ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
9/11/2025 1:58:58 PM
Clerk of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JOSEPH GONZALEZ, KEVIN CLEMENTE, JAMES HARDEN, and GHAZI SANKARI individuals, on behalf of themselves and on behalf of all persons similarly situated, Plaintiff, v. OREMOR AUTOMOTIVE GROUP, LLC; OREMOR EUROPEAN, LLC D/B/A MERCEDES BENZ OF EL CAJON;	Case No: 37-2024-00019752-CU-OE-CTL **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:** 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 et seq;

ROMERO AUTOMOTIVE, INC.; OREMOR DEVELOPMENT, LLC; OREMOR FINANCIAL SERVICES, LLC; OREMOR OF CAPISTRANO, LLC; OREMOR OF FONTANA, LLC; OREMOR OF FRESNO, LLC; OREMOR OF GLENDALE, LLC; OREMOR OF ITALY II, LLC; JEEP CHRYSLER OF ONTARIO, INC.; OREMOR OF ONTARIO EN, LLC; OREMOR OF ONTARIO JCDR, LLC; OREMOR OF RIVERSIDE RC, LLC; OREMOR OF RIVERSIDE, LLC; OREMOR OF TEMECULA LX LLC; OREMOR OF TEMECULA, LLC; OREMOR OF TUSTIN, LLC; OREMOR OF VICTORVILLE, LLC; OREMOR OF WOODLAND HILLS, LLC; OREMOR ONTARIO DODGE, INC.; ROMERO MOTORS, LLC; OREMOR MANAGEMENT & INVESTMENT COMPANY; ROMERO MOTORS CORPORATION; J. MCCULLOUGH CORP; UNITED RECOVERY, INC.; ACQUIRECORP'S NORWALK AUTO AUCTION; and DOES 1 through 50, inclusive,

Defendants.

2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;

3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 et seq;

4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;

7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;

8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802.

9) ILLEGAL RESTRICTIONS ON DISCLOSURE

10) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (Labor Code §§ 2698 et seq.)

DEMAND FOR A JURY TRIAL

Plaintiff JOSEPH GONZALEZ ("Plaintiff Gonzalez"), Plaintiff KEVIN CLEMENTE ("Plaintiff Clemente"), Plaintiff JAMES HARDEN ("Plaintiff Harden"), and Plaintiff GHAZI SANKARI ("Plaintiff Sankari") individuals, on behalf of themselves and all other similarly situated current and former employees, allege on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant OREMOR AUTOMOTIVE GROUP, LLC, a California limited liability; Defendant OREMOR EUROPEAN, LLC d/b/a MERCEDES BENZ OF EL CAJON, a California limited liability company; Defendant ROMERO AUTOMOTIVE, INC., a California corporation; Defendant OREMOR DEVELOPMENT, LLC, a California limited liability company; Defendant OREMOR FINANCIAL SERVICES, LLC, a California limited liability company; Defendant OREMOR OF CAPISTRANO, LLC, a California limited liability company; Defendant OREMOR OF FONTANA, LLC, a California limited liability company; Defendant OREMOR OF FRESNO, LLC, a California limited liability company; Defendant OREMOR OF GLENDALE, LLC, a California limited liability company; Defendant OREMOR OF ITALY II, LLC, a California limited liability company; Defendant JEEP CHRYSLER OF ONTARIO, INC., a California corporation; Defendant OREMOR OF ONTARIO EN, LLC, a California limited liability company; Defendant OREMOR OF ONTARIO JCDR, LLC, a California limited liability company; Defendant OREMOR OF RIVERSIDE RC, LLC, a California limited liability company; Defendant OREMOR OF RIVERSIDE, LLC, a California limited liability company; Defendant OREMOR OF TEMECULA LX LLC, a California limited liability company; Defendant OREMOR OF TEMECULA, LLC, a California limited liability company; Defendant OREMOR OF TUSTIN, LLC, a California limited liability company; Defendant OREMOR OF VICTORVILLE, LLC, a California limited liability company; Defendant OREMOR OF WOODLAND HILLS, LLC, a California limited liability company; Defendant OREMOR ONTARIO DODGE, INC., a California corporation; Defendant ROMERO MOTORS, LLC, a California limited liability company; Defendant OREMOR MANAGEMENT & INVESTMENT COMPANY, a California corporation; Defendant ROMERO MOTORS CORPORATION, a

California corporation; Defendant J. MCCULLOUGH CORP, a California corporations; Defendant UNITED RECOVERY, INC., a California corporation; Defendant ACQUIRECORP'S NORWALK AUTO AUCTION, a California corporation at all relevant times mentioned herein conducted and continue to conduct substantial and regular business in the state of California.

2. PLAINTIFFS allege there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased and all Defendants are referred to herein as "DEFENDANT" and/or "DEFENDANTS."

3. PLAINTIFFS allege that DOES 1-50 are the partners, agents, owners, or managers of DEFENDANTS at all relevant times. PLAINTIFFS allege there has existed a unity of interest and ownership between Defendants OREMOR AUTOMOTIVE GROUP, LLC; OREMOR EUROPEAN, LLC D/B/A MERCEDES BENZ OF EL CAJON; ROMERO AUTOMOTIVE, INC.; OREMOR DEVELOPMENT, LLC; OREMOR FINANCIAL SERVICES, LLC; OREMOR OF CAPISTRANO, LLC; OREMOR OF FONTANA, LLC; OREMOR OF FRESNO, LLC; OREMOR OF GLENDALE, LLC; OREMOR OF ITALY II, LLC; JEEP CHRYSLER OF ONTARIO, INC.; OREMOR OF ONTARIO EN, LLC; OREMOR OF ONTARIO JCDR, LLC; OREMOR OF RIVERSIDE RC, LLC; OREMOR OF RIVERSIDE, LLC; OREMOR OF TEMECULA LX LLC; OREMOR OF TEMECULA, LLC; OREMOR OF TUSTIN, LLC; OREMOR OF VICTORVILLE, LLC; OREMOR OF WOODLAND HILLS, LLC; OREMOR ONTARIO DODGE, INC.; ROMERO MOTORS, LLC; OREMOR MANAGEMENT & INVESTMENT COMPANY; ROMERO MOTORS CORPORATION; J. MCCULLOUGH CORP.; UNITED RECOVERY, INC.; ACQUIRECORP'S NORWALK AUTO AUCTION DEFENDANTS are therefore alter egos of each other. Adherence to the fiction of the separate existence of DEFENDANTS would permit an abuse of the corporate privilege, and would promote injustice by protecting DEFENDANTS from liability for the wrongful acts committed by them.

4. PLAINTIFFS further alleges that DEFENDANTS are the alter egos of each other for the following reasons:

i. On the California Secretary of State's website (https://businesssearch.sos.ca.gov/) Defendants OREMOR AUTOMOTIVE GROUP, LLC; OREMOR EUROPEAN, LLC D/B/A MERCEDES BENZ OF EL CAJON; ROMERO AUTOMOTIVE, INC.; OREMOR DEVELOPMENT, LLC; OREMOR FINANCIAL SERVICES, LLC; OREMOR OF CAPISTRANO, LLC; OREMOR OF FONTANA, LLC; OREMOR OF FRESNO, LLC; OREMOR OF GLENDALE, LLC; OREMOR OF ITALY II, LLC; JEEP CHRYSLER OF ONTARIO, INC.; OREMOR OF ONTARIO EN, LLC; OREMOR OF ONTARIO JCDR, LLC; OREMOR OF RIVERSIDE RC, LLC; OREMOR OF RIVERSIDE, LLC; OREMOR OF TEMECULA LX LLC; OREMOR OF TEMECULA, LLC; OREMOR OF TUSTIN, LLC; OREMOR OF VICTORVILLE, LLC; OREMOR OF WOODLAND HILLS, LLC; OREMOR ONTARIO DODGE, INC.; ROMERO MOTORS, LLC; OREMOR MANAGEMENT & INVESTMENT COMPANY; ROMERO MOTORS CORPORATION; J. MCCULLOUGH CORP.; UNITED RECOVERY, INC.; ACQUIRECORP'S NORWALK AUTO AUCTION have the related entity addresses and/or mailing addresses and/or Agents for Service of Process;

ii. On information and belief Defendants OREMOR AUTOMOTIVE GROUP, LLC; OREMOR EUROPEAN, LLC D/B/A MERCEDES BENZ OF EL CAJON; ROMERO AUTOMOTIVE, INC.; OREMOR DEVELOPMENT, LLC; OREMOR FINANCIAL SERVICES, LLC; OREMOR OF CAPISTRANO, LLC; OREMOR OF FONTANA, LLC; OREMOR OF FRESNO, LLC; OREMOR OF GLENDALE, LLC; OREMOR OF ITALY II, LLC; JEEP CHRYSLER OF ONTARIO, INC.; OREMOR OF ONTARIO EN, LLC; OREMOR OF ONTARIO JCDR, LLC; OREMOR OF RIVERSIDE RC, LLC; OREMOR OF RIVERSIDE, LLC; OREMOR OF TEMECULA LX LLC; OREMOR OF TEMECULA, LLC; OREMOR OF TUSTIN, LLC; OREMOR OF VICTORVILLE, LLC; OREMOR OF WOODLAND HILLS, LLC; OREMOR ONTARIO DODGE, INC.; ROMERO MOTORS, LLC; OREMOR MANAGEMENT & INVESTMENT COMPANY; ROMERO MOTORS CORPORATION; J. MCCULLOUGH

CORP.; UNITED RECOVERY, INC.; ACQUIRECORP'S NORWALK AUTO AUCTION utilize substantially similar standardized employment forms, employment policies and pay stubs;

iii. On information and belief Defendants OREMOR AUTOMOTIVE GROUP, LLC; OREMOR EUROPEAN, LLC D/B/A MERCEDES BENZ OF EL CAJON; ROMERO AUTOMOTIVE, INC.; OREMOR DEVELOPMENT, LLC; OREMOR FINANCIAL SERVICES, LLC; OREMOR OF CAPISTRANO, LLC; OREMOR OF FONTANA, LLC; OREMOR OF FRESNO, LLC; OREMOR OF GLENDALE, LLC; OREMOR OF ITALY II, LLC; JEEP CHRYSLER OF ONTARIO, INC.; OREMOR OF ONTARIO EN, LLC; OREMOR OF ONTARIO JCDR, LLC; OREMOR OF RIVERSIDE RC, LLC; OREMOR OF RIVERSIDE, LLC; OREMOR OF TEMECULA LX LLC; OREMOR OF TEMECULA, LLC; OREMOR OF TUSTIN, LLC; OREMOR OF VICTORVILLE, LLC; OREMOR OF WOODLAND HILLS, LLC; OREMOR ONTARIO DODGE, INC.; ROMERO MOTORS, LLC; OREMOR MANAGEMENT & INVESTMENT COMPANY; ROMERO MOTORS CORPORATION; J. MCCULLOUGH CORP.; UNITED RECOVERY, INC.; ACQUIRECORP'S NORWALK AUTO AUCTION. have an executive team which supervise and manage the operations of all of the car dealerships, supervised and managed the finances of all of the car dealerships, supervised and managed the marketing of all of the car dealerships, supervised and managed the human resources of all of the car dealerships, and supervised and managed operations at all of the car dealerships.

5. PLAINTIFFS allege that DEFENDANTS' various separate corporate entities are used by an individual or individuals, or by another corporation, to accomplish inequitable purposes, including to limit liability for the unlawful acts of DEFENDANTs.

6. PLAINTIFFS allege that there is such a unity of interest and ownership between DEFENDANTS' various corporate entities that own DEFENDANTS' car dealerships and the individual or individuals, or organization controlling those corporate entities that their separate personalities no longer exist.

7. PLAINTIFFS further alleges that the failure to disregard the various corporate entities would promote injustice.

8. Alternatively, on information and belief, Defendants OREMOR AUTOMOTIVE GROUP, LLC; OREMOR EUROPEAN, LLC D/B/A MERCEDES BENZ OF EL CAJON; ROMERO AUTOMOTIVE, INC.; OREMOR DEVELOPMENT, LLC; OREMOR FINANCIAL SERVICES, LLC; OREMOR OF CAPISTRANO, LLC; OREMOR OF FONTANA, LLC; OREMOR OF FRESNO, LLC; OREMOR OF GLENDALE, LLC; OREMOR OF ITALY II, LLC; JEEP CHRYSLER OF ONTARIO, INC.; OREMOR OF ONTARIO EN, LLC; OREMOR OF ONTARIO JCDR, LLC; OREMOR OF RIVERSIDE RC, LLC; OREMOR OF RIVERSIDE, LLC; OREMOR OF TEMECULA LX LLC; OREMOR OF TEMECULA, LLC; OREMOR OF TUSTIN, LLC; OREMOR OF VICTORVILLE, LLC; OREMOR OF WOODLAND HILLS, LLC; OREMOR ONTARIO DODGE, INC.; ROMERO MOTORS, LLC; OREMOR MANAGEMENT & INVESTMENT COMPANY; ROMERO MOTORS CORPORATION; J. MCCULLOUGH CORP.; UNITED RECOVERY, INC.; ACQUIRECORP'S NORWALK AUTO AUCTION each exerted control over the hours, wages and/or working conditions of PLAINTIFFS and the other members of the CALIFORNIA CLASS. Therefore, Defendants OREMOR AUTOMOTIVE GROUP, LLC; OREMOR EUROPEAN, LLC D/B/A MERCEDES BENZ OF EL CAJON; ROMERO AUTOMOTIVE, INC.; OREMOR DEVELOPMENT, LLC; OREMOR FINANCIAL SERVICES, LLC; OREMOR OF CAPISTRANO, LLC; OREMOR OF FONTANA, LLC; OREMOR OF FRESNO, LLC; OREMOR OF GLENDALE, LLC; OREMOR OF ITALY II, LLC; JEEP CHRYSLER OF ONTARIO, INC.; OREMOR OF ONTARIO EN, LLC; OREMOR OF ONTARIO JCDR, LLC; OREMOR OF RIVERSIDE RC, LLC; OREMOR OF RIVERSIDE, LLC; OREMOR OF TEMECULA LX LLC; OREMOR OF TEMECULA, LLC; OREMOR OF TUSTIN, LLC; OREMOR OF VICTORVILLE, LLC; OREMOR OF WOODLAND HILLS, LLC; OREMOR ONTARIO DODGE, INC.; ROMERO MOTORS, LLC; OREMOR MANAGEMENT & INVESTMENT COMPANY; ROMERO MOTORS CORPORATION; J. MCCULLOUGH CORP.; UNITED RECOVERY, INC.; ACQUIRECORP'S NORWALK AUTO AUCTION are jointly responsible as employers for the conduct alleged herein as "DEFENDANTS" and/or "DEFENDANT."

9. DEFENDANTS owns and operate car dealerships in California, including in the county of San Diego where some of the PLAINTIFFS worked.

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFFS who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFFS are informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

11. The agents, servants, and/or employees of the Defendants and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFFS and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the Defendants’ agents, servants and/or employees.

12. DEFENDANTS were PLAINTIFFS’ employers or persons acting on behalf of PLAINTIFFS’ employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

13. DEFENDANTS were PLAINTIFFS’ employers or persons acting on behalf of PLAINTIFFS’ employer either individually or as an officer, agent, or employee of another person,

within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

14. Plaintiff Clemente was employed by DEFENDANTS in California from December 5, 2022 to November 8, 2023, as a non-exempt employee, and entitled to minimum wages, overtime pay, and legally compliant meal and rest periods.

15. Plaintiff Gonzalez was employed by DEFENDANTS in California from September of 2021 to April of 2023, paid in part an hourly wage, commission-based compensation, non-discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

16. Plaintiff Harden has been employed by DEFENDANTS in California since October 2019, as a non-exempt employee, and entitled to minimum wages, overtime pay, and legally compliant meal and rest periods.

17. Plaintiff Sankari was employed by DEFENDANTS in California from February 2024 to April 2024, as a non-exempt employee, and entitled to minimum wages, overtime pay, and legally compliant meal and rest periods.

18. PLAINTIFFS bring this Class Action on behalf of himself and a California class, defined as all current and former non-exempt, exempt, piece-rate based, and/or commission-based employees employed by Defendants OREMOR AUTOMOTIVE GROUP, LLC and/or OREMOR EUROPEAN, LLC D/B/A MERCEDES BENZ OF EL CAJON and/or ROMERO AUTOMOTIVE, INC. and/or OREMOR DEVELOPMENT, LLC and/or OREMOR FINANCIAL SERVICES, LLC and/or OREMOR OF CAPISTRANO, LLC and/or OREMOR OF FONTANA, LLC and/or OREMOR OF FRESNO, LLC and/or OREMOR OF GLENDALE, LLC and/or OREMOR OF ITALY II, LLC and/or JEEP CHRYSLER OF ONTARIO, INC. and/or OREMOR OF ONTARIO EN, LLC and/or OREMOR OF ONTARIO JCDR, LLC and/or OREMOR OF RIVERSIDE RC, LLC and/or OREMOR OF RIVERSIDE, LLC and/or OREMOR OF TEMECULA LX LLC and/or OREMOR OF TEMECULA, LLC and/or OREMOR OF TUSTIN, LLC and/or OREMOR OF VICTORVILLE, LLC and/or OREMOR OF WOODLAND

HILLS, LLC and/or OREMOR ONTARIO DODGE, INC. and/or ROMERO MOTORS, LLC and/or OREMOR MANAGEMENT & INVESTMENT COMPANY and/or ROMERO MOTORS CORPORATION and/or J. MCCULLOUGH CORP.; UNITED RECOVERY, INC.; ACQUIRECORP'S NORWALK AUTO AUCTION in California ("CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars ($5,000,000.00).

19. PLAINTIFFS bring this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which failed to lawfully compensate these employees. DEFENDANTS' uniform policy and practice alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANTS retained and continues to retain wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable relief.

20. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS.

21. PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

22. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees of DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

23. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because at least one of the PLAINTIFFS worked in this County for DEFENDANTS and DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in this County and/or conduct substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CONDUCT

24. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFFS for off-the-clock work, failed to compensate PLAINTIFFS and other members of the CALIFORNIA CLASS overtime, sick pay, and meal rest premiums at the correct regular rate, failed to reimburse PLAINTIFFS and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to

toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

A. <u>Meal and Rest Period Violations</u>

25. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor Codes, an employer shall not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. If an employer fails to provide an employee with a mandated meal period, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

26. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of understaffing and their rigorous work schedule, PLAINTIFFS and other CALIFORNIA CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for meal periods. PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS from time-to-time failed to provide PLAINTIFFS and CALIFORNIA CLASS members with a second off-duty meal period from time to time in which these employees were required by DEFENDANTS to work ten (10) hours of work from time to time. Further, from time to time, DEFENDANTS required PLAINTIFFS and other CALIFORNIA CLASS Members to maintain cordless communication devices on them during what was supposed to be their off-duty meal break in order to receive and respond to work-related communications. PLAINTIFFS and

the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

27. Further, pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS was required to pay PLAINTIFFS and CALIFORNIA CLASS members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee suffered or permitted to work. DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS members to work without paying them for all the time they were under the DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off duty meal break due to PLAINTIFFS' rigorous work schedule and DEFENDANTS' understaffing. PLAINTIFFS were from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFFS' off-duty meal break. As a result, the PLAINTIFFS and other CALIFORNIA CLASS members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business records.

28. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor Codes, an employer shall authorize and permit all employees to take a rest periods, which so far as practical shall be in the middle of each work period. Generally, an employer must provide ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided.

29. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4) hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period

of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. Further, from time to time, DEFENDANTS required PLAINTIFFS and other CALIFORNIA CLASS Members to maintain cordless communication devices on them during what was supposed to be their off-duty rest break in order to receive and respond to work-related communications. As a result, PLAINTIFFS and the other CALIFORNIA CLASS Members were from time to time required to remain on the premises, on-duty and on-call during their rest periods. PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one-hour wages in lieu thereof.

B. <u>Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick Pay</u>

30. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS were compensated at an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific elements of an employee's performance and/or commissions.

31. DEFENDANTS' non-discretionary commission and bonus program provided the CALIFORNIA CLASS, including PLAINTIFFS, with commissions and/or bonus compensation when the employees met the various performance goals set by DEFENDANTS. However, when calculating the regular rate of pay, in those pay periods where PLAINTIFFS and the CALIFORNIA CLASS worked overtime and earned non-discretionary bonus and/or commission wages, DEFENDANTS failed to accurately include the non-discretionary bonus compensation and/or commission wages as part of the employees' "regular rate of pay."

32. Management and supervisors described the bonus and commissions programs and commission compensation program to potential and new employees as part of the compensation package for new and used car salespersons including PLAINTIFFS and the CALIFORNIA CLASS. As a matter of law, the incentive and commission compensation received by PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly calculated into the "regular rate of pay" for purposes of overtime and double time compensation,

meal and rest period premium payments, and sick pay. DEFENDANTS' failure to do so has resulted in DEFENDANTS' systematic underpayment of overtime and double time compensation, meal and rest period premium payments, and sick pay to PLAINTIFFS and other CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

33. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime and double time compensation, meal and rest period premium payments, and sick pay. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the correct overtime and double time compensation, meal and rest period premium payments, and sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

C. <u>Commission and Piece-Rate Violations</u>

34. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFFS and the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those instances where PLAINTIFFS and the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis, PLAINTIFFS and the CALIFORNIA CLASS were entitled to be separately compensated for all non-productive time at an hourly rate that is no less than the applicable minimum wage. Notwithstanding, in those instances where PLAINTIFFS and the

CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANTS failed to separately compensate PLAINTIFFS and the CALIFORNIA CLASS for all non-productive time, including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result, PLAINTIFFS and the CALIFORNIA CLASS forfeited minimum wages and overtime wages by DEFENDANTS' failure to separately compensate their non-productive time at an hourly rate that is no less than the applicable minimum wage.

35. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS improperly misclassified PLAINTIFFS and the CALIFORNIA CLASS members who were paid on a draw versus commission basis as exempt from overtime compensation. During the CLASS PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.) As a result, PLAINTIFFS and the CALIFORNIA CLASS members who were paid on a draw versus commission basis forfeited overtime wages by DEFENDANTS' failure to accurately classify them as non-exempt from overtime compensation.

D. <u>Off-the-Clock Minimum Wage and Overtime Violations</u>

36. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control.

37. As a result, the PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS failed to pay PLAINTIFFS and other members of the CALIFORNIA CLASS necessary wages for attending for performing work at DEFENDANTS' direction,

request, and benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business records.

38. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFFS and the other members of the CALIFORNIA CLASS.

39. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments, and employment conditions of PLAINTIFFS and the other members of the CALIFORNIA CLASS.

40. DEFENDANTS were able to track the amount of time PLAINTIFFS and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFFS and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed, including pre-shift, post shift and during meal period off-the-clock work.

41. PLAINTIFFS and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

42. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFFS and the other members of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

43. DEFENDANTS knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

44. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFFS and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

E. <u>Unreimbursed Business Expenses</u>

45. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFFS and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall 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."

46. In the course of their employment, DEFENDANTS required PLAINTIFFS and other CALIFORNIA CLASS Members to use their personal cell phones, personal vehicles and for the purchase of work uniforms as a result of and in furtherance of their job duties as employees for DEFENDANTS. But for the use of their own personal cell phones, personal vehicles and for the purchase of work uniforms, PLAINTIFFS and the CALIFORNIA CLASS Members could not complete their essential job duties, including but not limited to, sending and receiving work-related communications from DEFENDANTS and DEFENDANTS' clients and using personal vehicles to deliver paperwork to DEFENDANTS and DEFENDANTS' clients. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFFS and other CALIFORNIA CLASS Members for their use of their personal cell phones, personal vehicles and purchase of work uniforms. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFFS and other CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related to the use of their personal cellular phones, personal vehicles and purchase of work uniforms, all on behalf of and for the benefit of DEFENDANTS.

F. Wage Statement Violations

47. California Labor Code Sections 226 and 226.2 require an employer to furnish its employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and (11) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

48. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANTS furnished PLAINTIFFS and the CALIFORNIA CLASS written wage statements that failed to accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and (7) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

49. In addition to the violations described above, DEFENDANTS, from time to time, failed to provide PLAINTIFFS and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

50. As a result, DEFENDANTS issued PLAINTIFFS and the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS'

violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

G. <u>Violations for Untimely Payment of Wages</u>

51. Pursuant to California Labor Code section 204, PLAINTIFFS and the CALIFORNIA CLASS members were entitled to timely payment of wages during their employment. PLAINTIFFS and the CALIFORNIA CLASS members, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within permissible time period.

52. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous 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." PLAINTIFFS and the CALIFORNIA CLASS Members were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

53. As such, PLAINTIFFS demand up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all CALIFORNIA CLASS Members whose employment ended during the CLASS PERIOD.

H. <u>Unlawful Deductions</u>

54. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFFS and CALIFORNIA CLASS Members' pay without explanations and without authorization to do so or notice to PLAINTIFFS and the CALIFORNIA CLASS Members. As a result, DEFENDANTS violated Labor Code § 221.

I. <u>Unlawful Restrictions on Disclosure</u>

55. DEFENDANTS also adopted and enforced a policy and practice of compelling employees to agree to a Code of Business Conduct and Ethics containing an unlawful non-disclosure provision as a condition of their employment. The agreement bars PLAINTIFFS and

other members of the CALIFORNIA CLASS MEMBERS, from divulging certain confidential information, directly or indirectly, without DEFENDANTS' consent. The confidential information included information related to PLAINTIFF and other CALIFORNIA CLASS Members' wages.

56. By requiring PLAINTIFF and other CALIFORNIA CLASS MEMBERS to accept the Code of Business Conduct and Ethics as a condition of employment, therefore maintaining certain information, including information about their wages, as confidential, DEFENDANTS violated numerous California Labor Code provisions protecting workers' rights to disclose certain information, including but not limited to their salary and compensation information. DEFENDANTS' policy and practice as a continuing prohibition on the disclosure of information in perpetuity, in direct violation of numerous California Labor Code provisions.

J. <u>Unlawful Rounding Practices</u>

57. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

58. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members' time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to

perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.

59. Specifically, as to PLAINTIFFS, DEFENDANTS failed to provide all the legally required off-duty meal breaks to them and paid rest periods to them as required by the applicable Wage Order and Labor Code. DEFENDANTS failed to compensate PLAINTIFFS for their missed meal and rest breaks. The nature of the work performed by PLAINTIFFS did not prevent them from being relieved of all of their duties for the legally required off-duty meal periods. Further, DEFENDANTS failed to provide PLAINTIFFS with a second off-duty meal period each workday in which PLAINTIFFS was required by DEFENDANTS to work ten (10) hours of work. As a result, DEFENDANTS' failure to provide PLAINTIFFS with the legally required second off-duty meal period is evidenced by DEFENDANTS' business records. From time to time, and as a result of DEFENDANTS not accurately recording all missed meal and rest periods, and failing to pay minimum wages due for all time worked and separate compensation for rest breaks, the wage statements issued to PLAINTIFFS by DEFENDANTS violated California law, and in particular, Labor Code Section 226(a). Further, DEFENDANTS failed to reimburse PLAINTIFFS for all required business expenses including for the use of their personal cell phones, personal vehicles and purchase of work uniforms. To date, DEFENDANTS have yet to pay PLAINTIFFS all of their wages due to him and all premiums due to them for missed meal and rest breaks and DEFENDANTS have failed to pay any penalty wages owed to them under California Labor Code Section 203. The amount in controversy for PLAINTIFFS individually does not exceed $75,000.

<u>THE CALIFORNIA CLASS</u>

60. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of all current and former non-exempt, exempt, piece-rate based, and/or commission-based employees employed by Defendants OREMOR AUTOMOTIVE GROUP, LLC and/or OREMOR EUROPEAN, LLC D/B/A MERCEDES BENZ OF EL CAJON and/or ROMERO AUTOMOTIVE, INC. and/or OREMOR

DEVELOPMENT, LLC and/or OREMOR FINANCIAL SERVICES, LLC and/or OREMOR OF CAPISTRANO, LLC and/or OREMOR OF FONTANA, LLC and/or OREMOR OF FRESNO, LLC and/or OREMOR OF GLENDALE, LLC and/or OREMOR OF ITALY II, LLC and/or JEEP CHRYSLER OF ONTARIO, INC. and/or OREMOR OF ONTARIO EN, LLC and/or OREMOR OF ONTARIO JCDR, LLC and/or OREMOR OF RIVERSIDE RC, LLC and/or OREMOR OF RIVERSIDE, LLC and/or OREMOR OF TEMECULA LX LLC and/or OREMOR OF TEMECULA, LLC and/or OREMOR OF TUSTIN, LLC and/or OREMOR OF VICTORVILLE, LLC and/or OREMOR OF WOODLAND HILLS, LLC and/or OREMOR ONTARIO DODGE, INC. and/or ROMERO MOTORS, LLC and/or OREMOR MANAGEMENT & INVESTMENT COMPANY and/or ROMERO MOTORS CORPORATION and/or J. MCCULLOUGH CORP.; UNITED RECOVERY, INC.; ACQUIRECORP'S NORWALK AUTO AUCTION in California ("CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars ($5,000,000.00).

61. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

62. PLAINTIFFS and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, and illegal meal and rest period policies. DEFENDANTS further failed to reimburse for business expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage statements, and failed to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

63. The members of the class are so numerous that joinder of all class members is impractical.

64. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid mean and rest period premiums, failing to provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

i. Whether DEFENDANTS maintained legally compliant meal period policies and practices;

ii. Whether DEFENDANTS maintained legally compliant rest period policies and practices;

iii. Whether DEFENDANTS failed to pay PLAINTIFFS and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;

iv. Whether DEFENDANTS failed to pay PLAINTIFFS and the CALIFORNIA CLASS Members accurate overtime wages;

v. Whether DEFENDANTS failed to pay PLAINTIFFS and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;

vi. Whether Defendants failed to compensate PLAINTIFFS and the CALIFORNIA CLASS Members for required business expenses;

vii. Whether DEFENDANTS issued legally compliant wage statements;

viii. Whether DEFENDANTS engaged in the unlawful restrictions of trade and disclosures;

ix. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;

x. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though

DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;

xi. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFFS and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

65. PLAINTIFFS are members of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

66. PLAINTIFFS' claims are typical of the claims of the class, and PLAINTIFFS have the same interests as the other members of the class.

67. PLAINTIFFS will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

68. PLAINTIFFS retained able class counsel with extensive experience in class action litigation.

69. Further, PLAINTIFFS' interests are coincident with, and not antagonistic to, the interests of the other CALIFORNIA CLASS Members.

70. There is a strong community of interest among PLAINTIFFS and the members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

71. The questions of law and fact common to the CALIFORNIA CLASS Members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

72. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members in impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and

determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

xii. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

xiii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

73. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

FIRST CAUSE OF ACTION

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

74. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

75. DEFENDANTS are a "person" as that term is defined under Cal. Bus. and Prof. Code § 17021.

76. California Business & Professions Code §§ 17200, et seq. (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

> Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which

> constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

77. By the conduct alleged herein, DEFENDANTS have engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

78. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or substantially injurious to employees, and were without valid justification or utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code, including restitution of wages wrongfully withheld.

79. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent in that DEFENDANTS' uniform policy and practice failed to pay all minimum and overtime wages due, failed to provide the legally mandated meal and rest periods, failed to pay the required amount of compensation for missed meal and rest periods, and failed to reimburse necessary business expenses incurred due to a systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, et seq., and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

80. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFFS and the

other members of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

81. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide all legally required meal and rest breaks to PLAINTIFFS and the other members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

82. Therefore, PLAINTIFFS demands on behalf of himself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

83. PLAINTIFFS further demand on behalf of himself and each member of the CALIFORNIA CLASS one (1) hour of pay for each workday in which a rest period was not given and a premium was not timely provided as required by law.

84. By and through the unlawful and unfair business practices described herein, DEFENDANTS have obtained valuable property, money and services from PLAINTIFFS and the other members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly compete against competitors who comply with the law.

85. All the acts described herein as violations of, among other things, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, et seq.

86. PLAINTIFFS and the other members of the CALIFORNIA CLASS were entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANTS have acquired, or of which PLAINTIFFS and the other members of the

CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all time worked.

87. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and unfair business practices in the future.

88. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANTS are restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

89. PLAINTIFFS, and the other CLASS MEMBERS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

90. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate and pay minimum wages.

91. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

92. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed in unlawful.

93. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

94. As set forth above, during the CLASS PERIOD, DEFENDANTS maintained a uniform wage practice of paying PLAINTIFFS and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

95. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS regarding minimum wage pay.

96. In committing these violations of the California Labor Code, DEFENDANTS inaccurately calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFFS and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

97. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein, PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct minimum wage compensation for their time worked for DEFENDANTS.

98. During the CLASS PERIOD, PLAINTIFFS and the other members of the CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.

99. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation to the PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

100. DEFENDANTS knew or should have known that PLAINTIFFS and the other members of the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

101. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide them with the requisite compensation, DEFENDANTS acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

102. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

<u>THIRD CAUSE OF ACTION</u>

Failure To Pay Overtime Compensation

(Cal. Lab. Code §§ 510, 1194 and 1198)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants

103. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

104. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to properly compensate the members of the CALIFORNIA CLASS for all overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek during the CLASS PERIOD.

105. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

106. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amount specified by law.

107. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

108. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and CALIFORNIA CLASS Members were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked, including overtime work.

109. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of

implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFFS and the other members of the CALIFORNIA CLASS, and denied accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for overtime worked, including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

110. In committing these violations of the California Labor Code, DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

111. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein, PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full compensation for all overtime worked.

112. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFFS and the other members of the CALIFORNIA CLASS. Further, PLAINTIFFS and the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of himself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of California.

113. During the CLASS PERIOD, PLAINTIFFS and the other members of the CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a failure to pay all earned wages.

114. DEFENDANTS failed to accurately pay PLAINTIFFS and the other members of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA CLASS were required to work, and did in fact work, overtime as to which DEFENDANTS failed to accurately record and

pay using the applicable overtime rate as evidenced by DEFENDANTS' business records and witnessed by employees.

115. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

116. DEFENDANTS knew or should have known that PLAINTIFFS and the other members of the CALIFORNIA CLASS are under compensated for their overtime worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS the applicable overtime rate.

117. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide them with the requisite overtime compensation, DEFENDANTS acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

118. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under

Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

119. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

120. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the CALIFORNIA CLASS as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFFS and the CALIFORNIA CLASS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and the CALIFORNIA CLASS were often not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFFS and the CALIFORNIA CLASS with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records. As a result, PLAINTIFFS and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

121. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

122. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

123. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

124. During the CLASS PERIOD, PLAINTIFFS and the CALIFORNIA CLASS were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFFS and the CALIFORNIA CLASS were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and the CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

125. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS and the CALIFORNIA CLASS who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

126. As a proximate result of the aforementioned violations, PLAINTIFFS and the CALIFORNIA CLASS have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

<u>SIXTH CAUSE OF ACTION</u>

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code §§ 226)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

127. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

128. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing: (1) Gross wages earned; (2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) Net wages earned; (6) The inclusive dates of the period for which the employee is paid,; (7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement; (8) The name and address of the legal entity that is the employer, and (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

129. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) Gross wages earned; (2) Total hours worked by the employee, (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions; (5) Net wages earned; and (6) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

130. Further, during the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with complete and accurate wage statements in compliance with Cal. Labor Code Section 226.2, which failed to accurately show, among other things: (1) the total hours of compensable rest and recovery periods; and (2) the total hours of other nonproductive time, the rate of compensation for the nonproductive time and the gross wages paid for the nonproductive time during the applicable pay period.

131. PLAINTIFFS and the members of the CALIFORNIA CLASS were injured by DEFENDANTS' violations in that they could not promptly and easily determine from the wage statement alone, the amount of gross or net wages paid, the total hours worked, the number pf piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate to the employee during the applicable pay period.

132. DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and intentional in that DEFENDANTS willfully intended to issue wage statements that were out of compliance with § 226 and 226.2.

133. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226 and 226.2, causing injury and damages to the PLAINTIFFS and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars ($50.00) for the initial pay period in which the violation occurred, and one hundred dollars ($100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more than four thousand dollars ($4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA CLASS herein).

SEVENTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code §§ 203)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

134. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

135. Cal. Lab. Code § 200 provides, in relevant part, that:

> As used in this article:(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

136. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

137. Cal. Lab. Code § 202 provides, in relevant part, that:

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes

> of the requirement to provide payment within 72 hours of the notice of quitting.

138. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS Members' employment contract.

139. Cal. Lab. Code § 203 provides, in relevant part, that:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

140. The employment of PLAINTIFFS and many CALIFORNIA CLASS Members terminated and DEFENDANTS has not tendered payment of all wages owed as required by law.

141. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid minimum and/or overtime wages and/or missed meal and rest breaks without being paid the legally required penalties by DEFENDANTS, PLAINTIFFS demand up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed by law.

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

142. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

143. Cal. Lab. Code § 2802 provides, in relevant part, that:

> An employer shall 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.

144. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFFS and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal cellular phones, personal vehicles and purchase of work uniforms all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFFS and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal cell phones, personal vehicles and purchase of work uniforms to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their personal cellular phones, personal vehicles and purchase of work uniforms for DEFENDANTS within the course and scope of their employment for DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and the members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the members of the CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and regulations of California.

145. PLAINTIFFS therefore demand reimbursement on behalf of the members of the CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and

on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANTS, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

NINTH CAUSE OF ACTION

ILLEGAL RESTRICTIONS ON DISCLOSURE

(Cal. Lab. Code § 1102.5)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

146. Plaintiffs, and other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

147. Labor Code § 1102.5(a) prohibits an employer from making, adopting, or enforcing 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, 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 or 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.

148. Labor Code § 1102.5(f) provides: "In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars ($10,000) for each violation of this section.

149. Labor Code § 232 states that no employer shall (a) require, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages, and (b) require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages.

150. DEFENDANTS required PLAINTIFFS to sign a Code of Business Conduct and Ethics that prohibited them from disclosing any proprietary information. This expressly includes salary information. The document signed by PLAINTIFFS states that "Proprietary information

includes … salary information and unauthorized use or distribution of this information would violate our Dealership's policy, could be illegal and may result in civil or even criminal penalties." PLAINTIFFS were subject to that prohibition throughout their employment.

151. Labor Code § 2699(a) permits an aggrieved employee to recover any civil penalty to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of herself or herself and other current or former employees pursuant to the procedures set forth in Labor Code § 2699.3.

152. PLAINTIFFS seek to recover damages from DEFENDANTS for their violations as alleged herein pursuant to Labor Code § 1102.5 on behalf of himself and on behalf of the CLASS MEMBERS.

TENTH CAUSE OF ACTION

For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFFS and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)

153. PLAINTIFFS and the AGGRIEVED EMPLOYEES reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

154. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

155. PLAINTIFFS bring this Representative Action on behalf of the State of California with respect to all current and former AGGRIEVED EMPLOYEES employed by DEFENDANTS during the PAGA PERIOD.

156. At all relevant times, for the reasons described herein, and others, PLAINTIFFS and the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of Labor Code Section 2699(c).

157. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like PLAINTIFFS, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

158. PLAINTIFFS complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated August 23, 2023, PLAINTIFFS gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANTS of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. (See Exhibit #1.)

159. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA with notice and amended notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFFS may commence and is authorized to pursue this cause of action.

160. Pursuant to Labor Code Sections 2699(a) and (f), the AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 232, 246, 510, 512, 558, 1102.5(a), 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804 in the following amounts:

a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars ($100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars ($200) for AGGIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars ($250) for each AGGRIEVED EMOPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars ($100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars ($200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars ($50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars ($100) for each underpaid AGGIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars ($250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars ($1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred ($500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1197, 1198, and 1199, a civil penalty in the amount of one hundred dollars ($100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty ($250) per AGGIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

161. For all provisions of the Labor Code for which civil penalty is not specifically

provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars ($100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars ($200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFFS and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

162. PLAINTIFFS seek penalties for those violations that affected other AGGRIEVED EMPLOYEES only. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["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."], Emphasis added, reh'g denied (June 13, 2018).)

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS prays for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:
   a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
   b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
   c. An order requiring DEFENDANTS to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
   d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA CLASS:
   a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
   b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
   c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
   d. The greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000), and an award of costs for

violation of Cal. Lab. Code § 226

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of the Aggrieved Employees:

a. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, et seq.;

b. For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and

c. For such other relief as the Court deems just and proper.

