

FIRST AMENDED **SUMMONS**
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

WEST COVINA AUTO RETAIL, INC., FIRST BOOK EQUITY HOLDINGS LITTLE HILLS, INC., previously named as fictitious DOE 1; (SEE ATTACHMENT)

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LOUIS MESQUITA, an individual, in his representative capacity on behalf of the himself, the State of California, and fellow current and former AGGRIEVED EMPLOYEES

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 14 2021

Sherri B. Carter, Executive Office/Clerk
By: Maisha Pryor, Deputy
Maisha Pryor

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of Los Angeles
312 N. Spring Street
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso): 21STCV27391

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 3990 Old Town Avenue C204, San Diego, CA 92110.

DATE:

(Fecha) SEP 14 2021

Clerk, by

Maisha Pryor

(Secretario)

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)



SHORT TITLE:

Mesquita v. West Covina Auto Retail, Inc.

CASE NUMBER:

21STCV27391

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

NORM REEVES, INC., previously named as fictitious DOE 2; IRVINE AUTO RETAIL I, INC., previously named as fictitious DOE 3; IRVINE AUTO RETAIL II, INC., previously named as fictitious DOE 4; IRVINE AUTO RETAIL III, INC., previously named as fictitious DOE 5; COASTAL AUTO SALES, INC., previously named as fictitious DOE 6; VISTA AUTO RETAIL, INC., previously named as fictitious DOE 7; CERRITOS INFINITI, INC., previously named as fictitious DOE 8; CONANT AUTO RETAIL, SAN DIEGO, INC., previously named as fictitious DOE 9; CERRITOS FORD, INC., previously named as fictitious DOE 10; MODERNITY EQUITY HOLDINGS LITTLE HILLS, INC., previously named as fictitious DOE 11; PARKWAY PREMIUM MOTORCARS, INC., previously named as fictitious DOE 12; and Does 13 through 50, Inclusive.

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SEP 14 2021

Sherri H. Carter, Executive Office/Clerk

By: Maisha Pryor, Deputy
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Attorneys for Plaintiff LOUIS MESQUITA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LOUIS MESQUITA, an individual, in his
representative capacity on behalf of the himself,
the State of California, and fellow current and
former AGGRIEVED EMPLOYEES

Plaintiff,

vs.

WEST COVINA AUTO RETAIL, INC., FIRST
BOOK EQUITY HOLDINGS LITTLE HILLS,
INC., previously named as fictitious DOE 1;
NORM REEVES, INC. , previously named as
fictitious DOE 2; IRVINE AUTO RETAIL I,
INC. , previously named as fictitious DOE 3;
IRVINE AUTO RETAIL II, INC., previously
named as fictitious DOE 4; IRVINE AUTO
RETAIL III, INC., previously named as fictitious
DOE 5; COASTAL AUTO SALES, INC. ,
previously named as fictitious DOE 6; VISTA
AUTO RETAIL, INC. , previously named as
fictitious DOE 7; CERRITOS INFINITI, INC.,
previously named as fictitious DOE 8; CONANT
AUTO RETAIL, SAN DIEGO, INC.,
previously named as fictitious DOE 9;

Case No. 21STCV27391

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

CERRITOS FORD, INC. , previously named as
fictitious DOE 10; MODERNITY EQUITY
HOLDINGS LITTLE HILLS, INC., previously
named as fictitious DOE 11; PARKWAY
PREMIUM MOTORCARS, INC. , previously
named as fictitious DOE 12; and Does 13 through
50, Inclusive,

Defendants.

