive and told not to leave until all repairs were finished, even completing work after scheduled hours or during meal and rest periods. As a result, Plaintiff and other non-exempt employees infrequently had piece-rate/commission earnings that do not exceed their hourly wages.

11. Because Defendants’ pay system is simply a subterfuge for a piece-rate/commission compensation system, Plaintiff was not separately compensated for time spent working on tasks which were not compensated on a piece-rate/commission basis, including hours spent cleaning and maintaining tools, performing administrative tasks and attending mandatory meetings (i.e., “non-productive” time worked). As a result, Plaintiff was not paid at least the

1 minimum wage for all hours actually worked and was not credited with any of the overtime hours
2 actually worked. Furthermore, Defendants informed Plaintiff and other non-exempt employees
3 that they would not be paid at an overtime rate for hours worked in excess of 8.0 hours per day,
4 and Defendants failed to pay Plaintiff and other non-exempt employees all overtime wages owed.
5 Even if Plaintiff worked more than 8.0 hours per day and clocked his time accurately, it has been
6 Defendants' policy/practice to require employees to change their time after the fact to reflect
7 exactly 8.0 hours. As a result, Plaintiff and other non-exempt employees were required to clock
8 out after 8.0 hours and continue working until their jobs were completed, however, Defendants
9 failed to compensate Plaintiff and other non-exempt employees for all overtime hours worked.

10 12. Defendants also failed to provide Plaintiff with all legally compliant meal periods
11 due to Defendants' meal period policies/practices, which have resulted in late (commencing after
12 the fifth hour of work), short (less than 30 minutes), and missed meal periods. Specifically, due
13 to work demands imposed by Defendants, Plaintiff was often not provided with a first meal period
14 prior to the conclusion of his fifth hour of work. Plaintiff's meal periods were also interrupted by
15 work demands imposed by Defendants and Plaintiff was often not provided a full 30-minute
16 uninterrupted meal period. Additionally, Defendants failed to provide Plaintiff with second meal
17 periods on shifts over 10.0 hours. On those occasions when Plaintiff was not provided with all
18 legally compliant meal periods to which he was entitled, Defendants failed to always compensate
19 Plaintiff with the required meal period premium(s) for each workday in which he experienced a
20 meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during
21 at least a portion of the relevant period, Defendants maintained no mechanism for the payment of
22 meal period premium payments as required by Labor Code § 226.7 in the event that a legally
23 compliant meal period was not provided to their non-exempt employees.

24 13. While working on a piece-rate/commission basis, Plaintiff worked shifts in excess
25 of 3.5 hours, and was never provided with a paid rest period for every 4-hour period worked, or
26 major fraction thereof, because Defendants' piece-rate/commission compensation plan fails to
27 separately compensate Plaintiff for required rest periods. As a result, Plaintiff was not provided
28 with compensated rest periods as required by Wage Order 4, § 12(A), nor have Defendants

1 compensated Plaintiff pursuant to Labor Code section 226.7 for their failure to provide “paid”
2 rest periods.

3 14. During Plaintiff’s employment with Defendants, Defendants also failed to
4 adequately reimburse Plaintiff for all reasonable and necessary work expenditures, including, but
5 not limited to, the costs of tools required to perform Plaintiff’s job duties. Despite requiring
6 Plaintiff to use his personal tools for business purposes, Defendants failed to reimburse Plaintiff
7 for the costs of providing his own tools. Furthermore, upon information and belief, Defendants
8 made unlawful deductions from Plaintiff’s and other non-exempt employee’s wages for the cost
9 of tools which were required to perform Plaintiff’s and other employees’ job duties.

10 15. As a result of Defendants’ failure to pay all minimum and overtime wages and all
11 meal and rest period premium wages, Defendants maintained inaccurate payroll records and failed
12 to issue accurate, compliant, itemized wage statements.