4. On all claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: September 11, 2025

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Xavier L. Woodford
Attorneys for Plaintiffs

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: September 11, 2025

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Xavier L. Woodford
Attorneys for Plaintiffs

EXHIBIT 1

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Toll-Free 1-888-498-6999

August 23, 2023

<u>Via Online Filing to LWDA and Certified Mail to Defendants</u>
Labor and Workforce Development Agency
Online Filing

ROMERO MOTORS CORPORATION
ROMERO MOTORS, LLC
J. MCCULLOUGH CORP.
OREMOR DEVELOPMENT LLC
OREMOR EUROPEAN, LLC
OREMOR FINANCIAL SERVICES, LLC
OREMOR OF CAPISTRANO, LLC
OREMOR OF FONTANA, LLC
OREMOR OF FRESNO, LLC
OREMOR OF GLENDALE LLC
OREMOR OF ITALY II, LLC
OREMOR OF ONTARIO EN, LLC
OREMOR OF ONTARIO JCDR, LLC
OREMOR OF RIVERSIDE RC, LLC
OREMOR OF RIVERSIDE, LLC
OREMOR OF TEMECULA LX LLC
OREMOR OF TEMECULA, LLC
OREMOR OF TUSTIN, LLC
OREMOR OF VICTORVILLE, LLC
OREMOR OF WOODLAND HILLS, LLC
UNITED RECOVERY, INC.
AQUIRECORP'S NORWALK AUTO AUCTION
JEEP CHRYSLER OF ONTARIO, INC.
c/o Richard J Romero
1377 Kettering Dr
Ontario, CA 91761
Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0880 7023 67

Re: <u>Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5</u>

Dear Sir/Madam:

Our offices represent Plaintiff JOSEPH GONZALEZ ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. (collectively, hereinafter, "Defendants"). Plaintiff was employed by Defendants from September of 2021 to April of 2023, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages. Plaintiff further contends that Defendants failed to advise Plaintiff and the other aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiff and the other aggrieved employees for the non-productive time, including for their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 110. Further, Defendants improperly misclassified aggrieved employees who were paid on a draw versus commission basis as exempt from overtime compensation. Defendants included advanced draws in order to meet the salary-basis test for the overtime exemption. However, Defendants cannot rely on advanced draws in order to meet the salary-basis test for such an exemption. See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt, exempt, piece-rate based, and/or commission-based employees who worked for Defendant ROMERO MOTORS CORPORATION and/or Defendant ROMERO MOTORS, LLC and/or Defendant J. MCCULLOUGH CORP. and/or Defendant OREMOR DEVELOPMENT LLC and/or Defendant OREMOR EUROPEAN, LLC and/or Defendant OREMOR FINANCIAL SERVICES, LLC and/or Defendant OREMOR OF CAPISTRANO, LLC and/or Defendant OREMOR OF FONTANA, LLC and/or Defendant OREMOR OF FRESNO, LLC and/or Defendant OREMOR OF GLENDALE LLC and/or Defendant OREMOR OF ITALY II, LLC and/or Defendant OREMOR OF ONTARIO EN, LLC and/or Defendant OREMOR OF ONTARIO JCDR, LLC and/or Defendant OREMOR OF RIVERSIDE RC, LLC and/or Defendant OREMOR OF RIVERSIDE, LLC and/or Defendant OREMOR OF TEMECULA LX LLC and/or Defendant OREMOR OF TEMECULA, LLC and/or Defendant OREMOR OF TUSTIN, LLC and/or Defendant OREMOR OF VICTORVILLE, LLC and/or Defendant OREMOR OF WOODLAND HILLS, LLC and/or Defendant UNITED RECOVERY, INC. and/or Defendant AQUIRECORP'S NORWALK AUTO AUCTION and/or Defendant JEEP CHRYSLER OF ONTARIO, INC. in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq*. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC

Jean-Claude Lapuyade, Esq.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

JOSEPH GONZALEZ, an individual, on behalf of himself and on behalf of all persons similarly situated, Plaintiff, v. ROMERO MOTORS CORPORATION, a California corporation; ROMERO MOTORS, LLC, a California limited liability company; J. MCCULLOUGH CORP., a California corporation; OREMOR DEVELOPMENT LLC, a California limited liability company; OREMOR EUROPEAN, LLC, a California limited liability company; OREMOR FINANCIAL SERVICES, LLC, a California limited liability company; OREMOR OF CAPISTRANO, LLC, a California limited liability company; OREMOR OF FONTANA, LLC, a California limited liability company; OREMOR OF FRESNO, LLC, a California	Case No: **<u>CLASS ACTION COMPLAINT FOR:</u>** 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*; 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1; 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq;* 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER; 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

limited liability company; OREMOR OF GLENDALE LLC, a California limited liability company; OREMOR OF ITALY II, LLC, a California limited liability company; OREMOR OF ONTARIO EN, LLC, a California limited liability company; OREMOR OF ONTARIO JCDR, LLC, a California limited liability company; OREMOR OF RIVERSIDE RC, LLC, a California limited liability company; OREMOR OF RIVERSIDE, LLC, a California limited liability company; OREMOR OF TEMECULA LX LLC, a California limited liability company; OREMOR OF TEMECULA, LLC, a California limited liability company; OREMOR OF TUSTIN, LLC, a California limited liability company; OREMOR OF VICTORVILLE, LLC, a California limited liability company; OREMOR OF WOODLAND HILLS, LLC, a California limited liability company; UNITED RECOVERY, INC., a California corporation; AQUIRECORP'S NORWALK AUTO AUCTION, a California corporation; JEEP CHRYSLER OF ONTARIO, INC., a California corporation; and DOES 1-50, Inclusive,

Defendants.

6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802.

DEMAND FOR A JURY TRIAL

Plaintiff JOSEPH GONZALEZ ("PLAINTIFF"), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant ROMERO MOTORS CORPORATION, a California corporation; Defendant ROMERO MOTORS, LLC, a California limited liability company; Defendant J. MCCULLOUGH CORP., a California corporation; Defendant OREMOR DEVELOPMENT LLC, a California limited liability company; Defendant OREMOR EUROPEAN, LLC, a California limited liability company; Defendant OREMOR FINANCIAL SERVICES, LLC, a California limited liability company; Defendant OREMOR OF CAPISTRANO, LLC, a California limited liability company; Defendant OREMOR OF FONTANA, LLC, a California limited liability company; Defendant OREMOR OF FRESNO, LLC, a California limited liability

company; Defendant OREMOR OF GLENDALE LLC, a California limited liability company; Defendant OREMOR OF ITALY II, LLC, a California limited liability company; Defendant OREMOR OF ONTARIO EN, LLC, a California limited liability company; Defendant OREMOR OF ONTARIO JCDR, LLC, a California limited liability company; Defendant OREMOR OF RIVERSIDE RC, LLC, a California limited liability company; Defendant OREMOR OF RIVERSIDE, LLC, a California limited liability company; Defendant OREMOR OF TEMECULA LX LLC, a California limited liability company; Defendant OREMOR OF TEMECULA, LLC, a California limited liability company; Defendant OREMOR OF TUSTIN, LLC, a California limited liability company; Defendant OREMOR OF VICTORVILLE, LLC, a California limited liability company; Defendant OREMOR OF WOODLAND HILLS, LLC, a California limited liability company; Defendant UNITED RECOVERY, INC., a California corporation; Defendant AQUIRECORP'S NORWALK AUTO AUCTION, a California corporation; and Defendant JEEP CHRYSLER OF ONTARIO, INC., a California corporation at all relevant times mentioned herein conducted and continue to conduct substantial and regular business in the state of California.

2. PLAINTIFF alleges there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased and all Defendants are referred to herein as “DEFENDANT” and/or “DEFENDANT.”

3. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest and ownership between Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC,

Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. such that any individuality and separateness between the entities has ceased. Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. are therefore alter egos of each other. Adherence to the fiction of the separate existence of DEFENDANT would permit an abuse of the corporate privilege, and would promote injustice by protecting DEFENDANT from liability for the wrongful acts committed by them.

4. PLAINTIFF further alleges that DEFENDANT are the alter egos of each other for the following reasons:

i. On the California Secretary of State’s website (https://businesssearch.sos.ca.gov/) Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant

OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. have the same entity address and/or mailing address and/or Agent for Service of Process;

ii. On information and belief Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. utilize the same standardized employment forms and issue the same employment policies and same pay stubs;

iii. On information and belief Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF

FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. have an executive team which supervise and manage the operations of all of DEFENDANT’s car dealerships, supervised and managed the finances of all of DEFENDANT’s car dealerships, supervised and managed the marketing of all of DEFENDANT’s car dealerships, supervised and managed the human resources of all of DEFENDANT’s car dealerships, and supervised and managed operations at all of DEFENDANT’s car dealerships.

5. PLAINTIFF alleges that DEFENDANT’s various separate corporate entities are used by an individual or individuals, or by another corporation, to accomplish inequitable purposes, including to limit liability for the unlawful acts of DEFENDANT.

6. PLAINTIFF alleges that there is such a unity of interest and ownership between DEFENDANT’s various corporate entities that own DEFENDANT’s car dealerships and the individual or individuals, or organization controlling those corporate entities that their separate personalities no longer exist.

7. PLAINTIFF further alleges that the failure to disregard the various corporate entities would promote injustice.

8. Alternatively, on information and belief, Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF

FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively. Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. each exerted control over the hours, wages and/or working conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS. Therefore, Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR

OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. are jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

9. DEFENDANTS owns and operate car dealerships in California, including in the county of San Bernardino where PLAINTIFF worked.

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

11. The agents, servants, and/or employees of the Defendants and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the Defendants’ agents, servants and/or employees.

12. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or

caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

13. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

14. PLAINTIFF was employed by DEFENDANTS in California from September of 2021 to April of 2023, paid in part an hourly wage, commission-based compensation, non-discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

15. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all current and former non-exempt, exempt, piece-rate based, and/or commission-based employees employed by Defendant ROMERO MOTORS CORPORATION and/or Defendant ROMERO MOTORS, LLC and/or Defendant J. MCCULLOUGH CORP. and/or Defendant OREMOR DEVELOPMENT LLC and/or Defendant OREMOR EUROPEAN, LLC and/or Defendant OREMOR FINANCIAL SERVICES, LLC and/or Defendant OREMOR OF CAPISTRANO, LLC and/or Defendant OREMOR OF FONTANA, LLC and/or Defendant OREMOR OF FRESNO, LLC and/or Defendant OREMOR OF GLENDALE LLC and/or Defendant OREMOR OF ITALY II, LLC and/or Defendant OREMOR OF ONTARIO EN, LLC and/or Defendant OREMOR OF ONTARIO JCDR, LLC and/or Defendant OREMOR OF RIVERSIDE RC, LLC and/or Defendant OREMOR OF RIVERSIDE, LLC and/or Defendant OREMOR OF TEMECULA LX LLC and/or Defendant OREMOR OF TEMECULA, LLC and/or Defendant OREMOR OF TUSTIN, LLC and/or Defendant OREMOR OF VICTORVILLE, LLC and/or Defendant OREMOR OF WOODLAND HILLS, LLC and/or Defendant UNITED RECOVERY, INC. and/or Defendant AQUIRECORP'S NORWALK AUTO AUCTION and/or

Defendant JEEP CHRYSLER OF ONTARIO, INC. in California ("CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars ($5,000,000.00).

16. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

17. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

18. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

19. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This

action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

20. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in this County and/or conduct substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CONDUCT

21. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS overtime, sick pay, and meal rest premiums at the correct regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

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A. Meal and Rest Period Violations

22. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor Codes, an employer shall not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. If an employer fails to provide an employee with a mandated meal period, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

23. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were from time to time required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT from time-to-time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period from time to time in which these employees were required by DEFENDANT to work ten (10) hours of work from time to time. Further, from time to time, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless communication devices on them during what was supposed to be their off-duty meal break in order to receive and respond to work-related communications. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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24. Further, pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

25. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor Codes, an employer shall authorize ad permit all employees to take a rest periods, which so far as practical shall be in the middle of each work period. Generally, an employer must provide ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided.

26. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4) hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours

or more from time to time. Further, from time to time, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless communication devices on them during what was supposed to be their off-duty rest break in order to receive and respond to work-related communications. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members were from time to time required to remain on the premises, on-duty and on-call during their rest periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages in lieu thereof.

B. <u>Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick Pay</u>

27. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS were compensated at an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific elements of an employee's performance and/or commissions.

28. DEFENDANTS' non-discretionary commission and bonus program provided the CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation when the employees met the various performance goals set by DEFENDANT. However, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned non-discretionary bonus and/or commission wages, DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or commission wages as part of the employees' "regular rate of pay.".

29. Management and supervisors described the bonus and commissions programs and commission compensation program to potential and new employees as part of the compensation package for new and used car salespersons including PLAINTIFF and the CALIFORNIA CLASS. As a matter of law, the incentive and commission compensation received by PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly calculated into the "regular rate of pay" for purposes of overtime and double time compensation, meal and rest period premium payments, and sick pay. DEFENDANT's failure to do so has resulted in DEFENDANT's systematic underpayment of overtime and double time compensation,

meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

30. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime and double time compensation, meal and rest period premium payments, and sick pay. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the correct overtime and double time compensation, meal and rest period premium payments, and sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

C. <u>Commission and Piece-Rate Violations</u>

31. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately compensated for all non-productive time at an hourly rate that is no less than the applicable minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,

including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum wages and overtime wages by DEFENDANT'S failure to separately compensate their non-productive time at an hourly rate that is no less than the applicable minimum wage.

32. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid on a draw versus commission basis as exempt from overtime compensation. During the CLASS PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.) As a result, PLAINTIFF and the CALIFORNIA CLASS members who were paid on a draw versus commission basis forfeited overtime wages by DEFENDANTS' failure to accurately classify them as non-exempt from overtime compensation.

D. <u>Off-the-Clock Minimum Wage and Overtime Violations</u>

33. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control.

34. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary wages for attending for performing work at DEFENDANTS' direction, request, and benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business records.

35. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

36. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments, and employment conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS.

37. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed, including pre-shift, post shift and during meal period off-the-clock work.

38. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

39. DEFENDANTS' policies and practices deprived PLAINTIFF and the other members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

40. DEFENDANTS knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

41. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

E. <u>Unreimbursed Business Expenses</u>

42. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and

other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall 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."

43. In the course of their employment, DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS Members to use their personal cell phones, personal vehicles and for the purchase of work uniforms as a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of their own personal cell phones, personal vehicles and for the purchase of work uniforms, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential job duties, including but not limited to, sending and receiving work-related communications from DEFENDANTS and DEFENDANTS' clients and using personal vehicles to deliver paperwork to DEFENDANT and DEFENDANTS' clients. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal cell phones, personal vehicles and purchase of work uniforms. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related to the use of their personal cellular phones, personal vehicles and purchase of work uniforms, all on behalf of and for the benefit of DEFENDANTS.

F. <u>Wage Statement Violations</u>

44. California Labor Code Sections 226 and 226.2 require an employer to furnish its employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security

number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and (11) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

45. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANT furnished PLAINTIFF and the CALIFORNIA CLASS written wage statements that failed to accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and (7) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

46. In addition to the violations described above, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

47. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

G. <u>Violations for Untimely Payment of Wages</u>

48. Pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA CLASS members were entitled to timely payment of wages during their employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not

receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within permissible time period.

49. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous 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." PLAINTIFF and the CALIFORNIA CLASS Members were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

50. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all CALIFORNIA CLASS Members whose employment ended during the CLASS PERIOD.

H. Unlawful Deductions

51. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF and CALIFORNIA CLASS Members' pay without explanations and without authorization to do so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANTS violated Labor Code § 221.

I. Unlawful Rounding Practices

52. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANT's timekeeping system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for

overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

53. Further, the mutability of DEFENDANT's timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time being inaccurately recorded. As a result, from time to time, DEFENDANT' unlawful rounding policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break.

54. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally required off-duty meal breaks to him and paid rest periods to him as required by the applicable Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him from being relieved of all of his duties for the legally required off-duty meal periods. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT'S failure to provide PLAINTIFFS with the legally required second off-duty meal period is evidenced by DEFENDANT's business records. From time to time, and as a result of DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay minimum wages due for all time worked and separate compensation for rest breaks, the wage statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all required business expenses including for the use of his personal cell phone, personal vehicle and purchase of work uniforms. To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums due to him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages owed to him under California Labor Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed $75,000.

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THE CALIFORNIA CLASS

55. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of all current and former non-exempt, exempt, piece-rate based, and/or commission-based employees employed by Defendant ROMERO MOTORS CORPORATION and/or Defendant ROMERO MOTORS, LLC and/or Defendant J. MCCULLOUGH CORP. and/or Defendant OREMOR DEVELOPMENT LLC and/or Defendant OREMOR EUROPEAN, LLC and/or Defendant OREMOR FINANCIAL SERVICES, LLC and/or Defendant OREMOR OF CAPISTRANO, LLC and/or Defendant OREMOR OF FONTANA, LLC and/or Defendant OREMOR OF FRESNO, LLC and/or Defendant OREMOR OF GLENDALE LLC and/or Defendant OREMOR OF ITALY II, LLC and/or Defendant OREMOR OF ONTARIO EN, LLC and/or Defendant OREMOR OF ONTARIO JCDR, LLC and/or Defendant OREMOR OF RIVERSIDE RC, LLC and/or Defendant OREMOR OF RIVERSIDE, LLC and/or Defendant OREMOR OF TEMECULA LX LLC and/or Defendant OREMOR OF TEMECULA, LLC and/or Defendant OREMOR OF TUSTIN, LLC and/or Defendant OREMOR OF VICTORVILLE, LLC and/or Defendant OREMOR OF WOODLAND HILLS, LLC and/or Defendant UNITED RECOVERY, INC. and/or Defendant AQUIRECORP'S NORWALK AUTO AUCTION and/or Defendant JEEP CHRYSLER OF ONTARIO, INC. in California ("CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars ($5,000,000.00).

56. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

57. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,

and illegal meal and rest period policies. Defendant further failed to reimburse for business expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage statements, and failed to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

58. The members of the class are so numerous that joinder of all class members is impractical.

59. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid mean and rest period premiums, failing to provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

i. Whether DEFENDANTS maintained legally compliant meal period policies and practices;

ii. Whether DEFENDANTS maintained legally compliant rest period policies and practices;

iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;

iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;

v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;

vi. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;

vii. Whether DEFENDANTS issued legally compliant wage statements;

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viii. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;

ix. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;

x. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

60. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

61. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same interests as the other members of the class.

62. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

63. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

64. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests of the other CALIFORNIA CLASS Members.

65. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

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66. The questions of law and fact common to the CALIFORNIA CLASS Members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

67. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members in impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

68. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

<u>FIRST CAUSE OF ACTION</u>

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

69. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

70. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code § 17021.

71. California Business & Professions Code §§ 17200, et seq. (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

> Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

72. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

73. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or substantially injurious to employees, and were without valid justification or utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code, including restitution of wages wrongfully withheld.

74. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent in that DEFENDANT's uniform policy and practice failed to pay all minimum and overtime wages due, failed to provide the legally mandated meal and rest periods, failed to pay the required amount of compensation for missed meal and rest periods, and failed to reimburse

necessary business expenses incurred due to a systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, et seq., and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

75. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

76. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide all legally required meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

77. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

78. PLAINTIFF further demands on behalf of himself and each member of the CALIFORNIA CLASS one (1) hour of pay for each workday in which a rest period was not given and a premium was not timely provided as required by law.

79. By and through the unlawful and unfair business practices described herein, DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

80. All the acts described herein as violations of, among other things, the Industrial

Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, et seq.

81. PLAINTIFF and the other members of the CALIFORNIA CLASS were entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all time worked.

82. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

83. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

84. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

85. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for

DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages.

86. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

87. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed in unlawful.

88. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

89. As set forth above, during the CLASS PERIOD, DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they worked. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

90. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS regarding minimum wage pay.

91. In committing these violations of the California Labor Code, DEFENDANT inaccurately calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

92. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum wage compensation for their time worked for DEFENDANT.

93. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.

94. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to the PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

95. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

96. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

97. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA CLASS Members who have

terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

(Cal. Lab. Code §§ 510, 1194 and 1198)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

98. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

99. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to properly compensate the members of the CALIFORNIA CLASS for all overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek during the CLASS PERIOD.

100. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

101. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amount specified by law.

102. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed

by the Industrial Welfare Commission is unlawful.

103. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

104. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked, including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

105. In committing these violations of the California Labor Code, DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

106. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full compensation for all overtime worked.

107. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of himself and the CALIFORNIA CLASS based on DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of California.

108. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a failure to pay all earned wages.

109. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT's business records and witnessed by employees.

110. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

111. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS are under compensated for their overtime worked. DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA CLASS the applicable overtime rate.

112. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide them with the requisite overtime compensation, DEFENDANT acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

113. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including overtime wages, according to proof, interest,

statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

114. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

115. During the CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the CALIFORNIA CLASS as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and the CALIFORNIA CLASS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and the CALIFORNIA CLASS were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

116. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

117. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

118. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

119. During the CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

120. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and the CALIFORNIA CLASS who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of

compensation at each employee's regular rate of pay for each workday that rest period was not provided.

121. As a proximate result of the aforementioned violations, PLAINTIFF and the CALIFORNIA CLASS have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code §§ 226)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

122. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

123. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing: (1) Gross wages earned; (2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) Net wages earned; (6) The inclusive dates of the period for which the employee is paid,; (7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement; (8) The name and address of the legal entity that is the employer, and (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

124. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements

which failed to accurately show, among other things, (1) Gross wages earned; (2) Total hours worked by the employee, (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions; (5) Net wages earned; and (6) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

125. Further, during the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements in compliance with Cal. Labor Code Section 226.2, which failed to accurately show, among other things: (1) the total hours of compensable rest and recovery periods; and (2) the total hours of other nonproductive time, the rate of compensation for the nonproductive time and the gross wages paid for the nonproductive time during the applicable pay period.

126. PLAINTIFFS and the members of the CALIFORNIA CLASS were injured by DEFENDANTS' violations in that they could not promptly and easily determine from the wage statement alone, the amount of gross or net wages paid, the total hours worked, the number pf piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate to the employee during the applicable pay period.

127. DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and intentional in that DEFENDANTS willfully intended to issue wage statements that were out of compliance with § 226 and 226.2.

128. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226 and 226.2, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars ($50.00) for the initial pay period in which the violation occurred, and one hundred dollars ($100.00) for each violation in a subsequent pay period

pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more than four thousand dollars ($4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

SEVENTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code §§ 203)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

129. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

130. Cal. Lab. Code § 200 provides, in relevant part, that:

> As used in this article:(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

131. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

132. Cal. Lab. Code § 202 provides, in relevant part, that:

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous 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. Notwithstanding any other provision of law, an employee who quits

> without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

133. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members' employment contract.

134. Cal. Lab. Code § 203 provides, in relevant part, that:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

135. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

136. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid minimum and/or overtime wages and/or missed meal and rest breaks without being paid the legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed by law.

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EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

137. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

138. Cal. Lab. Code § 2802 provides, in relevant part, that:

> An employer shall 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.

139. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal cellular phones, personal vehicles and purchase of work uniforms all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal cell phones, personal vehicles and purchase of work uniforms to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their personal cellular phones, personal vehicles and purchase of work uniformsfor DEFENDANTS within the course and scope of their employment for DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by

DEFENDANTS' conduct to assert any waiver of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and regulations of California.