Plaintiff LOUIS MESQUITA (“PLAINTIFF”), an individual, in his representative capacity on
behalf of the himself, the State of California, and fellow current and former AGGRIEVED
EMPLOYEES, defined *supra*, alleges on information and belief, except for his own acts and knowledge
which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF brings 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 DEFENDANT for engaging in a pattern and practice of wage and hour
violations under the California Labor Code, against WEST COVINA AUTO RETAIL, INC. and/or
FIRST BOOK EQUITY HOLDINGS LITTLE HILLS, INC., previously named as fictitious DOE 1
and/or NORM REEVES, INC., previously named as fictitious DOE 2 and/or IRVINE AUTO RETAIL
I, INC., previously named as fictitious DOE 3 and/or IRVINE AUTO RETAIL II, INC., previously
named as fictitious DOE 4 and/or IRVINE AUTO RETAIL III, INC., previously named as fictitious DOE
5 and/or COASTAL AUTO SALES, INC., previously named as fictitious DOE 6 and/or VISTA AUTO
RETAIL, INC., previously named as fictitious DOE 7 and/or CERRITOS INFINITI, INC., previously
named as fictitious DOE 8 and/or CONANT AUTO RETAIL, SAN DIEGO, INC., previously named as
fictitious DOE 9, and/or CERRITOS FORD, INC. , previously named as fictitious DOE 10 and/or
MODERNITY EQUITY HOLDINGS LITTLE HILLS, INC., previously named as fictitious DOE 11
and/or PARKWAY PREMIUM MOTORCARS, INC., previously named as fictitious DOE 12 (referred
to herein as “DEFENDANT” and/or “DEFENDANTS”) seeking only to recover PAGA civil penalties
for himself, and on behalf of all current and former AGGRIEVED EMPLOYEES that worked for
DEFENDANTS. PLAINTIFF **does not seek to recover anything other than civil penalties as**

1 **permitted by California Labor Code § 2699.** To the extent statutory violations are mentioned for
2 wage violations, PLAINTIFF does not seek underlying general and/or special damages for those
3 violations, but simply the civil penalties permitted by California Labor Code § 2699.

4 2. PLAINTIFF is informed and believes and thereon allege, that DEFENDANT decreased
5 their employment-related costs by systematically violating California wage and hour laws.

6 3. DEFENDANT's systematic pattern of wage and hour and IWC Wage Order violations
7 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 8 a. Failure to provide compliant meal periods;
- 9 b. Failure to provide compliant rest periods;
- 10 c. Failure to separately compensate for rest periods at the regular rate of pay;
- 11 d. Failure to pay all minimum, regular and overtime wages, including at the correct rate
12 of pay;
- 13 e. Failure to reimburse for business expenses;
- 14 f. Failure to maintain true and accurate records;
- 15 g. Failure to pay sick time at the correct rate of pay;
- 16 h. Failure to provide accurate itemized wage statements; and
- 17 i. Failure to timely pay wages due during, and upon termination of employment.

18 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of himself
19 and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid
20 wages permitted pursuant to California Labor Code § 2699, *et seq.*

21 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
22 California.

23 **THE PARTIES**

24 6. Defendant WEST COVINA AUTO RETAIL, INC. ("Defendant West Covina Auto
25 Retail") is a California corporation and at all relevant times mentioned owns and operates multiple new
26 and used car dealerships throughout the State of California. In addition to selling a variety of used and
27 new automobiles, Defendant West Covina Auto Retail also provides repair services.

1 7. Defendant FIRST BOOK EQUITY HOLDINGS LITTLE HILLS, INC., previously
2 named as fictitious DOE 1 (“Defendant First Book Equity Holdings”) is a California corporation and at
3 all relevant times mentioned owns and operates multiple new and used car dealerships throughout the
4 State of California. In addition to selling a variety of used and new automobiles, Defendant First Book
5 Equity Holdings also provides repair services.

6 8. Defendant NORM REEVES, INC., previously named as fictitious DOE 2 (“Defendant
7 Norm Reeves”) is a California corporation and at all relevant times mentioned owns and operates
8 multiple new and used car dealerships throughout the State of California. In addition to selling a variety
9 of used and new automobiles, Defendant Norm Reeves also provides repair services.