13 **CLASS ACTION ALLEGATIONS**

14 16. Class Definitions: Plaintiff brings this Complaint on behalf of himself and the
15 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 16 a. The Minimum Wage Class consists of all of Defendants’ current and former non-
17 exempt employees in California who were paid on a commission and/or piece rate
18 basis during the four years immediately preceding the filing of this Complaint
19 through the present.
- 20 b. The Overtime Class consists of all Defendants’ current and former non-exempt
21 employees in California who worked over 8.0 hours in a day and/or 40.0 hours in
22 a week, during the four years immediately preceding the filing of this Complaint
23 through the present.
- 24 c. The Meal Period Class consists of all of Defendants’ current and former non-
25 exempt employees in California who (i) worked at least one shift in excess of 5.0
26 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four
27 years immediately preceding the filing of this Complaint through the present.

- d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who were paid on a commission and/or piece rate basis, and who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this Complaint through the present.
- e. The Unlawful Deduction Class consists of all of Defendants' current and former employees in California who had a deduction taken from their wages for the cost of their tools, during the four years immediately preceding the filing of this action through the present.
- f. The Employee Expense Class consists of all of Defendants' current and former non-exempt employees who were not reimbursed for business expenses in California, during the four years immediately preceding the filing of this Complaint through the present.
- g. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, Rest Period Class and/or Employee Expense Class, who received a wage statement from Defendants in California during the one year immediately preceding the filing of this Complaint through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes and subclasses are unknown to Plaintiff, at this time; however, it is estimated that the number is in excess of one hundred (100) individuals as to each class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- i. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 226.2, 1182.12, 1194, 1194.2 and 1197 by failing to pay all

members of the Minimum Wage Class at least the minimum wage for all hours worked;

ii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 and 1194 by requiring overtime work and not paying for said work according to the overtime laws of the State of California;

iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.2, 226.7 and 516;

v. Whether Defendants unlawfully deducted wages from members of the Unlawful Deduction Class;

vi. Whether Defendants' reimbursement policies, and failure to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their work duties comply with Labor Code § 2802.

vii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226 and 226.2;

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform Flag Rate and/or Commission Plans and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as non-exempt employees in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum and

overtime wages, was not authorized and permitted all required meal and rest periods, was not reimbursed for all necessary business expenditures, and did not receive complete and accurate wage statements.

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

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be

dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes are maintainable as classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM WAGES

(AGAINST ALL DEFENDANTS)

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

24. Wage Order 4, § 4 and Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff for all hours worked, including, but not limited to, all hours he was subject to Defendants' control and/or were suffered or permitted to work under the Labor Code and Wage Order 4.

25. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes, but is not limited to Defendants' uniform piece-rate/commission compensation structure for Plaintiff, which resulted in Plaintiff only being paid on Defendants' piece-rate/commission-based system, as opposed to being paid for all hours actually worked. Accordingly, Plaintiff was not paid at least the legal minimum wage for all hours actually worked.

26. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the Industrial Welfare Commission prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well

as liquidated damages in an amount equal to the wages due and interest thereon.

27. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff has sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 4.

28. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 1194 *et seq.*, and 1198; and Code of Civil Procedure § 1021.5.

29. As a consequence of Defendants' non-payment of minimum wages, Plaintiff seeks penalties pursuant to the Wage Order 4, § 20(A) and California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages and/or penalties pursuant to California Labor Code § 558(a).

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

32. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime

1 hours worked pursuant to Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3 requires an
2 employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay”
3 for work in excess of eight hours per workday and/or in excess of forty hours of work in the
4 workweek. Wage Order 4, § 3 also requires an employer to pay an employee double the
5 employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work
6 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
7 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
8 Overtime Pay Class at one and one half times their regular rate of pay for such hours.

9 33. Defendants’ policy/practice of requiring overtime work and not paying at the
10 proper overtime rates for said work violates Labor Code §§ 204, 210, 216, 510, 558, 1194, and
11 1198; and Wage Order 4.

12 34. The foregoing policies/practices alleged herein are unlawful and create entitlement
13 to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
14 amount of overtime wages, including interest thereon, statutory penalties, civil penalties,
15 attorneys’ fees, and costs of suit according to Labor Code §§ 204, 210, 216, 510, 558, 1194, and
16 1198; and Code of Civil Procedure § 1021.5.