140. PLAINTIFF therefore demands reimbursement on behalf of the members of the CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:
    a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
    b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
    c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
    d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA CLASS:
    a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
    b. Compensatory damages, according to proof at trial, including compensatory

damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;

c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

d. The greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000), and an award of costs for violation of Cal. Lab. Code § 226

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On all claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: August 23, 2023

JCL LAW FIRM, APC

By:______________________________
Jean-Claude Lapuyade, Esq.

Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: August 23, 2023

JCL LAW FIRM, APC

By:________________________________

Jean-Claude Lapuyade, Esq.

Attorney for PLAINTIFF

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February 20, 2024

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

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

Oremor Automotive Group, LLC
1377 Kettering Drive
Ontario, CA 91761

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

Additional Addressees on Last Pages

Dear LWDA Officer and Company Representatives:

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

OREMOR AUTOMOTIVE GROUP, LLC
OREMOR EUROPEAN, LLC d/b/a "MERCEDES BENZ OF EL CAJON"
ROMERO AUTOMOTIVE, INC.
OREMOR DEVELOPMENT, LLC
OREMOR FINANCIAL SERVICES, LLC
OREMOR OF CAPISTRANO, LLC
OREMOR OF FONTANA, LLC
OREMOR OF FRESNO, LLC
OREMOR OF GLENDALE, LLC
OREMOR OF ITALY II, LLC
JEEP CHRYSLER OF ONTARIO, INC.
OREMOR OF ONTARIO EN, LLC
OREMOR OF ONTARIO JCDR, LLC

OREMOR OF RIVERSIDE RC, LLC
OREMOR OF ITALY II, LLC
JEEP CHRYSLER OF ONTARIO, INC.
OREMOR OF ONTARIO EN, LLC
OREMOR OF ONTARIO JCDR, LLC
OREMOR OF RIVERSIDE RC, LLC
OREMOR OF RIVERSIDE, LLC
OREMOR OF TEMECULA LX LLC
OREMOR OF TEMECULA, LLC
OREMOR OF TUSTIN, LLC
OREMOR OF VICTORVILLE, LLC
OREMOR OF WOODLAND HILLS, LLC
OREMOR ONTARIO DODGE, INC.
ROMERO MOTORS, LLC
OREMOR MANAGEMENT & INVESTMENT COMPANY
RICHARD J. ROMERO

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 position of Porter from about approximately December 5, 2022 to November 8, 2023. 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. Due to understaffing and the volume of work to be completed as well as the number of customers who needed help, aggrieved employees were not always able to take compliant meal periods and sometimes worked through their off-the-clock meal periods. Moreover, aggrieved employees needed to monitor their phones for calls and texts about work.

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.

<u>Unpaid Hours Worked/Non-Productive, Rest, and Recovery Periods</u>
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.

<u>Labor Code section 226.2</u>(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.

Defendants failed to pay for aggrieved employees' rest periods separately. Rather, Defendants paid its undifferentiated base rate for all of the time that employees were clocked in, including rest periods. This resulted in underpayment of wages whenever aggrieved employees earned non-discretionary bonuses, commissions, shift differentials, or any other short of qualifying renumeration.

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 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 stated above, aggrieved employees worked off-the-clock due to a combination of large volumes of work and understaffing. Some of these off-the-clock hours should have counted towards overtime had they been properly recorded.

Further, Defendants failed to pay overtime at the proper rate because they neglected to include all bonuses, commissions, shift differentials, and other premiums and payments into employees' 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 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. Because Defendants did not record all of the hours that aggrieved employees worked, Defendants did not provide the proper amount of sick leave accrued by the aggrieved employees, or proper notice thereof. Moreover, Defendants did not provide sick leave pay at the proper rate of pay because they failed to include all bonuses, commissions, shift differentials, and other premiums and payments into employees' 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.

Unpaid Vacation Wages
Violation of Labor Code § 227.3

Defendants violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires "whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination."

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Because Defendants did not record all of the hours that aggrieved employees worked, Defendants did not provide the proper number of vacation hours accrued by aggrieved employees. Moreover, Defendants did not provide vacation pay at the proper rate of pay because they failed to include all bonuses, commissions, shift differentials, and other premiums and payments into employees' vacation 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.

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.

Plaintiff and other aggrieved employees were often unable to take fully-compliant meal periods because of understaffing and the volume of work that needed to be completed. For example, when Plaintiff worked at the loaner desk, there were regularly high volumes of customers and only one other employee. While Plaintiff started his usual workday at 7 a.m., he often could not take his meal period until 1 p.m. or 1:30 p.m. In order to meet the demands of their jobs, Plaintiff and other aggrieved employees could not take full, timely, uninterrupted off-duty meal periods.

On some occasions when aggrieved employees missed their meal periods, managers had them sign a "On-Duty Meal Period Agreement" even though the nature of their jobs did not require them to remain on-duty. Rather, aggrieved employees had to remain on-duty for the convenience of Defendants.

Despite failing to provide Plaintiff and other aggrieved employees with the opportunity to take all legally-compliant meal periods, Defendants failed to pay them all meal period premiums owed.

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 faction 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 the same reasons that they were not able to take all legally-compliant meal periods, Plaintiff and other aggrieved employees were also unable to take full, timely, off-duty rest periods. Due to the high volume of customers and lack of coverage, Plaintiff and other aggrieved employees often missed or worked through their rest periods. Despite failing to provide the aggrieved employees the opportunity to take legally-compliant rest periods, Defendants did not pay all rest period premiums owed.

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. As described above, Defendants did not pay Plaintiff and other aggrieved employees the legally-required premiums when Defendants failed to provide employees with the opportunity to take legally-compliant meal and rest periods, and failed to pay other wages aggrieved employees were owed. These premiums and wages remain owing to this day.

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.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203. As described above, Defendants did not pay Plaintiff and other aggrieved employees the legally-required premiums when Defendants failed to provide employees with the opportunity to take legally-compliant meal and rest periods as well as other wages aggrieved employees were owed. Because these premiums and wages remain owing to this day, long after Plaintiff and other aggrieved employees have separated from their employment, Defendants are liable for waiting time penalties, which also remain unpaid.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California 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.

<u>Non-Compliant Wage Statements</u>
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).

<u>Labor Code section 226(a)</u> 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 premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages and premiums 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. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages and premiums.

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.

<u>Unreimbursed Employee Expenses</u>
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.

For example, Defendants required Plaintiff and other aggrieved employees to use their personal cell phones for work purposes but did not adequately reimburse them. Plaintiff and other aggrieved employees were required to be members of a group text message chain with other employees for work throughout his employment. Plaintiff and other aggrieved employees also had to call customers with their personal phones, and had to install the company e-mails and security applications on their phones.

Despite the daily and extensive use of his personal cell phone for work, Plaintiff only received three $10 payments for the use of his personal cell phone for the months of August, September, and October 2023. This is inadequate considering the amount of work usage for which Plaintiff had to utilize his phone and the fact that Defendants' "Bring Your Own Device (BYOD) Policy" requires that employees maintain anti-virus software on their personal devices, which by themselves can cost employees more than $10 per month. *See Fig. 1 below.*

Mercedes-Benz
of El Cajon

BRING YOUR OWN DEVICE (BYOD) POLICY

OBJECTIVE
This policy establishes Mercedes Benz of El Cajon (hereinafter referred to as the "Dealership") guidelines for Team Member use of personally owned electronic devices for work-related purposes.

SCOPE
Team Members of the Dealership may have the opportunity to use their personal electronic devices for work purposes when authorized in writing, in advance, by the Team Member and management. Personal electronic devices include personally owned cellphones, smartphones, tablets, laptops, and computers. The use of personal devices is limited to certain Team Members and may be limited based on compatibility of technology.

PROCEDURE
Device protocols
To ensure the security of the Dealership information, authorized Team Members are required to have anti-virus software installed on their personal mobile devices.

Fig. 1, excerpt from Device Policy

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.

Failure to Provide Employee Records
Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." Labor Code section 432 states that "[i]f an employee … signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." Labor Code section 1198.5 grants "[e]very current and former employee, or his or her representative, … the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee's performance or to any grievance concerning the employee." Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available "time records showing when the employee begins and ends each work period" as well as time records showing "[m]eal periods, split shift intervals, and daily hours worked[.]" Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all records upon Plaintiff's request. In response to Plaintiff's written request for his employment records, Defendants failed to produce any of Plaintiff's timekeeping records in violation of the Records section of the applicable 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 sections 226.3 ($250/$1,000), 1174.5 ($500), and 2699 ($100/$200) 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.

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,

David X. Lin

Cc Plaintiff Kevin Clemente

Tyler T. Rasmussen
FISHER & PHILLIPS LLP
trasmussen@fisherphillips.com

ADDITIONAL ADDRESSEES

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Romero Automotive, Inc.
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Oremor Development, LLC
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Oremor Financial Services, LLC
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Oremor of Fresno, LLC
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Oremor of Italy II, LLC
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Jeep Chrysler of Ontario, Inc.
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Oremor of Ontario EN, LLC
1377 Kettering Drive
Ontario, CA 91761

Oremor of Ontario JCDR, LLC
1377 Kettering Drive
Ontario, CA 91761

Oremor of Riverside RC, LLC
1377 Kettering Drive
Ontario, CA 91761

Oremor of Riverside, LLC
1377 Kettering Drive
Ontario, CA 91761

Oremor of Temecula LX LLC
1377 Kettering Drive
Ontario, CA 91761

Oremor of Temecula, LLC
1377 Kettering Drive
Ontario, CA 91761

Oremor of Tustin, LLC
1377 Kettering Drive
Ontario, CA 91761

Oremor of Victorville, LLC
1377 Kettering Drive
Ontario, CA 91761

Oremor of Woodland Hills, LLC
1377 Kettering Drive
Ontario, CA 91761

Oremor Ontario Dodge, INC.
1377 Kettering Drive
Ontario, CA 91761

Romero Motors, LLC
1377 Kettering Drive
Ontario, CA 91761

Oremor Management & Investment Company
1377 Kettering Drive
Ontario, CA 91761

Richard J. Romero
1377 Kettering Drive
Ontario, CA 91761

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July 29, 2024

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

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

Oremor of Woodland Hills LLC
1377 Kettering Drive
Ontario, CA 91761

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

Lexus of Woodland Hills
21701 Ventura Blvd
Woodland Hills, CA 91364

Dear LWDA Officer and Company Representatives:

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

OREMOR OF WOODLAND HILLS LLC; LEXUS OF WOODLAND HILLS;

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 an aggrieved employee.

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 position of Sales Consultant from about February 2024 to April 2024. 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 "<u>aggrieved employees</u>" and the "<u>PAGA Period</u>").

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 -

<u>Unpaid Hours Worked/Minimum Wage</u>
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. Defendants engaged in an unlawful policy and practice of requiring Plaintiff and the aggrieved employees to complete work off-the-clock, without compensation.

Specifically, Defendants required Plaintiff and the aggrieved employees to deliver customers' vehicles to their residences while Plaintiff and the aggrieved employees were off-the-clock. Additionally, Plaintiff would complete his closing tasks while off-the-clock. Defendants' agents instructed Plaintiff and the aggrieved employees to clock out while completing these tasks. Due to this unlawful practice of failing to pay for off-the-clock work, all hours were not directly compensated, resulting in the underpayment of regular and overtime wages to Plaintiff and the aggrieved employees.

Further, Defendants maintained the unlawful policy and practice of failing to provide compliant meal periods to Plaintiff and the aggrieved employees. Plaintiff alleges that when he would clock out for a meal period, Defendants would routinely interrupt his meal break and tell him to "get back to work or you're fired." Defendants would then require Plaintiff to log a compliant meal period was taken in his time records. Defendants committed the same practice with respect to Plaintiff and the aggrieved employees when they were entitled to a second meal period for working over ten hours in a scheduled shift. Because Defendants would deduct a 30-minute to 1-hour meal period from Plaintiff's time records, regardless of his ability to take compliant meal periods, this resulted in time worked that was not compensated at the lawful minimum wage rate.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

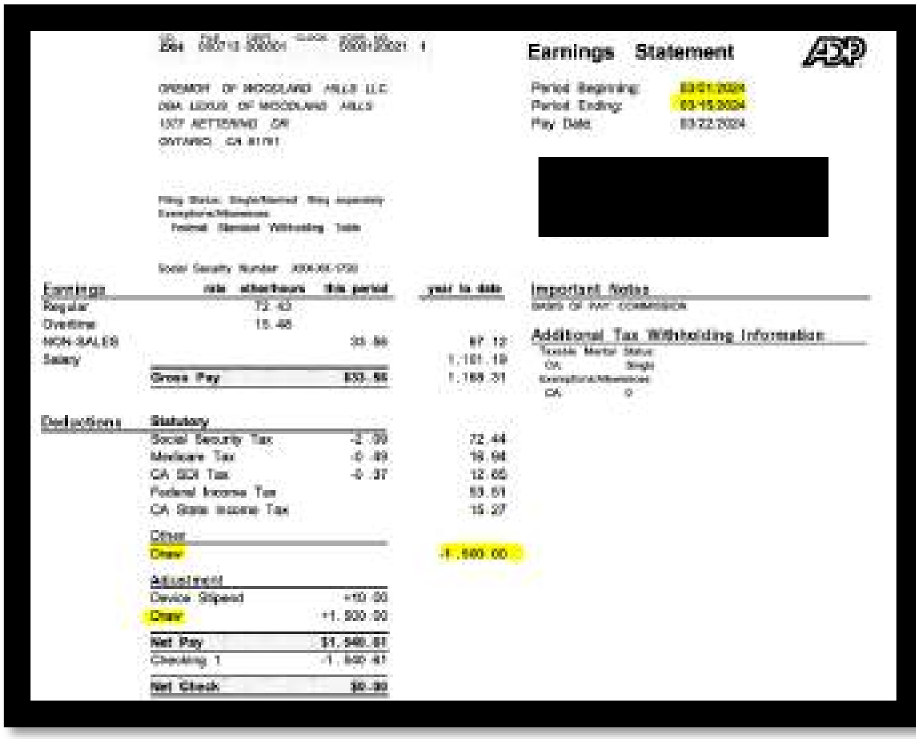
Unpaid Hours Worked/Non-Productive, Rest, and Recovery Periods
Violation of Labor Code §§ 226.2; IWC Wage Orders

Defendants 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.

Defendants committed a similar violation to the one set forth in *Vaquero*, paying employees a draw against commissions without separately compensating for the paid rest periods. As a result, Defendants committed a Labor Code violation in each respective pay period and are liable for Labor Code penalties accordingly. An illustrative example of a wage statement showing Plaintiff's draw against commissions, along with an omission of payment for 10-minute rest periods each day (i.e., paid nonproductive time) appears on Plaintiff's wage statement dated March 1, 2024 to March 15, 2024.



Earnings Statement

[illegible] OF WOODLAND HILLS LLC
DBA LEXUS OF WOODLAND HILLS
[illegible]
ONTARIO CA [illegible]

Period Beginning: 03/01/2024
Period Ending: 03/15/2024
Pay Date: 03/22/2024

[redacted]

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Standard Withholding Table

Social Security Number: [illegible]

Earnings	rate	other hours	this period	year to date
Regular		72.43		
Overtime		15.46		
NON-SALES			33.56	67.12
Salary				1,101.19
Gross Pay			$33.56	1,168.31

Deductions	Statutory	this period	year to date
	Social Security Tax	-2.08	72.44
	Medicare Tax	-0.49	16.94
	CA SDI Tax	-0.37	12.65
	Federal Income Tax		53.61
	CA State Income Tax		15.27
	Other		
	Draw		-1,500.00
	Adjustment		
	Device Stipend	+10.00	
	Draw	+1,500.00	
	Net Pay	$1,540.61	
	Checking 1	-1,540.61	
	Net Check	$0.00	

Important Notes
BASIS OF PAY: COMMISSION

Additional Tax Withholding Information
Taxable Marital Status:
CA: Single
Exemptions/Allowances:
CA: 0

Extract of Plaintiff's wage statement from the pay period from March 1, 2024 to March 15, 2024 showing Plaintiff's draw against commission along with an omission of payment for 10-minute rest periods.

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.

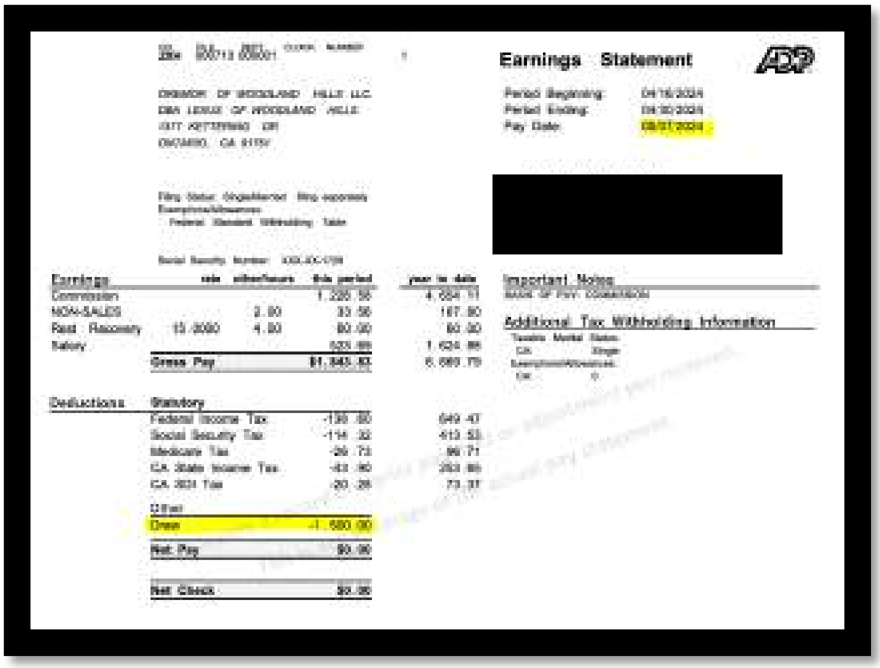
<u>Unlawful Wage Deductions</u>
Violation of Labor Code §§ 221 through 225

In addition to the foregoing unlawful wage deductions, Defendants violated Labor Code sections 221 through 225 with respect to the aggrieved employees.

<u>Labor Code section 221</u> 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." <u>Labor Code section 222</u> renders it illegal to unlawfully withhold any part of wages agreed upon from the employee. <u>Labor Code section 223</u> states "[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

Defendants maintained an unlawful policy and practice of deducting wages and earnings from Plaintiff and the aggrieved employees. To the extent Defendants argue the money paid to aggrieved employees as a draw against commissions effectively operates as compensation for rest period compensation or otherwise reduces the contractual commission rate, that policy and practice violates the foregoing sections of the Labor Code, because a loan for time spent resting is not compensation for a rest period. *See*, *e.g.*, *Vaquero v. Stoneledge Furniture, LLC.* (2017) 9 Cal. App. 5th 98.

Further, Defendants unlawfully deducted $1,500 from Plaintiff's final wage statement as a draw against commission. An illustrative example of this violation is shown below:



Extract of Plaintiff's final wage statement from May 7, 2024 showing $1,500 was deducted as a draw against commission.

Plaintiff is informed and believes that Defendants committed this same unlawful wage deduction against other aggrieved employees as a matter of common payroll administration and company policy in a manner susceptible to common proof.

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 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 at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. As stated in the "Unpaid Hours Worked" section above, Defendants maintained an unlawful practice of failing to pay Plaintiff and the aggrieved employees for their time spent working while off-the-clock. When Plaintiff and the aggrieved employees worked more than 8 hours per day or over 40 hours per week, these practices resulted in unpaid overtime wages.

Additionally, Defendants paid Plaintiff and the aggrieved employees sales commissions, non-discretionary bonuses, and other forms of remuneration that Defendants also failed to include in the "regular rate of pay" when employees earned overtime. Defendants paid overtime to Plaintiff and the aggrieved employees at 1.5x their base hourly rate. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned commissions and bonuses, Defendants should have (but failed to) pay overtime "at the rate of no less than one and one-half times the regular rate of pay for an employee" as required by the plain language of Labor Code section 510(a) 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, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Pay All Commissions Owed
Violation of Labor Code §§ 200, 201, 204.1, 210; IWC Wage Orders

Defendants violated Labor Code sections 200, 201, 204.1, and 210 with respect to the aggrieved employees.

Labor Code section 204.1 defines commissions as "compensation paid to any person for services rendered in the sale of such employer's property or services and based proportionately upon the amount or value thereof." Under Labor Code section 200, commissions are considered wages. Labor Code section 210 authorizes penalties against employers who fail to pay employees wages as provided in Labor Code section 204.1.

Defendants failed to pay Plaintiff and, on information and belief, the aggrieved employees, for all commission wages that were due during and after their employment. Plaintiff and other aggrieved employees made sales every pay period which earned them commissions. However, Defendants failed to fully pay employees those commissions on each regularly scheduled payday. On information and belief, Defendants omitted some commissions earned from wage statements and sporadically paid Plaintiff and other employees a lump sum for commissions. Per Defendants' representations, Plaintiff and the aggrieved employees were to receive 20% of the commissionable front-end gross profit per closed sale on a new/used vehicle. However, Plaintiff alleges that he and the aggrieved employees were not fully compensated for their full commissions owed.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California 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 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. Defendants failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. Plaintiff and the aggrieved employees worked off-the-clock overtime hours that were not accounted for when calculating an employee's paid sick leave. Therefore, Plaintiff and the aggrieved employees were not awarded the total accrued sick leave time they had earned.