10 9. Defendant IRVINE AUTO RETAIL I, INC., previously named as fictitious DOE 3
11 (“Defendant Irvine Auto Retail I”) is a California corporation and at all relevant times mentioned owns
12 and operates multiple new and used car dealerships throughout the State of California. In addition to
13 selling a variety of used and new automobiles, Defendant Irvine Auto Retail I also provide repair
14 services.

15 10. Defendant IRVINE AUTO RETAIL II, INC., previously named as fictitious DOE 4
16 (“Defendant Irvine Auto Retail II”) is a California corporation and at all relevant times mentioned owns
17 and operates multiple new and used car dealerships throughout the State of California. In addition to
18 selling a variety of used and new automobiles, Defendant Irvine Auto Retail II also provides repair
19 services.

20 11. Defendant IRVINE AUTO RETAIL III, INC., previously named as fictitious DOE 5
21 (“Defendant Irvine Auto Retail III”) is a California corporation and at all relevant times mentioned owns
22 and operates multiple new and used car dealerships throughout the State of California. In addition to
23 selling a variety of used and new automobiles, Defendant Irvine Auto Retail III also provides repair
24 services.

25 12. Defendant COASTAL AUTO SALES, INC., previously named as fictitious DOE 6
26 (“Defendant Coastal Auto Sales”) is a California corporation and at all relevant times mentioned owns
27 and operates multiple new and used car dealerships throughout the State of California. In addition to
28

selling a variety of used and new automobiles, Defendant Coastal Auto Sales also provides repair services.

13. Defendant VISTA AUTO RETAIL, INC., previously named as fictitious DOE 7 (“Defendant Vista Auto Retail”) is a California corporation and at all relevant times mentioned owns and operates multiple new and used car dealerships throughout the State of California. In addition to selling a variety of used and new automobiles, Defendant Vista Auto Retail also provides repair services.

14. Defendant CERRITOS INFINITI, INC., previously named as fictitious DOE 8 (“Defendant Cerritos Infiniti”) is a California corporation and at all relevant times mentioned owns and operates multiple new and used car dealerships throughout the State of California. In addition to selling a variety of used and new automobiles, Defendant Cerritos Infiniti also provides repair services.

15. Defendant CONANT AUTO RETAIL, SAN DIEGO, INC., previously named as fictitious DOE 9 (“Defendant Conant Auto Retail”) is a California corporation and at all relevant times mentioned owns and operates multiple new and used car dealerships throughout the State of California. In addition to selling a variety of used and new automobiles, Defendant Conant Auto Retail also provides repair services.

16. Defendant CERRITOS FORD, INC., previously named as fictitious DOE 10 (“Defendant Cerritos Ford”) is a California corporation and at all relevant times mentioned owns and operates multiple new and used car dealerships throughout the State of California. In addition to selling a variety of used and new automobiles, Defendant Cerritos Ford also provides repair services.

17. Defendant MODERNITY EQUITY HOLDINGS LITTLE HILLS, INC., previously named as fictitious DOE 11 (“Defendant Modernity Equity Holdings”) is a California corporation and at all relevant times mentioned owns and operates multiple new and used car dealerships throughout the State of California. In addition to selling a variety of used and new automobiles, Defendant Modernity Equity Holdings also provides repair services.

18. Defendant PARKWAY PREMIUM MOTORCARS, INC., previously named as fictitious DOE 12 (“Defendant Parkway Premium Motorcars”) is a California corporation and at all relevant times mentioned owns and operates multiple new and used car dealerships throughout the State of California.

1 In addition to selling a variety of used and new automobiles, Defendant Parkway Premium Motorcars
2 also provides repair services.

3 19. PLAINTIFF has been employed by DEFENDANT in California since 2003, paid in part
4 an hourly wage, piece-rate compensation, non-discretionary commissions and bonuses, and entitled to
5 minimum wages, overtime pay and legally complaint meal and rest periods.