17 **THIRD CAUSE OF ACTION**

18 **MEAL PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

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

21 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 failed in their affirmative obligation to provide all of their non-exempt employees in California,
23 including Plaintiff and members of the Meal Period Class, with all legally-compliant meal periods
24 in accordance with the mandates of the California Labor Code and Wage Order 4, § 11. Despite
25 Defendants’ violations, Defendants did not pay an additional hour of pay to Plaintiff and members
26 of the Meal Period Class at their respective regular rates of pay, in accordance with California
27 Labor Code §§ 204, 210, 226.7, and 512.

28 37. As a result, Defendants are responsible for paying premium compensation for meal

1 period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 4,
2 including interest thereon, statutory penalties, civil penalties, and costs of suit.

3 **FOURTH CAUSE OF ACTION**

4 **REST PERIOD VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

6 38. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
7 fully set forth herein.

8 39. Wage Order 4, § 12 and Labor Code §§ 226.2, 226.7 and 516 establish the right of
9 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
10 period worked, or major fraction thereof.

11 40. As alleged herein, Defendants failed to separately compensate Plaintiff and
12 members of the Rest Period Class for each rest and recovery period to which they were entitled
13 while working pursuant to the piece-rate/commission pay plans.

14 41. The foregoing violations create an entitlement to recovery by Plaintiff and
15 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
16 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
17 to Labor Code §§ 226.2, 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

18 **FIFTH CAUSE OF ACTION**

19 **UNLAWFUL DEDUCTIONS FROM WAGES**

20 **(AGAINST ALL DEFENDANTS)**

21 42. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

22 43. As alleged above, Defendants made unlawful deductions from Plaintiffs' and other
23 non-exempt employees' earned wages for the cost of their tools. As a result, Defendants failed to
24 pay all wages owed to Plaintiffs and members of the Unlawful Deduction Class, in violation of
25 Labor Code §§ 221-223, which prohibit, among other things, deductions from earned wages
26 except in certain enumerated circumstances not applicable here.

27 44. Defendants' failure to pay all earned wages is unlawful and creates an entitlement
28 to recovery by Plaintiffs and the members of the Unlawful Deduction Class for unpaid wages,

1 interest on said wages, and attorneys' fees pursuant to Labor Code §§ 218.5, 218.6, and Code of
2 Civil Procedure § 1021.5.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE ALL NECESSARY BUSINESS EXPENDITURES**
5 **(AGAINST ALL DEFENDANTS)**

6 45. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
7 fully set forth herein.

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

12 47. Furthermore, at all relevant times herein, Defendants were subject to Labor Code
13 § 2804, which states that "any contract or agreement, express or implied, made by any employee
14 to waive the benefits of this article or any part thereof, is null and void, and this article shall not
15 deprive any employee or his personal representative of any right or remedy to which he is entitled
16 under the laws of this State."

17 48. Due to Defendants' unlawful policy and/or practice of requiring employees to use
18 their own tools for work purposes, and failing to pay reimbursements to Plaintiff and members of
19 the Employee Expense Class, Defendants have violated Labor Code § 2802.

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

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

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

SEVENTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

52. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

53. Plaintiff is informed and believes, and bases thereon allege, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate wage statements with respect to their respective actual regular hours worked, overtime hours worked, total gross wages earned, and total net wages earned, in violation of Labor Code §§ 226 and 226.2.

54. Defendants' failures in furnishing Plaintiff with complete and accurate itemized wage statements resulted in actual injury, as said failure led to, among other things, the non-payment of all earned overtime, and deprived Plaintiff of the information necessary to identify the discrepancies in Defendants' reported data.