Further, on information and belief, Defendants failed to pay sick leave at the correct rate because they failed to factor in bonuses, commissions, and/or other forms of remuneration, as required by Labor Code section 246. Instead, Defendants paid sick leave to Plaintiff and the aggrieved employees at their base hourly rate, resulting in inaccurate sick leave accrual.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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 prohibited Plaintiff and the aggrieved employees from taking compliant meal periods. Plaintiff alleges that whenever he or the aggrieved employees would clock out for meal periods, Defendants would often tell them to "get back to work or you're fired." As such, Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods. Plaintiff alleges that Defendants prohibited meal periods because Defendants did not hire enough Sales Consultants to keep up with the constant flow of customers.

Further, upon information and belief, when Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium, in violation of Labor Code section 226.7.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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 faction 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.

First, Defendants did not compensate employees for paid rest periods under the commission plan. Second, Plaintiff and the aggrieved employees routinely experienced missed, late, short, and interrupted rest periods due to staffing issues and the constant flow of business. As stated in the above sections, when Plaintiff or the aggrieved employees would try to take a rest break, Defendants would often tell them to "get back to work or you're fired." Therefore, Plaintiff and other aggrieved employees were very rarely, if at all, authorized or permitted to take all their rest periods. Further, Defendants maintained an unlawful policy and practice of failing to pay rest period premiums when non-compliant rest periods were taken.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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, up to the maximum amount allowed as set forth under the Labor Code.

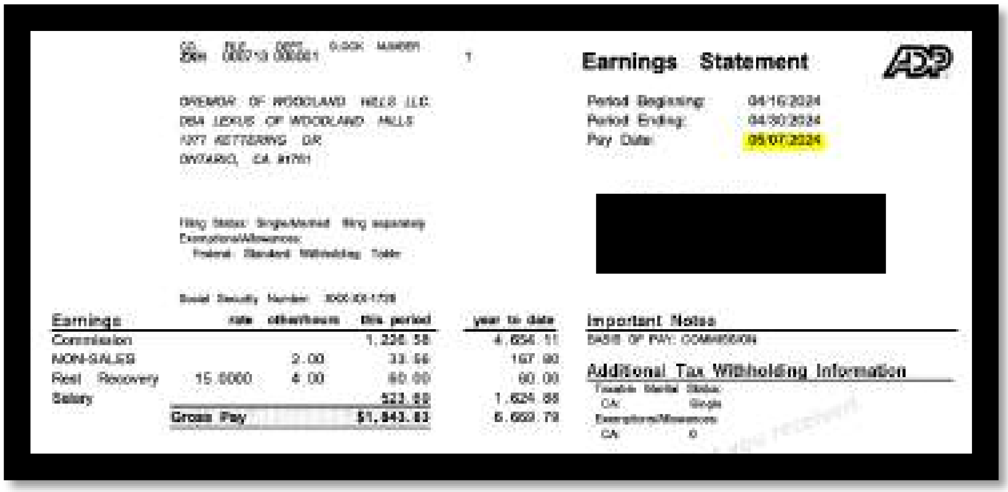
Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

Plaintiff was terminated on April 19, 2024, but Defendants did not pay him his final wages until eighteen days after his termination date, in violation of Labor Code section 201. Plaintiff alleges this mismanagement of final paychecks was a manner of common policy and susceptible to common proof at trial.



Earnings Statement

Period Beginning: 04/16/2024
Period Ending: 04/30/2024
Pay Date: 05/07/2024

[redacted]

Earnings	rate	other/hours	this period	year to date
Commission			1,226.58	4,654.11
NON-SALES		2.00	33.56	167.90
Rest Recovery	15.0000	4.00	60.00	60.00
Salary			523.69	1,624.88
Gross Pay			$1,843.83	6,659.79

Important Notes
BASIS OF PAY: COMMISSION

Additional Tax Withholding Information
Taxable Marital Status:
CA: Single
Exemptions/Allowances:
CA: 0

An extract of Plaintiff's final wage statement showing he was paid eighteen days after his termination date.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

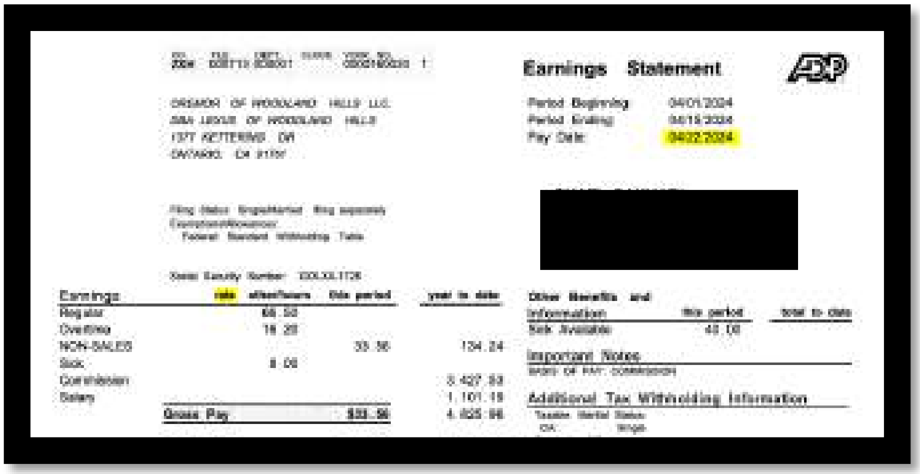
<u>Non-Compliant Wage Statements</u>
Violation of Labor Code §§ 226, 226.3

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).

<u>Labor Code section 226(a)</u> 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. An illustrative example of this violation is shown below:



Earnings Statement

ADP

Period Beginning 04/01/2024
Period Ending 04/15/2024
Pay Date: 04/22/2024

[redacted]

Earnings	rate	hours/units	this period	year to date
Regular		66.50		
Overtime		16.20		
NON-SALES			33.56	134.24
Sick		8.00		
Commission				3,427.93
Salary				1,101.19
Gross Pay			[illegible]	[illegible]

Other Benefits and Information	this period	total to date
Sick Available	40.00	

Important Notes

Additional Tax Withholding Information

Extract of Plaintiff's wage statement with a pay date of April 22, 2024 showing that his regular, overtime, and sick rate of pay was omitted from the pay stub.

Further, Defendants violated Labor Code section 226(a)(2) because the total hours listed on each wage statement are inaccurate because those hours listed do not include off-the-clock hours worked by Plaintiff and the aggrieved employees.

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, up to the maximum amount allowed as set forth under the Labor Code.

<u>Unreimbursed Employee Expenses</u>
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, and costs as a matter of policy and practice. Specifically, Defendants required Plaintiff and the aggrieved employees to deliver customers' vehicles to their residences while off-the-clock. In doing so, Defendants forced Plaintiff and the aggrieved employees to then Uber back to work to pick up their cars. However, Plaintiff and the aggrieved employees were not reimbursed for these Uber expenses.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Provide Employee Records
Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." Labor Code section 432 states that "[i]f an employee … signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." Labor Code section 1198.5 grants "[e]very current and former employee, or his or her representative, … the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee's performance or to any grievance concerning the employee." Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available "time records showing when the employee begins and ends each work period" as well as time records showing "[m]eal periods, split shift intervals, and daily hours worked[.]" Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants do not have a complete and accurate record of Plaintiff and the aggrieved employees' records on file. Specifically, Plaintiff requested copies of his time cards for the time he spent working for Defendants. However, to date, Defendants have not provided Plaintiff with those time cards. Consequently, Defendants have failed to afford Plaintiff and the aggrieved employees with the opportunity to inspect the records pertaining to their employment.

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), 1174.5 ($500), and 2699 ($100/$200) 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, up to the maximum amount allowed as set forth under the Labor Code.

Unlawful Employment Condition
Violation of Labor Code § 432.5

Defendants violated Labor Code section 432.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

Labor Code section 432.5 states that "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

Defendants' unlawful policy and practice of paying a draw against commission, but failing to pay for nonproductive time, is an unlawful employment condition that violates California law. Accordingly, Defendants are liable for the civil penalty in each affected pay period.

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.

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,

Mariela Romo

Cc Plaintiff Ghazi Sankari

FISHER PHILLIPS
Tyler T. Rasmussen, Esq. – trasmussen@fisherphillips.com
Defendants' Representative

jcl law firm apc
EMPLOYMENT LAWYERS

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Suite 3600
San Diego, CA 92121
619-599-8292
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Toll-Free 1-888-498-6999

January 31, 2025

<u>Via Online Filing to LWDA and Certified Mail to Defendants</u>
Labor and Workforce Development Agency
Online Filing

ROMERO MOTORS CORPORATION
ROMERO MOTORS, LLC
J. MCCULLOUGH CORP.
OREMOR DEVELOPMENT LLC
OREMOR EUROPEAN, LLC
OREMOR FINANCIAL SERVICES, LLC
OREMOR OF CAPISTRANO, LLC
OREMOR OF FONTANA, LLC
OREMOR OF FRESNO, LLC
OREMOR OF GLENDALE LLC
OREMOR OF ITALY II, LLC
OREMOR OF ONTARIO EN, LLC
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OREMOR OF RIVERSIDE RC, LLC
OREMOR OF RIVERSIDE, LLC
OREMOR OF TEMECULA LX LLC
OREMOR OF TEMECULA, LLC
OREMOR OF TUSTIN, LLC
OREMOR OF VICTORVILLE, LLC
OREMOR OF WOODLAND HILLS, LLC
UNITED RECOVERY, INC.
AQUIRECORP'S NORWALK AUTO AUCTION
JEEP CHRYSLER OF ONTARIO, INC.
c/o Fisher & Phillips LLP
2050 Main Street, Suite 1000
Irvine, CA 92614
Via Electronic Mail

Re: <u>Amended Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5</u>

Dear Sir/Madam:

Our offices represent Plaintiffs JOSEPH GONZALEZ ("Plaintiff Gonzalez") and JAMES HARDEN ("Plaintiff Harden"), and other aggrieved employees in a proposed lawsuit against Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant

OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. (collectively, hereinafter, "Defendants"). Plaintiff Gonzalez was employed by Defendants from September 2021 to April 2023, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Plaintiff Harden was employed by Defendants from October 2019 to February 2024, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiffs and other aggrieved employees for earned wages. Plaintiffs further contend that Defendants failed to advise Plaintiffs and the other aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiffs and the other aggrieved employees for the non-productive time, including for their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 110. Further, Defendants improperly misclassified aggrieved employees who were paid on a draw versus commission basis as exempt from overtime compensation. Defendants included advanced draws in order to meet the salary-basis test for the overtime exemption. However, Defendants cannot rely on advanced draws in order to meet the salary-basis test for such an exemption. See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.

The original claim in this case was submitted to the LWDA by Plaintiff Gonzalez on August 23, 2023, against Defendants (August 23, 2023, PAGA Notice"). Plaintiff Harden retained counsel to prosecute his claims against Defendants. The August 23, 2023, PAGA Notice is therefore amended to add Plaintiff Harden as an additional plaintiff in this matter. Plaintiff Harden's claims shall relate back to the date of Plaintiff Gonzalez's August 23, 2023, PAGA Notice.

As a consequence of the aforementioned violations, Plaintiffs further contend that Defendants failed to provide accurate wage statements to them and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiffs seek to represent a group of aggrieved employees defined as all non-exempt, exempt, piece-rate based, and/or commission-based employees who worked for Defendant ROMERO MOTORS CORPORATION and/or Defendant ROMERO MOTORS, LLC and/or Defendant J. MCCULLOUGH CORP. and/or Defendant OREMOR DEVELOPMENT LLC and/or Defendant OREMOR EUROPEAN, LLC and/or Defendant OREMOR FINANCIAL SERVICES, LLC and/or Defendant OREMOR OF CAPISTRANO, LLC and/or Defendant OREMOR OF FONTANA, LLC and/or Defendant OREMOR OF FRESNO, LLC and/or Defendant OREMOR OF GLENDALE LLC and/or

Defendant OREMOR OF ITALY II, LLC and/or Defendant OREMOR OF ONTARIO EN, LLC and/or Defendant OREMOR OF ONTARIO JCDR, LLC and/or Defendant OREMOR OF RIVERSIDE RC, LLC and/or Defendant OREMOR OF RIVERSIDE, LLC and/or Defendant OREMOR OF TEMECULA LX LLC and/or Defendant OREMOR OF TEMECULA, LLC and/or Defendant OREMOR OF TUSTIN, LLC and/or Defendant OREMOR OF VICTORVILLE, LLC and/or Defendant OREMOR OF WOODLAND HILLS, LLC and/or Defendant UNITED RECOVERY, INC. and/or Defendant AQUIRECORP'S NORWALK AUTO AUCTION and/or Defendant JEEP CHRYSLER OF ONTARIO, INC. in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiffs against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiffs, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiffs reserve any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiffs continue their investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This amended notice is provided to enable Plaintiffs to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq*. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC

Jean-Claude Lapuyade, Esq.

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

JOSEPH GONZALEZ, an individual, on behalf of himself and on behalf of all persons similarly situated,

Plaintiff,

v.

ROMERO MOTORS CORPORATION, a California corporation; ROMERO MOTORS, LLC, a California limited liability company; J. MCCULLOUGH CORP., a California corporation; OREMOR DEVELOPMENT LLC, a California limited liability company; OREMOR EUROPEAN, LLC, a California limited liability company; OREMOR FINANCIAL SERVICES, LLC, a California limited liability company; OREMOR OF CAPISTRANO, LLC, a California limited liability company; OREMOR OF FONTANA, LLC, a California limited liability company; OREMOR OF FRESNO, LLC, a California

Case No: CIVSB2331022

REPRESENTATIVE ACTION COMPLAINT FOR:

1. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT AT LABOR CODE SECTIONS 2698 *ET SEQ.*

limited liability company; OREMOR OF GLENDALE LLC, a California limited liability company; OREMOR OF ITALY II, LLC, a California limited liability company; OREMOR OF ONTARIO EN, LLC, a California limited liability company; OREMOR OF ONTARIO JCDR, LLC, a California limited liability company; OREMOR OF RIVERSIDE RC, LLC, a California limited liability company; OREMOR OF RIVERSIDE, LLC, a California limited liability company; OREMOR OF TEMECULA LX LLC, a California limited liability company; OREMOR OF TEMECULA, LLC, a California limited liability company; OREMOR OF TUSTIN, LLC, a California limited liability company; OREMOR OF VICTORVILLE, LLC, a California limited liability company; OREMOR OF WOODLAND HILLS, LLC, a California limited liability company; UNITED RECOVERY, INC., a California corporation; AQUIRECORP'S NORWALK AUTO AUCTION, a California corporation; JEEP CHRYSLER OF ONTARIO, INC., a California corporation; and DOES 1-50, Inclusive,

Defendants.

PLAINTIFFS JOSEPH GONZALEZ (“PLAINTIFF GONZALEZ”) and JAMES HARDEN (“PLAINTIFF HARDEN”), individuals, in their representative capacity on behalf of the State of California and fellow current and former AGGRIEVED EMPLOYEES, defined *infra*, against ROMERO MOTORS CORPORATION, a California corporation, ROMERO MOTORS, LLC, a California limited liability company, J. MCCULLOUGH CORP., a California corporation, OREMOR DEVELOPMENT LLC, a California limited liability company, OREMOR EUROPEAN, LLC, a California limited liability company, OREMOR FINANCIAL SERVICES, LLC, a California limited liability company, OREMOR OF CAPISTRANO, LLC, a California limited liability company, OREMOR OF FONTANA, LLC, a California limited liability company, OREMOR OF FRESNO, LLC, a California limited liability company, OREMOR OF GLENDALE LLC, a California limited liability company, OREMOR OF ITALY II, LLC, a California limited liability company, OREMOR OF ONTARIO EN, LLC, a California limited liability company, OREMOR OF ONTARIO JCDR, LLC, a California limited liability company, OREMOR OF RIVERSIDE RC, LLC, a California limited liability company, OREMOR OF RIVERSIDE, LLC, a California limited liability company, OREMOR OF TEMECULA LX LLC, a California limited liability company, OREMOR OF TEMECULA, LLC, a California limited liability company, OREMOR OF TUSTIN, LLC, a California limited liability company, OREMOR OF VICTORVILLE, LLC, a California limited liability company, OREMOR OF WOODLAND HILLS, LLC, a California limited liability company, UNITED RECOVERY, INC., a California corporation, AQUIRECORP'S NORWALK AUTO AUCTION, a California corporation, and JEEP CHRYSLER OF ONTARIO, INC., a California corporation (“DEFENDANT” and/or “DEFENDANTS”), alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFFS bring this representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former aggrieved employees of DEFENDANTS for engaging in a pattern and practice of wage and hour violations under the California Labor Code and seeking only to recover PAGA civil penalties on behalf of all current and former aggrieved employees who worked for DEFENDANTS. PLAINTIFFS do **not**

seek to recover anything other than penalties as permitted by California Labor Code § 2699. To the extent that statutory violations are mentioned for wage violations, PLAINTIFFS do not seek underlying general and/or special damages for those violations, but simply the civil penalties permitted by California Labor Code § 2699.

2. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS decreased their employment-related costs by systematically violating California wage and hour laws.

3. DEFENDANTS' systematic pattern of wage and hour and IWC Wage Order violations toward PLAINTIFFS and other AGGRIEVED EMPLOYEES in California include, *inter alia*:

a. Failure to provide compliant meal and rest periods;

b. Failure to allow employees to take duty-free meal and rest periods;

c. Failure to pay all minimum, sick pay, regular and overtime wages;

d. Failure to correctly calculate the regular rate of pay;

e. Failure to pay within seven (7) days of the close of payroll;

f. Failure to pay for all hours worked;

g. Failure to maintain true and accurate records;

h. Failure to reimburse for required business expenses;

i. Failure to provide accurate itemized wage statements; and

j. Failure to timely pay wages due during, and upon termination of employment.

4. PLAINTIFFS brings this representative action against DEFENDANTS on behalf of AGGRIEVED EMPLOYEES of DEFENDANTS in California seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

5. PLAINTIFFS reserve the right to name additional representatives throughout the State of California

<u>THE PARTIES</u>

6. Defendant ROMERO MOTORS CORPORATION, a California corporation, Defendant ROMERO MOTORS, LLC, a California limited liability company, Defendant J. MCCULLOUGH CORP., a California corporation; Defendant OREMOR DEVELOPMENT LLC, a California limited liability company, Defendant OREMOR EUROPEAN, LLC, a California limited liability company,

Defendant OREMOR FINANCIAL SERVICES, LLC, a California limited liability company, Defendant OREMOR OF CAPISTRANO, LLC, a California limited liability company, Defendant OREMOR OF FONTANA, LLC, a California limited liability company, Defendant OREMOR OF FRESNO, LLC, a California limited liability company, Defendant OREMOR OF GLENDALE LLC, a California limited liability company, Defendant OREMOR OF ITALY II, LLC, a California limited liability company, Defendant OREMOR OF ONTARIO EN, LLC, a California limited liability company, Defendant OREMOR OF ONTARIO JCDR, LLC, a California limited liability company, Defendant OREMOR OF RIVERSIDE RC, LLC, a California limited liability company, Defendant OREMOR OF RIVERSIDE, LLC, a California limited liability company, Defendant OREMOR OF TEMECULA LX LLC, a California limited liability company, Defendant OREMOR OF TEMECULA, LLC, a California limited liability company, Defendant OREMOR OF TUSTIN, LLC, a California limited liability company, Defendant OREMOR OF VICTORVILLE, LLC, a California limited liability company, Defendant OREMOR OF WOODLAND HILLS, LLC, a California limited liability company, Defendant UNITED RECOVERY, INC., a California corporation, Defendant AQUIRECORP'S NORWALK AUTO AUCTION, a California corporation, and Defendant JEEP CHRYSLER OF ONTARIO, INC., a California corporation at all relevant times mentioned herein conducted and continue to conduct substantial and regular business in the state of California

7. PLAINTIFFS allege there has existed a unity of interest and ownership between DEFENDANTS such that any individuality and separateness between the entities has ceased and all Defendants are referred to herein as "DEFENDANT."

8. PLAINTIFFS allege that DOES 1-50 are the partners, agents, owners, or managers of DEFENDANT at all relevant times. PLAINTIFFS allege there has existed a unity of interest and ownership between Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR

OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. such that any individuality and separateness between the entities has ceased. Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. are therefore alter egos of each other. Adherence to the fiction of the separate existence of DEFENDANT would permit an abuse of the corporate privilege, and would promote injustice by protecting DEFENDANT from liability for the wrongful acts committed by them.

9. PLAINTIFFS further allege that DEFENDANTS are the alter egos of each other for the following reasons:

a. On the California Secretary of State’s website (https://businesssearch.sos.ca.gov/) Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant

OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. have the same entity address and/or mailing address and/or Agent for Service of Process;

b. On information and belief Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. utilize the same standardized employment forms and issue the same employment policies and same pay stubs;

c. On information and belief Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. have an executive team which supervise and manage the operations of all of DEFENDANT's car dealerships, supervised and managed the finances of all of DEFENDANT's car dealerships, supervised and managed the marketing of all of DEFENDANT's car dealerships, supervised and managed the human resources of all of DEFENDANT's car dealerships, and supervised and managed operations at all of DEFENDANT's car dealerships.

10. PLAINTIFFS allege that DEFENDANT's various separate corporate entities are used by an individual or individuals, or by another corporation, to accomplish inequitable purposes, including to limit liability for the unlawful acts of DEFENDANT.

11. PLAINTIFFS allege that there is such a unity of interest and ownership between DEFENDANT's various corporate entities that own DEFENDANT's car dealerships and the individual or individuals, or organization controlling those corporate entities that their separate personalities no longer exist.