6 20. PLAINTIFF brings this action in his representative capacity on behalf of the State of
7 California and on behalf of all of Defendant West Covina Auto Retail's and/or Defendant First Book
8 Equity Holdings' and/or Defendant Norm Reeves' and/or Defendant Irvine Auto Retail I's and/or
9 Defendant Irvine Auto Retail II's and/or Defendant Irvine Auto Retail III's and/or Defendant Costal
10 Auto Sales' and/or Defendant Vista Auto Retail's and/or Defendant Cerritos Infiniti's and/or Defendant
11 Conant Auto Retail's and/or Defendant Cerritos Ford's and/or Defendant Modernity Equity Holdings'
12 and/or Defendant Parkway Premium Motorcars' current and former non-exempt, piece-rate based,
13 and/or commission-based employees employed in California (at any of "DEFENDANTS'
14 LOCATIONS" as defined herein) who suffered one or more Labor Code violations enumerated in
15 Labor Code §§ 2698 *et seq.* (hereinafter "AGGRIEVED EMPLOYEES") and who worked for
16 DEFENDANT between July 7, 2020 and the present ("PAGA PERIOD"). DEFENDANTS'
17 LOCATIONS include, but are not limited to Norm Reeves Genesis, Norm Reeves Honda Superstore
18 Cerritos, Norm Reeves Honda Superstore Irvine, Norm Reeves Honda Superstore West Covina, Norm
19 Reeves Honda Superstore Huntington Beach, Norm Reeves Honda Superstore Vista, Norm Reeves
20 Volkswagen Superstore Irvine, Norm Reeves Cerritos Infiniti, Norm Reeves Toyota San Diego, Norm
21 Reeves Ford Superstore Cerritos, Norm Reeves Hyundai Superstore Cerritos, and Norm Reeves
22 Lincoln Cerritos.

23 21. PLAINTIFF is an "AGGRIEVED EMPLOYEE" within the meaning of Labor Code §
24 2699(c) because he was employed by DEFENDANT and suffered one or more of the alleged Labor Code
25 violations committed by DEFENDANT.

26 22. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were,
27 employees of DEFENDANTS, within the meanings set forth in the California Labor Code and the
28 applicable Industrial Welfare Commission Wage Order.

23. Defendant West Covina Auto Retail's, Defendant First Book Equity Holdings', Defendant Norm Reeves', Defendant Irvine Auto Retail I's, Defendant Irvine Auto Retail II's, Defendant Irvine Auto Retail III's, Defendant Costal Auto Sales', Defendant Vista Auto Retail's, Defendant Cerritos Infiniti's, Defendant Conant Auto Retail's, Defendant Cerritos Ford's, Defendant Modernity Equity Holdings', and Defendant Parkway Premium Motorcars' were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein. PLAINTIFF further alleges there has existed a unity of interest and ownership between Defendant West Covina Auto Retail's, Defendant First Book Equity Holdings', Defendant Norm Reeves', Defendant Irvine Auto Retail I's, Defendant Irvine Auto Retail II's, Defendant Irvine Auto Retail III's, Defendant Costal Auto Sales', Defendant Vista Auto Retail's, Defendant Cerritos Infiniti's, Defendant Conant Auto Retail's, Defendant Cerritos Ford's, Defendant Modernity Equity Holdings', and Defendant Parkway Premium Motorcars' such that any individuality and separateness between the entities has ceased and all Defendants are collectively referred to herein as "DEFENDANT" and/or "DEFENDANTS."

24. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 13 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 13 through 50, inclusive, when they are ascertained. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the defendants named as DOES 13 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts alleged in this Complaint.

25. PLAINTIFF alleges DOES 13-50 are the partners, agents, owners, or managers of DEFEDANTS at all relevant times. PLAINTIFF alleges there has existed a unity of interest and

ownership between DEFENDANTS such that any individuality and separateness between the entities has ceased. Defendant West Covina Auto Retail's, Defendant First Book Equity Holdings', Defendant Norm Reeves', Defendant Irvine Auto Retail I's, Defendant Irvine Auto Retail II's, Defendant Irvine Auto Retail III's, Defendant Costal Auto Sales', Defendant Vista Auto Retail's, Defendant Cerritos Infiniti's, Defendant Conant Auto Retail's, Defendant Cerritos Ford's, Defendant Modernity Equity Holdings', Defendant Parkway Premium Motorcars', and DOES 13-50 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.