55. Defendants' failures create an entitlement to recovery by Plaintiff in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq.*

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

56. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

57. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of Business and Professions Code § 17200 *et seq.* by: (a) failing to pay Plaintiff and members of the Overtime Class all overtime wages for all overtime hours worked; (b) failing to pay Plaintiff and members of the Minimum Wage Class at least at the minimum wage for all hours worked; (c) failing to provide Plaintiff and members of the Meal

1 Period Class with all meal periods to which they are entitled, or failing to pay them meal period
2 premium payments in lieu thereof; (d) failing to authorize and permit all required duty-free rest
3 periods to Plaintiff and members of the Rest Period Class, and/or failing to pay them rest period
4 premiums payments in lieu thereof; (e) making unlawful deductions from the earned wages of
5 Plaintiff and members of the Unlawful Deduction Class; (f) failing to furnish Plaintiff and
6 members of the Wage Statement Class accurate and itemized wage statements; and (g) failing to
7 reimburse all necessary business expenditures to Plaintiff and members of the Employee Expense
8 Class.

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

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

18 60. The acts complained of herein occurred within the last four years immediately
19 preceding the filing of the Complaint in this action.

20 61. Plaintiff was compelled to retain the services of counsel to file this court action to
21 protect their interests and those of the Classes, to obtain restitution and injunctive relief on behalf
22 of Defendants' current non-exempt employees, and to enforce important rights affecting the
23 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
24 which he is entitled to recover under Code of Civil Procedure § 1021.5.

25 **NINTH CAUSE OF ACTION**
26 **PRIVATE ATTORNEYS GENERAL ACT**
27 **(AGAINST ALL DEFENDANTS)**

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

63. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, and 1198;
- d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved

employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, and 1198;

e. Making unlawful deductions from the earned wages of Plaintiff, the Unlawful Deduction Class, and other aggrieved employees in violation of Labor Code §§ 221, 222, and 223;

f. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for all necessary expenditures incurred in violation of Labor Code §§ 2802 and 2804;

g. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;

h. Failing to timely pay all final wages and compensation earned by Plaintiff and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;

i. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and

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

64. On June 4, 2024, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 62 (a)-(j). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

65. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c).

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

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 226.2, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.2, 226.7 and 516;
8. Upon the Fifth Cause of Action, for recovery of unpaid wages pursuant to Labor Code §§ 221–223;
9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.* and 226.2;
11. Upon the Eighth Cause of Action, for restitution to Plaintiff of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this

1 Court to be in violation of Business and Professions Code § 17200 *et seq.*;

2 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
3 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
4 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
5 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
6 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
7 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
8 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
9 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
10 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
11 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
12 each initial violation and \$200 for each subsequent violation per employee per pay period for
13 those violations of the Labor Code for which no civil penalty is specifically provided, based on
14 the Labor Code violations identified in Paragraph 62 (a)-(j);

15 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
16 Code § 218.6, and Civil Code §§ 3287 and 3289;

17 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
18 §§ 226, 1194, 2699(g), and 2802(c), and Code of Civil Procedure § 1021.5; and

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

20
21
22 Dated: August 9, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

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24 By:



Paul K. Haines
Attorneys for Plaintiff

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27 ///

28 ///

DEMAND FOR JURY TRIAL

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

Dated: August 9, 2024

Respectfully submitted,

HAINES LAW GROUP, APC

By:



Paul K. Haines

Attorneys for Plaintiff

PROOF OF SERVICE

Jose Tarifa v. Ellis Family Stores, LLC, et al.
Los Angeles County Superior Court Case No. 24STCV13954

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite 180, El Segundo, El Segundo, California 90245.

On August 9, 2024, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) in this action as follows:

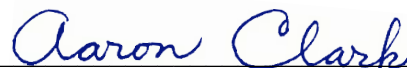
Patricia M. Jeng, Esq.
Email: pjeng@sheppardmullin.com
John D. Ellis, Esq.
Email: jellis@sheppardmullin.com
SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
Attorneys for Defendants ELLIS FAMILY STORES, LLC and GLENDALE DODGE, LLC

[] (VIA ELECTRONIC MAIL) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by transmission to CASE ANYWHERE.

[X] (VIA ELECTRONIC MAIL) Pursuant to California Rule of Court 2.251(c)(3), I caused the document described above to be sent to the persons at the electronic service addresses listed above via third party cloud service First Legal.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 9, 2024, at El Segundo, California.



Aaron Clark