12. PLAINTIFFS further allege that the failure to disregard the various corporate entities would promote injustice.

13. Alternatively, on information and belief, Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively. Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. each exerted control over the hours, wages and/or working conditions of PLAINTIFFS and the other members of

the CALIFORNIA CLASS. Therefore, Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. are jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

14. DEFENDANTS were PLAINTIFFS’ employers or persons acting on behalf of PLAINTIFFS’ employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

15. DEFENDANTS were PLAINTIFFS’ employers or persons acting on behalf of PLAINTIFFS’ employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

16. DEFENDANTS own and operate car dealerships in California, including in the county of San Bernardino where PLAINTIFFS worked.

17. PLAINTIFF GONZALEZ was employed by DEFENDANTS in California from September 2021 to April 2023, paid in part an hourly wage, commission-based compensation, non-

discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

18. PLAINTIFF HARDEN was employed by DEFENDANTS in California from October 2019 to February 2024, paid in part an hourly wage, commission-based compensation, non-discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

19. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to himself and all non-exempt, exempt, piece-rate based, and/or commission-based current and former employees who worked and/or work for Defendant ROMERO MOTORS CORPORATION and/or Defendant ROMERO MOTORS, LLC and/or Defendant J. MCCULLOUGH CORP. and/or Defendant OREMOR DEVELOPMENT LLC and/or Defendant OREMOR EUROPEAN, LLC and/or Defendant OREMOR FINANCIAL SERVICES, LLC and/or Defendant OREMOR OF CAPISTRANO, LLC and/or Defendant OREMOR OF FONTANA, LLC and/or Defendant OREMOR OF FRESNO, LLC and/or Defendant OREMOR OF GLENDALE LLC and/or Defendant OREMOR OF ITALY II, LLC and/or Defendant OREMOR OF ONTARIO EN, LLC and/or Defendant OREMOR OF ONTARIO JCDR, LLC and/or Defendant OREMOR OF RIVERSIDE RC, LLC and/or Defendant OREMOR OF RIVERSIDE, LLC and/or Defendant OREMOR OF TEMECULA LX LLC and/or Defendant OREMOR OF TEMECULA, LLC and/or Defendant OREMOR OF TUSTIN, LLC and/or Defendant OREMOR OF VICTORVILLE, LLC and/or Defendant OREMOR OF WOODLAND HILLS, LLC and/or Defendant UNITED RECOVERY, INC. and/or Defendant AQUIRECORP'S NORWALK AUTO AUCTION and/or Defendant JEEP CHRYSLER OF ONTARIO, INC., in California ("AGGRIEVED EMPLOYEES") during the time period of August 23, 2022, and the present ("PAGA Period").

20. PLAINTIFFS are "AGGRIEVED EMPLOYEES" within the meaning of Labor Code § 2699(c) because they was employed by DEFENDANT and suffered one or more of the alleged Labor Code violations committed by DEFENDANT.

21. PLAINTIFFS and all other AGGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANT, within the meanings set forth in the California Labor Code and the applicable Industrial Welfare Commission Wage Order

22. Each of the fictitiously named defendants participated in the acts alleged in this Second Amended Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFFS. PLAINTIFFS will amend this Complaint, setting forth the true names and capacities of these fictitiously named DEFENDANTS when their true names are ascertained. PLAINTIFFS are informed and believe, and on that basis allege, that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

23. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively "DEFENDANTS"), were PLAINTIFFS' employers or persons acting on behalf of PLAINTIFFS' employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

24. DEFENDANTS were PLAINTIFFS' employer or persons acting on behalf of PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

JURISDICTION AND VENUE

25. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court has jurisdiction over PLAINTIFFS' claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

26. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANTS, and DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in this County and/or

conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFFS and the AGGRIEVED EMPLOYEES.

THE CONDUCT

27. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFFS and the AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed to compensate PLAINTIFFS and the AGGRIEVED EMPLOYEES meal and rest premiums at the regular rate of pay, failed to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFFS and the AGGRIEVED EMPLOYEES for business expenses, and failed to issue to PLAINTIFFS and the AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate and/or failing to adhere to labor code section 226(a)(1)-(9). DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

A. Meal Period Violations

28. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the PAGA PERIOD, DEFENDANT required PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying

them for all the time they were under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

29. From time to time during the PAGA PERIOD, as a result of their rigorous work schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFFS the AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and the AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS failed to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which these employees are required by DEFENDANTS to work ten (10) hours of work. The nature of the work performed by PLAINTIFFS and the AGGRIEVED EMPLOYEES does not qualify for the limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, PLAINTIFFS and the AGGRIEVED EMPLOYEES were, from time to time, required to remain on duty and on call. Further, from time to time, DEFENDANT required PLAINTIFFS and other Aggrieved Employees to maintain cordless communication devices on them during what was supposed to be their off-duty meal break in order to receive and respond to work-related communications. DEFENDANTS' failure to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with legally required meal breaks is evidenced by DEFENDANTS' business records. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFFS and the AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

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B. Rest Period Violations

30. From time to time during the PAGA PERIOD, PLAINTIFFS the AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANTS' inadequate staffing. Further, for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFFS and the AGGRIEVED EMPLOYEES were, from time to time, required to on duty and/or on call. Further, from time to time, DEFENDANT required PLAINTIFFS and other Aggrieved Employees to maintain cordless communication devices on them during what was supposed to be their off-duty rest break in order to receive and respond to work-related communications. PLAINTIFFS and the AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFFS and the AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by DEFENDANT and DEFENDANTS' managers.

C. Unreimbursed Business Expenses

31. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFFS and the AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFFS the AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall 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."

32. In the course of their employment, DEFENDANTS required PLAINTIFFS and the AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell phones, personal vehicles and for the purchase of work uniforms as a result of and in furtherance of their job duties. Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES were required to use their personal cell phones and vehicles and purchase their own work uniforms in order to perform work related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFFS and the AGGRIEVED EMPLOYEES for the use of their personal cell phones and vehicles and purchase of their work uniforms. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFFS and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that included, but were not limited to, costs related to the use of their personal cell phones and vehicles and purchase of work uniforms, all on behalf of and for the benefit of DEFENDANT.

D. <u>Wage Statement Violations</u>

33. California Labor Code Section 226 required an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

34. From time to time during the PAGA PERIOD, when PLAINTIFFS and the AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time, DEFENDANTS issued wage statements that failed to provide the accurate name and

address of the legal entity that employed PLAINTIFFS and the AGGRIEVED EMPLOYEES, in violation of Cal. Lab. Code § 226(a)(8).

35. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal. Lab. Code § 226.

36. As a result, DEFENDANTS issued PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

E. <u>Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations</u>

37. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continues to fail to accurately pay PLAINTIFFS and the AGGRIEVED EMPLOYEES.

38. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFFS and the AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This resulted in PLAINTIFFS and the AGGRIEVED EMPLOYEES having to work while off-the-clock.

39. DEFENDANTS directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFFS and the AGGRIEVED EMPLOYEES.

40. DEFENDANTS controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of PLAINTIFFS the AGGRIEVED EMPLOYEES.

41. DEFENDANTS were able to track the amount of time PLAINTIFFS and the AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFFS and the AGGRIEVED EMPLOYEES all wages earned and owed for all the work they performed.

42. PLAINTIFFS and the AGGRIEVED EMPLOYEES were non-exempt employees, subject to the requirements of the California Labor Code.

43. DEFENDANTS' policies and practices deprived PLAINTIFFS and the AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFFS and the AGGRIEVED EMPLOYEES typically worked over

forty (40) hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

44. DEFENDANTS knew or should have known that PLAINTIFFS the AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

45. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

F. <u>Commission and Piece-Rate Based Violations</u>

46. From time-to-time during the PAGA PERIOD, PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis. In those instances where PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis, PLAINTIFFS and the AGGRIEVED EMPLOYEES were entitled to be separately compensated for all non-productive time at an hourly rate that is no less than the applicable minimum wage. Notwithstanding, in those instances where PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to separately compensate PLAINTIFFS and the AGGRIEVED EMPLOYEES for all non-productive time, including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited minimum wages and overtime wages by DEFENDANT'S failure to separately compensate their non-productive time at an hourly rate that is no less than the applicable minimum wage.

G. <u>Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay</u>

47. From time to time during the PAGA PERIOD, DEFENDANTS failed and continues to fail to accurately calculate and pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited wages due to them for working

overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANTS' uniform policy and practice not to the AGGRIEVED EMPLOYEES at the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

48. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFFS and the AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

49. DEFENDANTS' non-discretionary commission and bonus program provided the AGGRIEVED EMPLOYEES, including PLAINTIFFS, with commissions and/or bonus compensation when the employees met the various performance goals set by DEFENDANT. However, when calculating the regular rate of pay, in those pay periods where PLAINTIFFS and the AGGRIEVED EMPLOYEES worked overtime and earned non-discretionary bonus and/or commission wages, DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or commission wages as part of the employees' "regular rate of pay."

50. Management and supervisors described the bonus and commissions programs and commission compensation program to potential and new employees as part of the compensation package for new and used car salespersons including PLAINTIFFS and the AGGRIEVED EMPLOYEES. As a matter of law, the incentive and commission compensation received by PLAINTIFFS and other AGGRIEVED EMPLOYEES must be included and correctly calculated into the "regular rate of pay" for purposes of overtime and double time compensation, meal and rest period premium payments, and sick pay. DEFENDANT's failure to do so has resulted in DEFENDANT's systematic underpayment of overtime and double time compensation, meal and rest period premium payments, and sick pay to PLAINTIFFS and other AGGRIEVED EMPLOYEES. Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation as part of the "regular

rate of pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

51. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice, and procedure, intentionally and knowingly failed to compensate PLAINTIFFS and the AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

H. <u>Unlawful Deductions</u>

52. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFFS and the AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so or notice to PLAINTIFFS and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS violated Labor Code § 221.

I. <u>Timekeeping Manipulation</u>

53. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual time PLAINTIFFS the AGGRIEVED EMPLOYEES worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS the AGGRIEVED EMPLOYEES in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest breaks.

54. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

/ / /

55. The mutability of the timekeeping system also allowed DEFENDANTS to alter employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS' timekeeping system so as to create the appearance that PLAINTIFFS and the AGGRIEVED EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

56. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay PLAINTIFFS the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

J. <u>Unlawful Rounding Practices</u>

57. During the CALIFORNIA PAGA PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFFS and the AGGRIEVED EMPLOYEES being undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and the AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

58. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFFS and the AGGRIEVED EMPLOYEES' time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and

practice caused PLAINTIFFS and the AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.

K. Violations for Untimely Payment of Wages

59. Pursuant to California Labor Code section 204, PLAINTIFFS and the AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFFS and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within permissible time period.

FIRST CAUSE OF ACTION

For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFFS and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)

60. PLAINTIFFS and the AGGRIEVED EMPLOYEES reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

61. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

62. PLAINTIFFS brings this Representative Action on behalf of the State of California with respect to all current and former AGGRIEVED EMPLOYEES employed by DEFENDANT during the PAGA PERIOD.

63. At all relevant times, for the reasons described herein, and others, PLAINTIFFS and the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the meaning of

Labor Code Section 2699(c).

64. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like PLAINTIFFS, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

65. PLAINTIFF GONZALEZ complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated August 23, 2023, PLAINTIFF GONZALEZ gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANT of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. (See **Exhibit #1.)**

66. PLAINTIFF HARDEN complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated January 31, 2025, PLAINTIFF HARDEN gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANT of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. (See **Exhibit #2.)**

67. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA with notice and amended notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFFS may commence and is authorized to pursue this cause of action.

68. Pursuant to Labor Code Sections 2699(a) and (f), the AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804 in the following amounts:

a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars ($100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars ($200) for AGGIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars ($250) for each AGGRIEVED EMOPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars ($100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars ($200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars ($50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars ($100) for each underpaid AGGIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars ($250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars ($1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred ($500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1197, 1198, and 1199, a civil penalty in the amount of one hundred dollars ($100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty ($250) per AGGIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

69. For all provisions of the Labor Code for which civil penalty is not specifically provided,

Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars ($100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars ($200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFFS and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

70. PLAINTIFFS seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES only. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["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."], Emphasis added, reh'g denied (June 13, 2018).)

PRAYER FOR RELIEF

WHEREFORE**,** PLAINTIFF prays for judgment against DEFENDANT as follows:

(a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;

(b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and

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

Dated:

Respectfully Submitted,
JCL LAW FIRM, APC

By: ____________________________
Jean-Claude Lapuyade, Esq.
Attorneys for PLAINTIFF

EXHIBIT 1

5440 Morehouse Drive
Suite 3600
San Diego, CA 92121
619-599-8292
Fax 619-599-8291
Toll-Free 1-888-498-6999

August 23, 2023

<u>Via Online Filing to LWDA and Certified Mail to Defendants</u>
Labor and Workforce Development Agency
Online Filing

ROMERO MOTORS CORPORATION
ROMERO MOTORS, LLC
J. MCCULLOUGH CORP.
OREMOR DEVELOPMENT LLC
OREMOR EUROPEAN, LLC
OREMOR FINANCIAL SERVICES, LLC
OREMOR OF CAPISTRANO, LLC
OREMOR OF FONTANA, LLC
OREMOR OF FRESNO, LLC
OREMOR OF GLENDALE LLC
OREMOR OF ITALY II, LLC
OREMOR OF ONTARIO EN, LLC
OREMOR OF ONTARIO JCDR, LLC
OREMOR OF RIVERSIDE RC, LLC
OREMOR OF RIVERSIDE, LLC
OREMOR OF TEMECULA LX LLC
OREMOR OF TEMECULA, LLC
OREMOR OF TUSTIN, LLC
OREMOR OF VICTORVILLE, LLC
OREMOR OF WOODLAND HILLS, LLC
UNITED RECOVERY, INC.
AQUIRECORP'S NORWALK AUTO AUCTION
JEEP CHRYSLER OF ONTARIO, INC.
c/o Richard J Romero
1377 Kettering Dr
Ontario, CA 91761
Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0880 7023 67

Re: <u>Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5</u>

Dear Sir/Madam:

Our offices represent Plaintiff JOSEPH GONZALEZ ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. (collectively, hereinafter, "Defendants"). Plaintiff was employed by Defendants from September of 2021 to April of 2023, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages. Plaintiff further contends that Defendants failed to advise Plaintiff and the other aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiff and the other aggrieved employees for the non-productive time, including for their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 110. Further, Defendants improperly misclassified aggrieved employees who were paid on a draw versus commission basis as exempt from overtime compensation. Defendants included advanced draws in order to meet the salary-basis test for the overtime exemption. However, Defendants cannot rely on advanced draws in order to meet the salary-basis test for such an exemption. See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt, exempt, piece-rate based, and/or commission-based employees who worked for Defendant ROMERO MOTORS CORPORATION and/or Defendant ROMERO MOTORS, LLC and/or Defendant J. MCCULLOUGH CORP. and/or Defendant OREMOR DEVELOPMENT LLC and/or Defendant OREMOR EUROPEAN, LLC and/or Defendant OREMOR FINANCIAL SERVICES, LLC and/or Defendant OREMOR OF CAPISTRANO, LLC and/or Defendant OREMOR OF FONTANA, LLC and/or Defendant OREMOR OF FRESNO, LLC and/or Defendant OREMOR OF GLENDALE LLC and/or Defendant OREMOR OF ITALY II, LLC and/or Defendant OREMOR OF ONTARIO EN, LLC and/or Defendant OREMOR OF ONTARIO JCDR, LLC and/or Defendant OREMOR OF RIVERSIDE RC, LLC and/or Defendant OREMOR OF RIVERSIDE, LLC and/or Defendant OREMOR OF TEMECULA LX LLC and/or Defendant OREMOR OF TEMECULA, LLC and/or Defendant OREMOR OF TUSTIN, LLC and/or Defendant OREMOR OF VICTORVILLE, LLC and/or Defendant OREMOR OF WOODLAND HILLS, LLC and/or Defendant UNITED RECOVERY, INC. and/or Defendant AQUIRECORP'S NORWALK AUTO AUCTION and/or Defendant JEEP CHRYSLER OF ONTARIO, INC. in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq*. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC

Jean-Claude Lapuyade, Esq.

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

JOSEPH GONZALEZ, an individual, on behalf of himself and on behalf of all persons similarly situated, Plaintiff, v. ROMERO MOTORS CORPORATION, a California corporation; ROMERO MOTORS, LLC, a California limited liability company; J. MCCULLOUGH CORP., a California corporation; OREMOR DEVELOPMENT LLC, a California limited liability company; OREMOR EUROPEAN, LLC, a California limited liability company; OREMOR FINANCIAL SERVICES, LLC, a California limited liability company; OREMOR OF CAPISTRANO, LLC, a California limited liability company; OREMOR OF FONTANA, LLC, a California limited liability company; OREMOR OF FRESNO, LLC, a California	Case No: **CLASS ACTION COMPLAINT FOR:** 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*; 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1; 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq;* 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER; 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

limited liability company; OREMOR OF GLENDALE LLC, a California limited liability company; OREMOR OF ITALY II, LLC, a California limited liability company; OREMOR OF ONTARIO EN, LLC, a California limited liability company; OREMOR OF ONTARIO JCDR, LLC, a California limited liability company; OREMOR OF RIVERSIDE RC, LLC, a California limited liability company; OREMOR OF RIVERSIDE, LLC, a California limited liability company; OREMOR OF TEMECULA LX LLC, a California limited liability company; OREMOR OF TEMECULA, LLC, a California limited liability company; OREMOR OF TUSTIN, LLC, a California limited liability company; OREMOR OF VICTORVILLE, LLC, a California limited liability company; OREMOR OF WOODLAND HILLS, LLC, a California limited liability company; UNITED RECOVERY, INC., a California corporation; AQUIRECORP'S NORWALK AUTO AUCTION, a California corporation; JEEP CHRYSLER OF ONTARIO, INC., a California corporation; and DOES 1-50, Inclusive,

Defendants.

6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802.

DEMAND FOR A JURY TRIAL

Plaintiff JOSEPH GONZALEZ ("PLAINTIFF"), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant ROMERO MOTORS CORPORATION, a California corporation; Defendant ROMERO MOTORS, LLC, a California limited liability company; Defendant J. MCCULLOUGH CORP., a California corporation; Defendant OREMOR DEVELOPMENT LLC, a California limited liability company; Defendant OREMOR EUROPEAN, LLC, a California limited liability company; Defendant OREMOR FINANCIAL SERVICES, LLC, a California limited liability company; Defendant OREMOR OF CAPISTRANO, LLC, a California limited liability company; Defendant OREMOR OF FONTANA, LLC, a California limited liability company; Defendant OREMOR OF FRESNO, LLC, a California limited liability

company; Defendant OREMOR OF GLENDALE LLC, a California limited liability company; Defendant OREMOR OF ITALY II, LLC, a California limited liability company; Defendant OREMOR OF ONTARIO EN, LLC, a California limited liability company; Defendant OREMOR OF ONTARIO JCDR, LLC, a California limited liability company; Defendant OREMOR OF RIVERSIDE RC, LLC, a California limited liability company; Defendant OREMOR OF RIVERSIDE, LLC, a California limited liability company; Defendant OREMOR OF TEMECULA LX LLC, a California limited liability company; Defendant OREMOR OF TEMECULA, LLC, a California limited liability company; Defendant OREMOR OF TUSTIN, LLC, a California limited liability company; Defendant OREMOR OF VICTORVILLE, LLC, a California limited liability company; Defendant OREMOR OF WOODLAND HILLS, LLC, a California limited liability company; Defendant UNITED RECOVERY, INC., a California corporation; Defendant AQUIRECORP'S NORWALK AUTO AUCTION, a California corporation; and Defendant JEEP CHRYSLER OF ONTARIO, INC., a California corporation at all relevant times mentioned herein conducted and continue to conduct substantial and regular business in the state of California.

2. PLAINTIFF alleges there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased and all Defendants are referred to herein as “DEFENDANT” and/or “DEFENDANT.”

3. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest and ownership between Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC,

Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. such that any individuality and separateness between the entities has ceased. Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. are therefore alter egos of each other. Adherence to the fiction of the separate existence of DEFENDANT would permit an abuse of the corporate privilege, and would promote injustice by protecting DEFENDANT from liability for the wrongful acts committed by them.

4. PLAINTIFF further alleges that DEFENDANT are the alter egos of each other for the following reasons:

i. On the California Secretary of State’s website (https://businesssearch.sos.ca.gov/) Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant

OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. have the same entity address and/or mailing address and/or Agent for Service of Process;

ii. On information and belief Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. utilize the same standardized employment forms and issue the same employment policies and same pay stubs;

iii. On information and belief Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF

FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. have an executive team which supervise and manage the operations of all of DEFENDANT's car dealerships, supervised and managed the finances of all of DEFENDANT's car dealerships, supervised and managed the marketing of all of DEFENDANT's car dealerships, supervised and managed the human resources of all of DEFENDANT's car dealerships, and supervised and managed operations at all of DEFENDANT's car dealerships.

5. PLAINTIFF alleges that DEFENDANT's various separate corporate entities are used by an individual or individuals, or by another corporation, to accomplish inequitable purposes, including to limit liability for the unlawful acts of DEFENDANT.

6. PLAINTIFF alleges that there is such a unity of interest and ownership between DEFENDANT's various corporate entities that own DEFENDANT's car dealerships and the individual or individuals, or organization controlling those corporate entities that their separate personalities no longer exist.

