ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
11/5/2024 3:44 PM
By: Gaspar Ambriz Medina, DEPUTY

Tuvia Korobkin (SBN 268066)
tuvia@marqueelaw.com
Gary S. Brotman (SBN 287726)
gary@marqueelaw.com
Alex Purcell (SBN 347862)
alex@marqueelaw.com
MARQUEE LAW GROUP, A Professional Corporation
9100 Wilshire Boulevard, Suite 445 East Tower
Beverly Hills, California 90212
(310) 275-1844 telephone
(310) 275-1801 fax

Attorneys for Plaintiff
MARLON MONTENEGRO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

MARLON MONTENEGRO, on behalf of himself, the State of California, and all Aggrieved Employees,

Plaintiffs,

vs.

TED JONES FORD, INC. dba KEN GRODY FORD, a California corporation; KEN GRODY REDLANDS LLC dba KEN GRODY FORD REDLANDS, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CIVSB2433434

REPRESENTATIVE ACTION COMPLAINT:

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

UNLIMITED CIVIL CASE

Plaintiff Marlon Montenegro (hereinafter "Plaintiff"), on behalf of himself, the State of California, and other aggrieved employees, hereby brings this Representative Action Complaint ("Complaint") against Ted Jones Ford, Inc. dba Ken Grody Ford; Ken Grody Redlands LLC dba Ken Grody Ford Redlands; and DOES 1 to 100, inclusive (collectively "Defendants"), and on information and belief allege as follows:

JURISDICTION

1. Plaintiff, on behalf of himself, all other aggrieved employees, and the State of California, hereby brings this Complaint for recovery of civil penalties under the Private Attorneys General Act, Labor Code § 2698, *et seq.* ("PAGA"), and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"). The monetary damages that Plaintiff seeks exceed this Court's jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in San Bernardino County. Defendants own, maintain offices, transact business, have agent(s) within San Bernardino County, and/or otherwise are found within San Bernardino County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident. Plaintiff was employed by Defendants within the statute of limitations periods applicable to each cause of action pled herein.

4. Plaintiff is informed and believes, and based thereon alleges, that during the statute of limitations periods applicable to this action through the present, Defendants did (and continue to do) business and employed Plaintiff and other aggrieved employees within, among other counties, San Bernardino County and the State of California and, therefore, were (and are) doing business in San Bernardino County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said

defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the other aggrieved employees to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and the other aggrieved employees.

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

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

REPRESENTATIVE ACTION ALLEGATIONS

9. Defendants are in the business of selling and servicing motor vehicles. Plaintiff was employed by Defendants as a nonexempt salesperson for several years. Plaintiff began working for Defendants at their Buena Park location, in or about October 2015. In or about October 2023, Plaintiff transferred to Defendants' Redlands location. Plaintiff worked for Defendants until in or about June 2024.

10. During his employment with Defendants, Plaintiff and other aggrieved employees were paid an hourly wage plus additional compensation such as commissions, spiffs, bonuses,

and/or other remuneration that may not be excluded from the "regular rate" of pay when calculating overtime compensation. These forms of pay will collectively be referred to herein as "Incentive Pay." However, Defendants failed to incorporate the value of Incentive Pay into Plaintiff's and other aggrieved employees' "regular rate" of pay when calculating overtime compensation. Instead, when they earned overtime compensation and Incentive Pay in the same time period, Plaintiff and other aggrieved employees were paid overtime and double-time at 1.5 times (or 2 times) their *base* hourly rate, rather than at 1.5 times or 2 times their "regular rate" of pay.

11. For example, in the pay period of August 16-31, 2023 (with a wage statement dated September 6, 2023), when Plaintiff worked at the Buena Park location, his wage statement indicates that he was paid for 83.75 regular hours at a rate of $15.50 per hour for a total of $1,298.13. The wage statement further indicates that Plaintiff earned $813.66 in commissions. However, the wages statement further indicates that Plaintiff was paid for 22.25 hours of overtime at a rate of $23.25 per hour, as well as 2.5 hours of double-time at $31.00 per hour. In other words, Plaintiff's overtime and double-time wages were paid to him at 1.5 times and 2 times (respectively) his *base hourly rate* of $15.50, rather than 1.5 times and 2 times his "regular rate" of pay, which should have incorporated his commissions.

12. As another example, in the pay period of November 16-30, 2023 (with wage statements dated December 5, 2023), when Plaintiff worked at the Redlands location, Plaintiff's wage statements indicate that he was paid for 93.75 regular hours at a rate of $15.50 per hour for a total of $1,453.13. The wage statements further indicate that Plaintiff earned $489.55 in commissions and $200 in spiff payments. However, the wage statements further indicate that Plaintiff was paid for 16.75 hours of overtime at a rate of $23.25 per hour. In other words, Plaintiff's overtime wages were paid to him at 1.5 times his *base hourly rate* of $15.50, rather than 1.5 times his "regular rate" of pay, which should have incorporated his commissions and spiffs.

13. As yet another example, in the pay period of April 1-15, 2024 (with a wage statement dated April 19, 2024), when Plaintiff worked at the Redlands location, his wage

statement indicates that he was paid for 94.00 regular hours at a rate of $16.00 per hour for a total of $1,504.00. The wage statement further indicates that Plaintiff was paid for 25.75 hours of overtime at a rate of $24.00 per hour. In other words, Plaintiff's overtime wages were paid to him at 1.5 times his *base hourly rate* of $16.00, rather than 1.5 times his "regular rate" of pay, which should have incorporated his commissions.