26. PLAINTIFF alleges that Defendant West Covina Auto Retail's, Defendant First Book Equity Holdings', Defendant Norm Reeves', Defendant Irvine Auto Retail I's, Defendant Irvine Auto Retail II's, Defendant Irvine Auto Retail III's, Defendant Costal Auto Sales', Defendant Vista Auto Retail's, Defendant Cerritos Infiniti's, Defendant Conant Auto Retail's, Defendant Cerritos Ford's, Defendant Modernity Equity Holdings', and Defendant Parkway Premium Motorcars' 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 West Covina Auto Retail's, Defendant First Book Equity Holdings', Defendant Norm Reeves', Defendant Irvine Auto Retail I's, Defendant Irvine Auto Retail II's, Defendant Irvine Auto Retail III's, Defendant Costal Auto Sales', Defendant Vista Auto Retail's, Defendant Cerritos Infiniti's, Defendant Conant Auto Retail's, Defendant Cerritos Ford's, Defendant Modernity Equity Holdings', and Defendant Parkway Premium Motorcars' have the same entity address and/or mailing address and/or Agent for Service of Process; and,
- b. On information and belief, Defendant West Covina Auto Retail's, Defendant First Book Equity Holdings', Defendant Norm Reeves', Defendant Irvine Auto Retail I's, Defendant Irvine Auto Retail II's, Defendant Irvine Auto Retail III's, Defendant Costal Auto Sales', Defendant Vista Auto Retail's, Defendant Cerritos Infiniti's, Defendant Conant Auto Retail's, Defendant Cerritos Ford's, Defendant Modernity

Equity Holdings', and Defendant Parkway Premium Motorcars' utilize the same standardized employment forms and issue the same employment policies.

27. DEFENDANTS, including DOES 13 THROUGH 50 (hereinafter collectively "DEFENDANT" and/or "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.

28. DEFENDANTS were PLAINTIFF'S 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.

JOINT EMPLOYER

29. The Private Attorney General Act ("PAGA"), permits an aggrieved employee to enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

30. Section 558 of the California Labor Code provides that "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall be subject to a civil penalty..." (*Lab. Code* § 558(a).);

31. Section 1197.1 of the Labor Code provides that "[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty..." (*Lab. Code* § 1197.1(a).)

32. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that a corporate employer's owners, officers and directors, are subject to civil penalties for the employer's failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does

not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

33. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS, and each of them, are subject to civil penalties for their failure to pay PLAINTIFFS and the aggrieved employees the appropriate wages as complained of herein and proximately caused the complaints, injuries, and damages alleged herein.

34. At all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of each other Defendant, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of the other.

35. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's wages, working hours, and/or working conditions.

36. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy, and the acts of each Defendant are legally attributable to the other DEFENDANTS.

JURISDICTION AND VENUE

37. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFF's claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

38. 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, resides in this County, and DEFENDANTS (i) currently maintains 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 Aggrieved Employees.

THE CONDUCT

A. Regular Rate Violation – Overtime and Sick Pay

1. From time-to-time, during the PAGA PERIOD, DEFENDANT failed and continue to fail

1 to accurately calculate and pay PLAINTIFF and the AGRIEVED EMPLOYEES for their overtime hours
2 worked and sick pay. As a result, PLAINTIFF and the AGRIEVED EMPLOYEES forfeited wages due
3 to them for working overtime and for sick pay without compensation at the correct overtime and sick
4 pay rates. DEFENDANT's uniform policy and practice to not pay the AGRIEVED EMPLOYEES the
5 correct overtime rate for all overtime worked and sick pay in accordance with applicable law is
6 evidenced by DEFENDANT's business records.