7. PLAINTIFF further alleges that the failure to disregard the various corporate entities would promote injustice.

8. Alternatively, on information and belief, Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF

FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively. Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. each exerted control over the hours, wages and/or working conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS. Therefore, Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR

OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. are jointly responsible as employers for the conduct alleged herein as "DEFENDANTS" and/or "DEFENDANT."

9. DEFENDANTS owns and operate car dealerships in California, including in the county of San Bernardino where PLAINTIFF worked.

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively "DEFENDANTS" and/or "DEFENDANT") are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

11. The agents, servants, and/or employees of the Defendants and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

12. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or

caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

13. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

14. PLAINTIFF was employed by DEFENDANTS in California from September of 2021 to April of 2023, paid in part an hourly wage, commission-based compensation, non-discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

15. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all current and former non-exempt, exempt, piece-rate based, and/or commission-based employees employed by Defendant ROMERO MOTORS CORPORATION and/or Defendant ROMERO MOTORS, LLC and/or Defendant J. MCCULLOUGH CORP. and/or Defendant OREMOR DEVELOPMENT LLC and/or Defendant OREMOR EUROPEAN, LLC and/or Defendant OREMOR FINANCIAL SERVICES, LLC and/or Defendant OREMOR OF CAPISTRANO, LLC and/or Defendant OREMOR OF FONTANA, LLC and/or Defendant OREMOR OF FRESNO, LLC and/or Defendant OREMOR OF GLENDALE LLC and/or Defendant OREMOR OF ITALY II, LLC and/or Defendant OREMOR OF ONTARIO EN, LLC and/or Defendant OREMOR OF ONTARIO JCDR, LLC and/or Defendant OREMOR OF RIVERSIDE RC, LLC and/or Defendant OREMOR OF RIVERSIDE, LLC and/or Defendant OREMOR OF TEMECULA LX LLC and/or Defendant OREMOR OF TEMECULA, LLC and/or Defendant OREMOR OF TUSTIN, LLC and/or Defendant OREMOR OF VICTORVILLE, LLC and/or Defendant OREMOR OF WOODLAND HILLS, LLC and/or Defendant UNITED RECOVERY, INC. and/or Defendant AQUIRECORP'S NORWALK AUTO AUCTION and/or

Defendant JEEP CHRYSLER OF ONTARIO, INC. in California ("CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars ($5,000,000.00).

16. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

17. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

18. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

19. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This

action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

20. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in this County and/or conduct substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CONDUCT

21. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS overtime, sick pay, and meal rest premiums at the correct regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

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A. Meal and Rest Period Violations

22. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor Codes, an employer shall not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. If an employer fails to provide an employee with a mandated meal period, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

23. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were from time to time required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT from time-to-time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period from time to time in which these employees were required by DEFENDANT to work ten (10) hours of work from time to time. Further, from time to time, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless communication devices on them during what was supposed to be their off-duty meal break in order to receive and respond to work-related communications. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT’s strict corporate policy and practice.

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24. Further, pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

25. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor Codes, an employer shall authorize ad permit all employees to take a rest periods, which so far as practical shall be in the middle of each work period. Generally, an employer must provide ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided.

26. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4) hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours

or more from time to time. Further, from time to time, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless communication devices on them during what was supposed to be their off-duty rest break in order to receive and respond to work-related communications. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members were from time to time required to remain on the premises, on-duty and on-call during their rest periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages in lieu thereof.

B. <u>Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick Pay</u>

27. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS were compensated at an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific elements of an employee's performance and/or commissions.

28. DEFENDANTS' non-discretionary commission and bonus program provided the CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation when the employees met the various performance goals set by DEFENDANT. However, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned non-discretionary bonus and/or commission wages, DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or commission wages as part of the employees' "regular rate of pay.".

29. Management and supervisors described the bonus and commissions programs and commission compensation program to potential and new employees as part of the compensation package for new and used car salespersons including PLAINTIFF and the CALIFORNIA CLASS. As a matter of law, the incentive and commission compensation received by PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly calculated into the "regular rate of pay" for purposes of overtime and double time compensation, meal and rest period premium payments, and sick pay. DEFENDANT's failure to do so has resulted in DEFENDANT's systematic underpayment of overtime and double time compensation,

meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

30. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime and double time compensation, meal and rest period premium payments, and sick pay. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the correct overtime and double time compensation, meal and rest period premium payments, and sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

C. <u>Commission and Piece-Rate Violations</u>

31. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately compensated for all non-productive time at an hourly rate that is no less than the applicable minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,

including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum wages and overtime wages by DEFENDANT'S failure to separately compensate their non-productive time at an hourly rate that is no less than the applicable minimum wage.

32. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid on a draw versus commission basis as exempt from overtime compensation. During the CLASS PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.) As a result, PLAINTIFF and the CALIFORNIA CLASS members who were paid on a draw versus commission basis forfeited overtime wages by DEFENDANTS' failure to accurately classify them as non-exempt from overtime compensation.

D. <u>Off-the-Clock Minimum Wage and Overtime Violations</u>

33. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control.

34. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary wages for attending for performing work at DEFENDANTS' direction, request, and benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business records.

35. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

36. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments, and employment conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS.

37. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed, including pre-shift, post shift and during meal period off-the-clock work.

38. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

39. DEFENDANTS' policies and practices deprived PLAINTIFF and the other members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

40. DEFENDANTS knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

41. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

E. <u>Unreimbursed Business Expenses</u>

42. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and

other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that “an employer shall 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.”

43. In the course of their employment, DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS Members to use their personal cell phones, personal vehicles and for the purchase of work uniforms as a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of their own personal cell phones, personal vehicles and for the purchase of work uniforms, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential job duties, including but not limited to, sending and receiving work-related communications from DEFENDANTS and DEFENDANTS’ clients and using personal vehicles to deliver paperwork to DEFENDANT and DEFENDANTS’ clients. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal cell phones, personal vehicles and purchase of work uniforms. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related to the use of their personal cellular phones, personal vehicles and purchase of work uniforms, all on behalf of and for the benefit of DEFENDANTS.

F. <u>Wage Statement Violations</u>

44. California Labor Code Sections 226 and 226.2 require an employer to furnish its employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee’s social security

number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and (11) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

45. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANT furnished PLAINTIFF and the CALIFORNIA CLASS written wage statements that failed to accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and (7) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

46. In addition to the violations described above, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

47. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

G. <u>Violations for Untimely Payment of Wages</u>

48. Pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA CLASS members were entitled to timely payment of wages during their employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not

receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within permissible time period.

49. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous 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." PLAINTIFF and the CALIFORNIA CLASS Members were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

50. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all CALIFORNIA CLASS Members whose employment ended during the CLASS PERIOD.

H. Unlawful Deductions

51. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF and CALIFORNIA CLASS Members' pay without explanations and without authorization to do so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANTS violated Labor Code § 221.

I. Unlawful Rounding Practices

52. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANT's timekeeping system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for

overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

53. Further, the mutability of DEFENDANT's timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time being inaccurately recorded. As a result, from time to time, DEFENDANT' unlawful rounding policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break.

54. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally required off-duty meal breaks to him and paid rest periods to him as required by the applicable Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him from being relieved of all of his duties for the legally required off-duty meal periods. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT'S failure to provide PLAINTIFFS with the legally required second off-duty meal period is evidenced by DEFENDANT's business records. From time to time, and as a result of DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay minimum wages due for all time worked and separate compensation for rest breaks, the wage statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all required business expenses including for the use of his personal cell phone, personal vehicle and purchase of work uniforms. To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums due to him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages owed to him under California Labor Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed $75,000.

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THE CALIFORNIA CLASS

55. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of all current and former non-exempt, exempt, piece-rate based, and/or commission-based employees employed by Defendant ROMERO MOTORS CORPORATION and/or Defendant ROMERO MOTORS, LLC and/or Defendant J. MCCULLOUGH CORP. and/or Defendant OREMOR DEVELOPMENT LLC and/or Defendant OREMOR EUROPEAN, LLC and/or Defendant OREMOR FINANCIAL SERVICES, LLC and/or Defendant OREMOR OF CAPISTRANO, LLC and/or Defendant OREMOR OF FONTANA, LLC and/or Defendant OREMOR OF FRESNO, LLC and/or Defendant OREMOR OF GLENDALE LLC and/or Defendant OREMOR OF ITALY II, LLC and/or Defendant OREMOR OF ONTARIO EN, LLC and/or Defendant OREMOR OF ONTARIO JCDR, LLC and/or Defendant OREMOR OF RIVERSIDE RC, LLC and/or Defendant OREMOR OF RIVERSIDE, LLC and/or Defendant OREMOR OF TEMECULA LX LLC and/or Defendant OREMOR OF TEMECULA, LLC and/or Defendant OREMOR OF TUSTIN, LLC and/or Defendant OREMOR OF VICTORVILLE, LLC and/or Defendant OREMOR OF WOODLAND HILLS, LLC and/or Defendant UNITED RECOVERY, INC. and/or Defendant AQUIRECORP'S NORWALK AUTO AUCTION and/or Defendant JEEP CHRYSLER OF ONTARIO, INC. in California ("CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars ($5,000,000.00).

56. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

57. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,

and illegal meal and rest period policies. Defendant further failed to reimburse for business expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage statements, and failed to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

58. The members of the class are so numerous that joinder of all class members is impractical.

59. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid mean and rest period premiums, failing to provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

i. Whether DEFENDANTS maintained legally compliant meal period policies and practices;

ii. Whether DEFENDANTS maintained legally compliant rest period policies and practices;

iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;

iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;

v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;

vi. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;

vii. Whether DEFENDANTS issued legally compliant wage statements;

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viii. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;

ix. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;

x. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

60. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

61. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same interests as the other members of the class.

62. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

63. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

64. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests of the other CALIFORNIA CLASS Members.

65. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

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66. The questions of law and fact common to the CALIFORNIA CLASS Members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

67. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members in impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

68. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

<u>FIRST CAUSE OF ACTION</u>

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

69. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

70. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code § 17021.

71. California Business & Professions Code §§ 17200, et seq. (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

> Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

72. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

73. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or substantially injurious to employees, and were without valid justification or utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code, including restitution of wages wrongfully withheld.

74. By the conduct alleged herein, DEFENDANT’s practices were deceptive and fraudulent in that DEFENDANT’s uniform policy and practice failed to pay all minimum and overtime wages due, failed to provide the legally mandated meal and rest periods, failed to pay the required amount of compensation for missed meal and rest periods, and failed to reimburse

necessary business expenses incurred due to a systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, et seq., and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

75. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

76. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide all legally required meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

77. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

78. PLAINTIFF further demands on behalf of himself and each member of the CALIFORNIA CLASS one (1) hour of pay for each workday in which a rest period was not given and a premium was not timely provided as required by law.

79. By and through the unlawful and unfair business practices described herein, DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

80. All the acts described herein as violations of, among other things, the Industrial

Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, et seq.

81. PLAINTIFF and the other members of the CALIFORNIA CLASS were entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all time worked.

82. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

83. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

<u>SECOND CAUSE OF ACTION</u>

Failure To Pay Minimum Wages

(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

84. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

85. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for

DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages.

86. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

87. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed in unlawful.

88. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

89. As set forth above, during the CLASS PERIOD, DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they worked. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

90. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS regarding minimum wage pay.

91. In committing these violations of the California Labor Code, DEFENDANT inaccurately calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

92. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum wage compensation for their time worked for DEFENDANT.

93. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.

94. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to the PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

95. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

96. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

97. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA CLASS Members who have

terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

(Cal. Lab. Code §§ 510, 1194 and 1198)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

98. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

99. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to properly compensate the members of the CALIFORNIA CLASS for all overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek during the CLASS PERIOD.

100. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

101. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amount specified by law.

102. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed

by the Industrial Welfare Commission is unlawful.

103. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

104. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked, including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

105. In committing these violations of the California Labor Code, DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

106. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full compensation for all overtime worked.

107. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of himself and the CALIFORNIA CLASS based on DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of California.

108. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a failure to pay all earned wages.

109. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT's business records and witnessed by employees.

110. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

111. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS are under compensated for their overtime worked. DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA CLASS the applicable overtime rate.

112. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide them with the requisite overtime compensation, DEFENDANT acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

113. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including overtime wages, according to proof, interest,

statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

<u>FOURTH CAUSE OF ACTION</u>

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

114. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

115. During the CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the CALIFORNIA CLASS as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and the CALIFORNIA CLASS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and the CALIFORNIA CLASS were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

116. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

117. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

118. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

119. During the CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

120. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and the CALIFORNIA CLASS who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of

compensation at each employee's regular rate of pay for each workday that rest period was not provided.

121. As a proximate result of the aforementioned violations, PLAINTIFF and the CALIFORNIA CLASS have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code §§ 226)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

122. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

123. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing: (1) Gross wages earned; (2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) Net wages earned; (6) The inclusive dates of the period for which the employee is paid,; (7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement; (8) The name and address of the legal entity that is the employer, and (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

124. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements

which failed to accurately show, among other things, (1) Gross wages earned; (2) Total hours worked by the employee, (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions; (5) Net wages earned; and (6) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

125. Further, during the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements in compliance with Cal. Labor Code Section 226.2, which failed to accurately show, among other things: (1) the total hours of compensable rest and recovery periods; and (2) the total hours of other nonproductive time, the rate of compensation for the nonproductive time and the gross wages paid for the nonproductive time during the applicable pay period.

126. PLAINTIFFS and the members of the CALIFORNIA CLASS were injured by DEFENDANTS' violations in that they could not promptly and easily determine from the wage statement alone, the amount of gross or net wages paid, the total hours worked, the number pf piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate to the employee during the applicable pay period.

127. DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and intentional in that DEFENDANTS willfully intended to issue wage statements that were out of compliance with § 226 and 226.2.

128. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226 and 226.2, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars ($50.00) for the initial pay period in which the violation occurred, and one hundred dollars ($100.00) for each violation in a subsequent pay period

pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more than four thousand dollars ($4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

<u>SEVENTH CAUSE OF ACTION</u>

Failure To Pay Wages When Due

(Cal. Lab. Code §§ 203)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

129. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

130. Cal. Lab. Code § 200 provides, in relevant part, that:

> As used in this article:(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

131. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

132. Cal. Lab. Code § 202 provides, in relevant part, that:

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous 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. Notwithstanding any other provision of law, an employee who quits

> without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

133. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members' employment contract.

134. Cal. Lab. Code § 203 provides, in relevant part, that:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

135. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

136. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid minimum and/or overtime wages and/or missed meal and rest breaks without being paid the legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed by law.

/ / /

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

137. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

138. Cal. Lab. Code § 2802 provides, in relevant part, that:

> An employer shall 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.

139. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal cellular phones, personal vehicles and purchase of work uniforms all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal cell phones, personal vehicles and purchase of work uniforms to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their personal cellular phones, personal vehicles and purchase of work uniformsfor DEFENDANTS within the course and scope of their employment for DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by

DEFENDANTS' conduct to assert any waiver of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and regulations of California.

140. PLAINTIFF therefore demands reimbursement on behalf of the members of the CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:
    a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
    b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
    c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
    d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA CLASS:
    a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
    b. Compensatory damages, according to proof at trial, including compensatory

damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;

c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

d. The greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000), and an award of costs for violation of Cal. Lab. Code § 226

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On all claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: August 23, 2023

JCL LAW FIRM, APC

By:______________________________

Jean-Claude Lapuyade, Esq.

Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: August 23, 2023

JCL LAW FIRM, APC

By:____________________________________

Jean-Claude Lapuyade, Esq.

Attorney for PLAINTIFF

EXHIBIT 2

jcl law firm apc
EMPLOYMENT LAWYERS

5440 Morehouse Drive
Suite 3600
San Diego, CA 92121
619-599-8292
Fax 619-599-8291
Toll-Free 1-888-498-6999

January 31, 2025

Via Online Filing to LWDA and Certified Mail to Defendants
Labor and Workforce Development Agency
Online Filing

ROMERO MOTORS CORPORATION
ROMERO MOTORS, LLC
J. MCCULLOUGH CORP.
OREMOR DEVELOPMENT LLC
OREMOR EUROPEAN, LLC
OREMOR FINANCIAL SERVICES, LLC
OREMOR OF CAPISTRANO, LLC
OREMOR OF FONTANA, LLC
OREMOR OF FRESNO, LLC
OREMOR OF GLENDALE LLC
OREMOR OF ITALY II, LLC
OREMOR OF ONTARIO EN, LLC
OREMOR OF ONTARIO JCDR, LLC
OREMOR OF RIVERSIDE RC, LLC
OREMOR OF RIVERSIDE, LLC
OREMOR OF TEMECULA LX LLC
OREMOR OF TEMECULA, LLC
OREMOR OF TUSTIN, LLC
OREMOR OF VICTORVILLE, LLC
OREMOR OF WOODLAND HILLS, LLC
UNITED RECOVERY, INC.
AQUIRECORP'S NORWALK AUTO AUCTION
JEEP CHRYSLER OF ONTARIO, INC.
c/o Fisher & Phillips LLP
2050 Main Street, Suite 1000
Irvine, CA 92614
Via Electronic Mail

Re: **Amended Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiffs JOSEPH GONZALEZ ("Plaintiff Gonzalez") and JAMES HARDEN ("Plaintiff Harden"), and other aggrieved employees in a proposed lawsuit against Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant

OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. (collectively, hereinafter, "Defendants"). Plaintiff Gonzalez was employed by Defendants from September 2021 to April 2023, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Plaintiff Harden was employed by Defendants from October 2019 to February 2024, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiffs and other aggrieved employees for earned wages. Plaintiffs further contend that Defendants failed to advise Plaintiffs and the other aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiffs and the other aggrieved employees for the non-productive time, including for their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 110. Further, Defendants improperly misclassified aggrieved employees who were paid on a draw versus commission basis as exempt from overtime compensation. Defendants included advanced draws in order to meet the salary-basis test for the overtime exemption. However, Defendants cannot rely on advanced draws in order to meet the salary-basis test for such an exemption. See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.

The original claim in this case was submitted to the LWDA by Plaintiff Gonzalez on August 23, 2023, against Defendants (August 23, 2023, PAGA Notice"). Plaintiff Harden retained counsel to prosecute his claims against Defendants. The August 23, 2023, PAGA Notice is therefore amended to add Plaintiff Harden as an additional plaintiff in this matter. Plaintiff Harden's claims shall relate back to the date of Plaintiff Gonzalez's August 23, 2023, PAGA Notice.

As a consequence of the aforementioned violations, Plaintiffs further contend that Defendants failed to provide accurate wage statements to them and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiffs seek to represent a group of aggrieved employees defined as all non-exempt, exempt, piece-rate based, and/or commission-based employees who worked for Defendant ROMERO MOTORS CORPORATION and/or Defendant ROMERO MOTORS, LLC and/or Defendant J. MCCULLOUGH CORP. and/or Defendant OREMOR DEVELOPMENT LLC and/or Defendant OREMOR EUROPEAN, LLC and/or Defendant OREMOR FINANCIAL SERVICES, LLC and/or Defendant OREMOR OF CAPISTRANO, LLC and/or Defendant OREMOR OF FONTANA, LLC and/or Defendant OREMOR OF FRESNO, LLC and/or Defendant OREMOR OF GLENDALE LLC and/or

Defendant OREMOR OF ITALY II, LLC and/or Defendant OREMOR OF ONTARIO EN, LLC and/or Defendant OREMOR OF ONTARIO JCDR, LLC and/or Defendant OREMOR OF RIVERSIDE RC, LLC and/or Defendant OREMOR OF RIVERSIDE, LLC and/or Defendant OREMOR OF TEMECULA LX LLC and/or Defendant OREMOR OF TEMECULA, LLC and/or Defendant OREMOR OF TUSTIN, LLC and/or Defendant OREMOR OF VICTORVILLE, LLC and/or Defendant OREMOR OF WOODLAND HILLS, LLC and/or Defendant UNITED RECOVERY, INC. and/or Defendant AQUIRECORP'S NORWALK AUTO AUCTION and/or Defendant JEEP CHRYSLER OF ONTARIO, INC. in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiffs against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiffs, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiffs reserve any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiffs continue their investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This amended notice is provided to enable Plaintiffs to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq*. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC

Jean-Claude Lapuyade, Esq.

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

JOSEPH GONZALEZ, an individual, on behalf of himself and on behalf of all persons similarly situated,

Plaintiff,

v.

ROMERO MOTORS CORPORATION, a California corporation; ROMERO MOTORS, LLC, a California limited liability company; J. MCCULLOUGH CORP., a California corporation; OREMOR DEVELOPMENT LLC, a California limited liability company; OREMOR EUROPEAN, LLC, a California limited liability company; OREMOR FINANCIAL SERVICES, LLC, a California limited liability company; OREMOR OF CAPISTRANO, LLC, a California limited liability company; OREMOR OF FONTANA, LLC, a California limited liability company; OREMOR OF FRESNO, LLC, a California

Case No: CIVSB2331022

REPRESENTATIVE ACTION COMPLAINT FOR:

1. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT AT LABOR CODE SECTIONS 2698 *ET SEQ.*

limited liability company; OREMOR OF GLENDALE LLC, a California limited liability company; OREMOR OF ITALY II, LLC, a California limited liability company; OREMOR OF ONTARIO EN, LLC, a California limited liability company; OREMOR OF ONTARIO JCDR, LLC, a California limited liability company; OREMOR OF RIVERSIDE RC, LLC, a California limited liability company; OREMOR OF RIVERSIDE, LLC, a California limited liability company; OREMOR OF TEMECULA LX LLC, a California limited liability company; OREMOR OF TEMECULA, LLC, a California limited liability company; OREMOR OF TUSTIN, LLC, a California limited liability company; OREMOR OF VICTORVILLE, LLC, a California limited liability company; OREMOR OF WOODLAND HILLS, LLC, a California limited liability company; UNITED RECOVERY, INC., a California corporation; AQUIRECORP'S NORWALK AUTO AUCTION, a California corporation; JEEP CHRYSLER OF ONTARIO, INC., a California corporation; and DOES 1-50, Inclusive,

Defendants.