14. In addition to failing to incorporate Incentive Pay into the "regular rate" of pay, Defendants have also unlawfully rounded employee time entries in quarter-hour increments, in a manner that was not even-handed over time and has caused Plaintiff and other aggrieved employees to be underpaid for their hours worked. This has further resulted in unpaid wages, including unpaid minimum wages and unpaid overtime/double-time wages.

15. Defendants have also failed to provide meal periods to Plaintiff and other aggrieved employees. Specifically, Plaintiff and other aggrieved employees were often too busy with customers or other work duties to take timely meal periods (i.e., by the end of the fifth hour of work), to take a full 30-minute meal period, or to take a meal period at all. Defendants did not take any steps to actually relieve Plaintiff and other aggrieved employees of all duty so that they would have the opportunity to take their 30-minute meal periods starting by the end of the fifth hour of work. Moreover, Defendants did not provide second meal periods on shifts over 10 hours. Despite failing to provide legally compliant meal periods to Plaintiff and other aggrieved employees, Defendants have failed to pay the meal period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants have maintained no payroll code or other mechanism for paying meal period premiums when Defendants have failed to provide a legally compliant meal period.

16. Defendants have also failed to authorize and permit compliant rest periods to Plaintiff and other aggrieved employees. Specifically, and as noted above, Plaintiff and other aggrieved employees were often too busy to take rest breaks, and Defendants did not do anything to actually relieve Plaintiff or other aggrieved employees of all duty for their rest periods. Defendants have also failed to authorize and permit third rest periods on shifts over 10 hours, or fourth rest periods on shifts over 14 hours. Despite failing to authorize and permit legally

compliant paid rest periods to Plaintiff and other aggrieved employees, Defendants have failed to pay the rest period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants have maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to authorize and permit a legally compliant rest period.

17. Defendants have also failed to maintain accurate records on behalf of Plaintiff and other aggrieved employees. Specifically, Defendants would manipulate and/or change employee time records to reflect a meal period (or a compliant meal period) even where Plaintiff and/or other aggrieved employees did not actually receive a compliant meal period. This practice also resulted in unpaid wages, as Defendants would deduct 30 minutes from employees' wages for a purported meal period when a meal period was not, in fact, taken.

18. As a result of Defendants' failure to pay all owed wages (including minimum wages and overtime/double-time wages), as well as Defendants' failure to pay meal period and rest period premium wages, Defendants have failed to pay all wages to Plaintiff and other formerly employed aggrieved employees at the separation of their employment. As a further result of Defendants' failure to pay all owed wages, as well as Defendants' failure to pay meal period and rest period premium wages, Defendants have maintained inaccurate payroll records and have issued inaccurate wage statements to Plaintiff and other aggrieved employees. Specifically, for at least a portion of the relevant time period, Defendants issued wage statements that did not contain the name or address of the employer, in violation of Labor Code § 226(a)(8). For example, in the pay period of November 16-30, 2023 (with a wage statement dated December 5, 2023), Plaintiff's wage statement did not contain the name and address of the employer.

19. Defendants have also failed to reimburse Plaintiff and other aggrieved employees for all business expenses incurred in the course of their employment. Specifically, Defendants required Plaintiff and other aggrieved employees to use their personal cell phones for work purposes. For example, Plaintiff was required to download an app called VinSolutions, which he and other aggrieved employees used for various work-related purposes. Defendants also required Plaintiff and other aggrieved employees to communicate using their personal cell phones, and

otherwise to use their personal cell phones for work purposes. Despite requiring Plaintiff and other aggrieved employees to use their personal cell phones for work, Defendants have failed to reimburse them for any portion of their personal cell phone bill, as required under California law, including but not limited to Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

<u>FIRST CAUSE OF ACTION</u>

PRIVATE ATTORNEY GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

21. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq*. and, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, 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 $200.00 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 $100.00 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 of Labor Code § 226 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 $200.00 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 Plaintiff and other aggrieved employees at least the applicable minimum wage for all hours worked in violation of Labor Code §§ 204, 226.2, 1182.12, 1194, 1194.2, 1197, and 1198;

b. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

c. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation in violation of Labor Code §§ 226.2, 226.7, 516, 558, and 1198;

d. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;

e. Failing to issue complete and accurate itemized wage statements to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226 and 1198;

f. Failing to pay Plaintiff and other aggrieved former employees all final wages due at the end of their employment in violation of Labor Code §§ 201-203;

g. Failing to maintain accurate records in violation of Labor Code §§ 226, 1174 and 1198; and

h. Failing to reimburse Plaintiff and other aggrieved employees all necessary business expenditures in violation of Labor Code § 2802.

22. On or about August 28, 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 21 (a)-(h) above. 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.

23. Based on the foregoing, Plaintiff seek to represent himself, the State of California, and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all current and former employees who worked for Defendants in California at any time from one year prior to the submission of Plaintiffs' PAGA notice through the date that judgment is entered in this action or any alternative date agreed upon by the parties and/or approved by the Court.

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

PRAYER

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

25. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699, including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200.00 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 of Labor Code § 226 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 $200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor Code § 2699(f);

26. On all causes of action, for attorney's fees and costs as provided by Labor Code § 2699(k) and Code of Civil Procedure § 1021.5; and

///

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

Dated: November 5, 2024

Respectfully submitted,
MARQUEE LAW GROUP, A.P.C.

By: ______________________
Tuvia Korobkin
Attorneys for Plaintiff