7 2. State law provides that employees must be paid overtime pay at one-and-one-half times
8 their "regular rate of pay." PLAINTIFF and the AGRIEVED EMPLOYEES were compensated at an
9 hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific elements
10 of an employee's performance and/or commissions.

11 3. DEFENDANT's non-discretionary commission and bonus program provided the
12 AGRIEVED EMPLOYEES, including PLAINTIFF, with commissions and/or bonus compensation
13 when the employees met the various performance goals set by DEFENDANT. However, when
14 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the AGRIEVED
15 EMPLOYEES worked overtime and earned non-discretionary bonus and/or commission wages,
16 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
17 commission wages as part of the employees' "regular rate of pay."

18 4. In other instances, when calculating the regular rate of pay, in those pay periods where
19 PLAINTIFF and the AGRIEVED EMPLOYEES worked overtime and earned this non-discretionary
20 bonus, DEFENDANT failed to (1) accurately include the non-discretionary bonus compensation into
21 the regular rate of pay and/or (2) calculated all hours worked rather than just all non-overtime hours
22 worked into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4 Cal.5th 542.

23 5. Management and supervisors described the bonus and commissions programs and
24 commission compensation program to potential and new employees as part of the compensation package
25 for new and used car salespersons including PLAINTIFF and the AGRIEVED EMPLOYEES. As a
26 matter of law, the incentive and commission compensation received by PLAINTIFFS and other
27 AGRIEVED EMPLOYEES must be included and correctly calculated into the "regular rate of pay" for
28 purposes of overtime compensation and sick pay. DEFENDANT's failure to do so has resulted in

DEFENDANT's systematic underpayment of overtime compensation and sick pay to PLAINTIFF and other AGRIEVED 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 non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANT'S 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.

B. Piece-Rate Violations

6. From time-to-time during the PAGA PERIOD, PLAINTIFF and the AGRIEVED EMPLOYEES were paid in part on a piece-rate basis. In those instances where PLAINTIFF and the AGRIEVED EMPLOYEES were paid in part on a piece-rate basis, PLAINTIFF and the C AGRIEVED 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 PLAINTIFF and the AGRIEVED EMPLOYEES were paid in part on a 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 AGRIEVED 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.

C. Meal and Rest Period Violations

7. 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 5 hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than 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 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period

1 was not waived. If an employer fails to provide an employee with a mandated meal period, the employer
2 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
3 workday that the meal period is not provided.

4 8. From time-to-time during the PAGA PERIOD, as a result of understaffing and their
5 rigorous work schedule, PLAINTIFF and other AGRIEVED EMPLOYEES were from time to time
6 unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for meal
7 periods. PLAINTIFF and other AGRIEVED EMPLOYEES were from time to time required to perform
8 work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
9 duty meal break. Further, DEFENDANT from time-to-time failed to provide PLAINTIFF and
10 AGRIEVED EMPLOYEES with a second off-duty meal period from time to time in which these
11 employees were required by DEFENDANT to work ten (10) hours of work from time to time.
12 PLAINTIFF and the other AGRIEVED EMPLOYEES therefore forfeited meal breaks without
13 additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

14 9. Further, pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
15 required to pay PLAINTIFF and AGRIEVED EMPLOYEES for all their time worked, meaning the
16 time during which an employee is subject to the control of an employer, including all the time the
17 employee suffered or permitted to work. DEFENDANT required PLAINTIFF and AGRIEVED
18 EMPLOYEES to work without paying them for all the time they were under the DEFENDANT's
19 control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was
20 supposed to be PLAINTIFF's off duty meal break due to PLAINTIFF's rigorous work schedule and
21 DEFENDANT's understaffing. PLAINTIFF was from time to time interrupted by work assignments
22 while clocked out for what should have been PLAINTIFF's off-duty meal break. Further, DEFENDANT
23 from time to time required PLAINTIFF and the other AGRIEVED EMPLOYEES to carry cordless
24 communication devices on them during meal breaks in order to answer to DEFENDANT's supervisors
25 and customers for work-related tasks. As a result, the PLAINTIFF and other AGRIEVED EMPLOYEES
26 forfeited minimum wage and overtime compensation by regularly working without their time being
27 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
28 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other AGRIEVED