PLAINTIFFS JOSEPH GONZALEZ ("PLAINTIFF GONZALEZ") and JAMES HARDEN ("PLAINTIFF HARDEN"), individuals, in their representative capacity on behalf of the State of California and fellow current and former AGGRIEVED EMPLOYEES, defined *infra*, against ROMERO MOTORS CORPORATION, a California corporation, ROMERO MOTORS, LLC, a California limited liability company, J. MCCULLOUGH CORP., a California corporation, OREMOR DEVELOPMENT LLC, a California limited liability company, OREMOR EUROPEAN, LLC, a California limited liability company, OREMOR FINANCIAL SERVICES, LLC, a California limited liability company, OREMOR OF CAPISTRANO, LLC, a California limited liability company, OREMOR OF FONTANA, LLC, a California limited liability company, OREMOR OF FRESNO, LLC, a California limited liability company, OREMOR OF GLENDALE LLC, a California limited liability company, OREMOR OF ITALY II, LLC, a California limited liability company, OREMOR OF ONTARIO EN, LLC, a California limited liability company, OREMOR OF ONTARIO JCDR, LLC, a California limited liability company, OREMOR OF RIVERSIDE RC, LLC, a California limited liability company, OREMOR OF RIVERSIDE, LLC, a California limited liability company, OREMOR OF TEMECULA LX LLC, a California limited liability company, OREMOR OF TEMECULA, LLC, a California limited liability company, OREMOR OF TUSTIN, LLC, a California limited liability company, OREMOR OF VICTORVILLE, LLC, a California limited liability company, OREMOR OF WOODLAND HILLS, LLC, a California limited liability company, UNITED RECOVERY, INC., a California corporation, AQUIRECORP'S NORWALK AUTO AUCTION, a California corporation, and JEEP CHRYSLER OF ONTARIO, INC., a California corporation ("DEFENDANT" and/or "DEFENDANTS"), alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFFS bring this representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA") on behalf of other current and former aggrieved employees of DEFENDANTS for engaging in a pattern and practice of wage and hour violations under the California Labor Code and seeking only to recover PAGA civil penalties on behalf of all current and former aggrieved employees who worked for DEFENDANTS. PLAINTIFFS do **not**

seek to recover anything other than penalties as permitted by California Labor Code § 2699. To the extent that statutory violations are mentioned for wage violations, PLAINTIFFS do not seek underlying general and/or special damages for those violations, but simply the civil penalties permitted by California Labor Code § 2699.

2. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS decreased their employment-related costs by systematically violating California wage and hour laws.

3. DEFENDANTS' systematic pattern of wage and hour and IWC Wage Order violations toward PLAINTIFFS and other AGGRIEVED EMPLOYEES in California include, *inter alia*:

a. Failure to provide compliant meal and rest periods;

b. Failure to allow employees to take duty-free meal and rest periods;

c. Failure to pay all minimum, sick pay, regular and overtime wages;

d. Failure to correctly calculate the regular rate of pay;

e. Failure to pay within seven (7) days of the close of payroll;

f. Failure to pay for all hours worked;

g. Failure to maintain true and accurate records;

h. Failure to reimburse for required business expenses;

i. Failure to provide accurate itemized wage statements; and

j. Failure to timely pay wages due during, and upon termination of employment.

4. PLAINTIFFS brings this representative action against DEFENDANTS on behalf of AGGRIEVED EMPLOYEES of DEFENDANTS in California seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

5. PLAINTIFFS reserve the right to name additional representatives throughout the State of California

<u>THE PARTIES</u>

6. Defendant ROMERO MOTORS CORPORATION, a California corporation, Defendant ROMERO MOTORS, LLC, a California limited liability company, Defendant J. MCCULLOUGH CORP., a California corporation; Defendant OREMOR DEVELOPMENT LLC, a California limited liability company, Defendant OREMOR EUROPEAN, LLC, a California limited liability company,

Defendant OREMOR FINANCIAL SERVICES, LLC, a California limited liability company, Defendant OREMOR OF CAPISTRANO, LLC, a California limited liability company, Defendant OREMOR OF FONTANA, LLC, a California limited liability company, Defendant OREMOR OF FRESNO, LLC, a California limited liability company, Defendant OREMOR OF GLENDALE LLC, a California limited liability company, Defendant OREMOR OF ITALY II, LLC, a California limited liability company, Defendant OREMOR OF ONTARIO EN, LLC, a California limited liability company, Defendant OREMOR OF ONTARIO JCDR, LLC, a California limited liability company, Defendant OREMOR OF RIVERSIDE RC, LLC, a California limited liability company, Defendant OREMOR OF RIVERSIDE, LLC, a California limited liability company, Defendant OREMOR OF TEMECULA LX LLC, a California limited liability company, Defendant OREMOR OF TEMECULA, LLC, a California limited liability company, Defendant OREMOR OF TUSTIN, LLC, a California limited liability company, Defendant OREMOR OF VICTORVILLE, LLC, a California limited liability company, Defendant OREMOR OF WOODLAND HILLS, LLC, a California limited liability company, Defendant UNITED RECOVERY, INC., a California corporation, Defendant AQUIRECORP'S NORWALK AUTO AUCTION, a California corporation, and Defendant JEEP CHRYSLER OF ONTARIO, INC., a California corporation at all relevant times mentioned herein conducted and continue to conduct substantial and regular business in the state of California

7. PLAINTIFFS allege there has existed a unity of interest and ownership between DEFENDANTS such that any individuality and separateness between the entities has ceased and all Defendants are referred to herein as “DEFENDANT.”

8. PLAINTIFFS allege that DOES 1-50 are the partners, agents, owners, or managers of DEFENDANT at all relevant times. PLAINTIFFS allege there has existed a unity of interest and ownership between Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR

OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. such that any individuality and separateness between the entities has ceased. Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. are therefore alter egos of each other. Adherence to the fiction of the separate existence of DEFENDANT would permit an abuse of the corporate privilege, and would promote injustice by protecting DEFENDANT from liability for the wrongful acts committed by them.

9. PLAINTIFFS further allege that DEFENDANTS are the alter egos of each other for the following reasons:

a. On the California Secretary of State’s website (https://businesssearch.sos.ca.gov/) Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant

OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. have the same entity address and/or mailing address and/or Agent for Service of Process;

b. On information and belief Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. utilize the same standardized employment forms and issue the same employment policies and same pay stubs;

c. On information and belief Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. have an executive team which supervise and manage the operations of all of DEFENDANT's car dealerships, supervised and managed the finances of all of DEFENDANT's car dealerships, supervised and managed the marketing of all of DEFENDANT's car dealerships, supervised and managed the human resources of all of DEFENDANT's car dealerships, and supervised and managed operations at all of DEFENDANT's car dealerships.

10. PLAINTIFFS allege that DEFENDANT's various separate corporate entities are used by an individual or individuals, or by another corporation, to accomplish inequitable purposes, including to limit liability for the unlawful acts of DEFENDANT.

11. PLAINTIFFS allege that there is such a unity of interest and ownership between DEFENDANT's various corporate entities that own DEFENDANT's car dealerships and the individual or individuals, or organization controlling those corporate entities that their separate personalities no longer exist.

12. PLAINTIFFS further allege that the failure to disregard the various corporate entities would promote injustice.

13. Alternatively, on information and belief, Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively. Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. each exerted control over the hours, wages and/or working conditions of PLAINTIFFS and the other members of

the CALIFORNIA CLASS. Therefore, Defendant ROMERO MOTORS CORPORATION, Defendant ROMERO MOTORS, LLC, Defendant J. MCCULLOUGH CORP., Defendant OREMOR DEVELOPMENT LLC, Defendant OREMOR EUROPEAN, LLC, Defendant OREMOR FINANCIAL SERVICES, LLC, Defendant OREMOR OF CAPISTRANO, LLC, Defendant OREMOR OF FONTANA, LLC, Defendant OREMOR OF FRESNO, LLC, Defendant OREMOR OF GLENDALE LLC, Defendant OREMOR OF ITALY II, LLC, Defendant OREMOR OF ONTARIO EN, LLC, Defendant OREMOR OF ONTARIO JCDR, LLC, Defendant OREMOR OF RIVERSIDE RC, LLC, Defendant OREMOR OF RIVERSIDE, LLC, Defendant OREMOR OF TEMECULA LX LLC, Defendant OREMOR OF TEMECULA, LLC, Defendant OREMOR OF TUSTIN, LLC, Defendant OREMOR OF VICTORVILLE, LLC, Defendant OREMOR OF WOODLAND HILLS, LLC, Defendant UNITED RECOVERY, INC., Defendant AQUIRECORP'S NORWALK AUTO AUCTION, and Defendant JEEP CHRYSLER OF ONTARIO, INC. are jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

14. DEFENDANTS were PLAINTIFFS’ employers or persons acting on behalf of PLAINTIFFS’ employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

15. DEFENDANTS were PLAINTIFFS’ employers or persons acting on behalf of PLAINTIFFS’ employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

16. DEFENDANTS own and operate car dealerships in California, including in the county of San Bernardino where PLAINTIFFS worked.

17. PLAINTIFF GONZALEZ was employed by DEFENDANTS in California from September 2021 to April 2023, paid in part an hourly wage, commission-based compensation, non-

discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

18. PLAINTIFF HARDEN was employed by DEFENDANTS in California from October 2019 to February 2024, paid in part an hourly wage, commission-based compensation, non-discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

19. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to himself and all non-exempt, exempt, piece-rate based, and/or commission-based current and former employees who worked and/or work for Defendant ROMERO MOTORS CORPORATION and/or Defendant ROMERO MOTORS, LLC and/or Defendant J. MCCULLOUGH CORP. and/or Defendant OREMOR DEVELOPMENT LLC and/or Defendant OREMOR EUROPEAN, LLC and/or Defendant OREMOR FINANCIAL SERVICES, LLC and/or Defendant OREMOR OF CAPISTRANO, LLC and/or Defendant OREMOR OF FONTANA, LLC and/or Defendant OREMOR OF FRESNO, LLC and/or Defendant OREMOR OF GLENDALE LLC and/or Defendant OREMOR OF ITALY II, LLC and/or Defendant OREMOR OF ONTARIO EN, LLC and/or Defendant OREMOR OF ONTARIO JCDR, LLC and/or Defendant OREMOR OF RIVERSIDE RC, LLC and/or Defendant OREMOR OF RIVERSIDE, LLC and/or Defendant OREMOR OF TEMECULA LX LLC and/or Defendant OREMOR OF TEMECULA, LLC and/or Defendant OREMOR OF TUSTIN, LLC and/or Defendant OREMOR OF VICTORVILLE, LLC and/or Defendant OREMOR OF WOODLAND HILLS, LLC and/or Defendant UNITED RECOVERY, INC. and/or Defendant AQUIRECORP'S NORWALK AUTO AUCTION and/or Defendant JEEP CHRYSLER OF ONTARIO, INC., in California ("AGGRIEVED EMPLOYEES") during the time period of August 23, 2022, and the present ("PAGA Period").

20. PLAINTIFFS are "AGGRIEVED EMPLOYEES" within the meaning of Labor Code § 2699(c) because they was employed by DEFENDANT and suffered one or more of the alleged Labor Code violations committed by DEFENDANT.

21. PLAINTIFFS and all other AGGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANT, within the meanings set forth in the California Labor Code and the applicable Industrial Welfare Commission Wage Order

22. Each of the fictitiously named defendants participated in the acts alleged in this Second Amended Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFFS. PLAINTIFFS will amend this Complaint, setting forth the true names and capacities of these fictitiously named DEFENDANTS when their true names are ascertained. PLAINTIFFS are informed and believe, and on that basis allege, that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

23. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively "DEFENDANTS"), were PLAINTIFFS' employers or persons acting on behalf of PLAINTIFFS' employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

24. DEFENDANTS were PLAINTIFFS' employer or persons acting on behalf of PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

JURISDICTION AND VENUE

25. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court has jurisdiction over PLAINTIFFS' claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

26. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANTS, and DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in this County and/or

conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFFS and the AGGRIEVED EMPLOYEES.

THE CONDUCT

27. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFFS and the AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed to compensate PLAINTIFFS and the AGGRIEVED EMPLOYEES meal and rest premiums at the regular rate of pay, failed to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFFS and the AGGRIEVED EMPLOYEES for business expenses, and failed to issue to PLAINTIFFS and the AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate and/or failing to adhere to labor code section 226(a)(1)-(9). DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

A. Meal Period Violations

28. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the PAGA PERIOD, DEFENDANT required PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying

them for all the time they were under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

29. From time to time during the PAGA PERIOD, as a result of their rigorous work schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFFS the AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and the AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS failed to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which these employees are required by DEFENDANTS to work ten (10) hours of work. The nature of the work performed by PLAINTIFFS and the AGGRIEVED EMPLOYEES does not qualify for the limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, PLAINTIFFS and the AGGRIEVED EMPLOYEES were, from time to time, required to remain on duty and on call. Further, from time to time, DEFENDANT required PLAINTIFFS and other Aggrieved Employees to maintain cordless communication devices on them during what was supposed to be their off-duty meal break in order to receive and respond to work-related communications. DEFENDANTS' failure to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with legally required meal breaks is evidenced by DEFENDANTS' business records. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFFS and the AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

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B. Rest Period Violations

30. From time to time during the PAGA PERIOD, PLAINTIFFS the AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANTS' inadequate staffing. Further, for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFFS and the AGGRIEVED EMPLOYEES were, from time to time, required to on duty and/or on call. Further, from time to time, DEFENDANT required PLAINTIFFS and other Aggrieved Employees to maintain cordless communication devices on them during what was supposed to be their off-duty rest break in order to receive and respond to work-related communications. PLAINTIFFS and the AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFFS and the AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by DEFENDANT and DEFENDANTS' managers.

C. Unreimbursed Business Expenses

31. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFFS and the AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFFS the AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall 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."

32. In the course of their employment, DEFENDANTS required PLAINTIFFS and the AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell phones, personal vehicles and for the purchase of work uniforms as a result of and in furtherance of their job duties. Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES were required to use their personal cell phones and vehicles and purchase their own work uniforms in order to perform work related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFFS and the AGGRIEVED EMPLOYEES for the use of their personal cell phones and vehicles and purchase of their work uniforms. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFFS and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that included, but were not limited to, costs related to the use of their personal cell phones and vehicles and purchase of work uniforms, all on behalf of and for the benefit of DEFENDANT.

D. <u>Wage Statement Violations</u>

33. California Labor Code Section 226 required an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

34. From time to time during the PAGA PERIOD, when PLAINTIFFS and the AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time, DEFENDANTS issued wage statements that failed to provide the accurate name and

address of the legal entity that employed PLAINTIFFS and the AGGRIEVED EMPLOYEES, in violation of Cal. Lab. Code § 226(a)(8).

35. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal. Lab. Code § 226.

36. As a result, DEFENDANTS issued PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

E. <u>Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations</u>

37. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continues to fail to accurately pay PLAINTIFFS and the AGGRIEVED EMPLOYEES.

38. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFFS and the AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This resulted in PLAINTIFFS and the AGGRIEVED EMPLOYEES having to work while off-the-clock.

39. DEFENDANTS directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFFS and the AGGRIEVED EMPLOYEES.

40. DEFENDANTS controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of PLAINTIFFS the AGGRIEVED EMPLOYEES.

41. DEFENDANTS were able to track the amount of time PLAINTIFFS and the AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFFS and the AGGRIEVED EMPLOYEES all wages earned and owed for all the work they performed.

42. PLAINTIFFS and the AGGRIEVED EMPLOYEES were non-exempt employees, subject to the requirements of the California Labor Code.

43. DEFENDANTS' policies and practices deprived PLAINTIFFS and the AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFFS and the AGGRIEVED EMPLOYEES typically worked over

forty (40) hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

44. DEFENDANTS knew or should have known that PLAINTIFFS the AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

45. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

F. <u>Commission and Piece-Rate Based Violations</u>

46. From time-to-time during the PAGA PERIOD, PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis. In those instances where PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis, PLAINTIFFS and the AGGRIEVED EMPLOYEES were entitled to be separately compensated for all non-productive time at an hourly rate that is no less than the applicable minimum wage. Notwithstanding, in those instances where PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to separately compensate PLAINTIFFS and the AGGRIEVED EMPLOYEES for all non-productive time, including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited minimum wages and overtime wages by DEFENDANT'S failure to separately compensate their non-productive time at an hourly rate that is no less than the applicable minimum wage.

G. <u>Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay</u>

47. From time to time during the PAGA PERIOD, DEFENDANTS failed and continues to fail to accurately calculate and pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited wages due to them for working

overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANTS' uniform policy and practice not to the AGGRIEVED EMPLOYEES at the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

48. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFFS and the AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

49. DEFENDANTS' non-discretionary commission and bonus program provided the AGGRIEVED EMPLOYEES, including PLAINTIFFS, with commissions and/or bonus compensation when the employees met the various performance goals set by DEFENDANT. However, when calculating the regular rate of pay, in those pay periods where PLAINTIFFS and the AGGRIEVED EMPLOYEES worked overtime and earned non-discretionary bonus and/or commission wages, DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or commission wages as part of the employees' "regular rate of pay."

50. Management and supervisors described the bonus and commissions programs and commission compensation program to potential and new employees as part of the compensation package for new and used car salespersons including PLAINTIFFS and the AGGRIEVED EMPLOYEES. As a matter of law, the incentive and commission compensation received by PLAINTIFFS and other AGGRIEVED EMPLOYEES must be included and correctly calculated into the "regular rate of pay" for purposes of overtime and double time compensation, meal and rest period premium payments, and sick pay. DEFENDANT's failure to do so has resulted in DEFENDANT's systematic underpayment of overtime and double time compensation, meal and rest period premium payments, and sick pay to PLAINTIFFS and other AGGRIEVED EMPLOYEES. Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation as part of the "regular

rate of pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

51. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice, and procedure, intentionally and knowingly failed to compensate PLAINTIFFS and the AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

H. <u>Unlawful Deductions</u>

52. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFFS and the AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so or notice to PLAINTIFFS and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS violated Labor Code § 221.

I. <u>Timekeeping Manipulation</u>

53. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual time PLAINTIFFS the AGGRIEVED EMPLOYEES worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS the AGGRIEVED EMPLOYEES in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest breaks.

54. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

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55. The mutability of the timekeeping system also allowed DEFENDANTS to alter employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS' timekeeping system so as to create the appearance that PLAINTIFFS and the AGGRIEVED EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

56. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay PLAINTIFFS the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

J. <u>Unlawful Rounding Practices</u>

57. During the CALIFORNIA PAGA PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFFS and the AGGRIEVED EMPLOYEES being undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and the AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

58. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFFS and the AGGRIEVED EMPLOYEES' time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and

practice caused PLAINTIFFS and the AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.

K. Violations for Untimely Payment of Wages

59. Pursuant to California Labor Code section 204, PLAINTIFFS and the AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFFS and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within permissible time period.

FIRST CAUSE OF ACTION

For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFFS and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)

60. PLAINTIFFS and the AGGRIEVED EMPLOYEES reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

61. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

62. PLAINTIFFS brings this Representative Action on behalf of the State of California with respect to all current and former AGGRIEVED EMPLOYEES employed by DEFENDANT during the PAGA PERIOD.

63. At all relevant times, for the reasons described herein, and others, PLAINTIFFS and the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the meaning of

Labor Code Section 2699(c).

64. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like PLAINTIFFS, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

65. PLAINTIFF GONZALEZ complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated August 23, 2023, PLAINTIFF GONZALEZ gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANT of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. (See **<u>Exhibit #1.)</u>**

66. PLAINTIFF HARDEN complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated January 31, 2025, PLAINTIFF HARDEN gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANT of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. (See **<u>Exhibit #2.)</u>**

67. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA with notice and amended notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFFS may commence and is authorized to pursue this cause of action.

68. Pursuant to Labor Code Sections 2699(a) and (f), the AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804 in the following amounts:

a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars ($100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars ($200) for AGGIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars ($250) for each AGGRIEVED EMOPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars ($100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars ($200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars ($50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars ($100) for each underpaid AGGIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars ($250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars ($1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred ($500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1197, 1198, and 1199, a civil penalty in the amount of one hundred dollars ($100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty ($250) per AGGIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

69. For all provisions of the Labor Code for which civil penalty is not specifically provided,

Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars ($100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars ($200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFFS and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

70. PLAINTIFFS seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES only. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["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."], Emphasis added, reh'g denied (June 13, 2018).)

<u>PRAYER FOR RELIEF</u>

WHEREFORE**,** PLAINTIFF prays for judgment against DEFENDANT as follows:

(a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;

(b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and

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

Dated:

Respectfully Submitted,
JCL LAW FIRM, APC

By: ____________________________
Jean-Claude Lapuyade, Esq.
Attorneys for PLAINTIFF