1 EMPLOYEES for all time worked is evidenced by DEFENDANT's business records.

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

8 11. Additionally, during the PAGA PERIOD, PLAINTIFF and other AGRIEVED
9 EMPLOYEES were from time-to-time required to work in excess of four (4) hours without being
10 provided duty-free, uninterrupted, ten (10) minute rest period. Further, for the same reasons, these
11 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
12 least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts
13 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
14 (10) minutes for some shifts worked of ten (10) hours or more from time to time. DEFENDANT
15 required PLAINTIFF and the other AGRIEVED EMPLOYEES to remain on the premises during their
16 rest periods. Further, DEFENDANT from time to time required PLAINTIFF and the other AGRIEVED
17 EMPLOYEES to carry cordless communication devices on them during rest periods in order to answer
18 to DEFENDANT's supervisors and customers for work-related tasks. As a result, PLAINTIFF and the
19 other AGRIEVED EMPLOYEES were from time to time required to remain on the premises and on-
20 call during their rest periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not
21 provided with one-hour wages in lieu thereof.

22 **D. Wage Statement Violations**

23 12. California Labor Code Sections 226 and 226.2 require an employer to furnish its
24 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
25 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5)
26 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
27 the employee and only the last four digits of the employee's social security number or an employee
28 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.

13. From time-to-time during the PAGA PERIOD, DEFENDANT furnished PLAINTIFF and the AGRIEVED EMPLOYEES 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.

14. As a result, DEFENDANTS issued PLAINTIFF and the AGRIEVED EMPLOYEES 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.

E. Unreimbursed Business Expenses

15. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the AGRIEVED EMPLOYEES or required business expenses they incurred 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."

1 16. From time-to-time during the PAGA PERIOD, PLAINTIFF and the AGRIEVED
2 EMPLOYEES were required by DEFENDANTS to use their own personal cellular phones and personal
3 vehicles as a result of and in furtherance of their job duties as employees for DEFENDANTS. But for
4 the use of their personal cell phones and personal vehicles, PLAINTIFF and the AGRIEVED
5 EMPLOYEES could not complete their essential job duties. Notwithstanding, DEFENDANTS did not
6 reimburse or indemnify PLAINTIFF or the AGRIEVED EMPLOYEES for the cost associated with the
7 use of their personal cellular phones and personal vehicles for DEFENDANTS' benefit. As a result, in
8 the course of their employment with DEFENDANTS, PLAINTIFF and the AGRIEVED EMPLOYEES
9 incurred unreimbursed business expenses which included, but were not limited to, costs related to the
10 use of their personal cellular phones, gas and associated vehicle expenses, all on behalf of and for the
11 benefit of DEFENDANTS.

12 **F. Failure to Pay Wages When Due**

13 17. As a result of the aforementioned conduct during the PAGA PERIOD and CLASS
14 PERIOD, DEFENDANTS willfully failed to pay PLAINTIFF the and other AGGRIEVED
15 EMPLOYEES all wages due and owed by the times set forth by Labor Code §§ 201, 202, and 204.

16 18. The amount in controversy for PLAINTIFF individually does not exceed the sum or value
17 of \$75,000.

18 **FIRST CAUSE OF ACTION**

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

20 **[Cal. Lab. Code §§ 2698, et seq.]**

21 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

22 39. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
23 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

24 40. PAGA is a mechanism by which the State of California itself can enforce state labor laws
25 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
26 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
27 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
28 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.

41. PLAINTIFF brings this Representative Action on behalf of the State of California with respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by Defendant West Covina Auto Retail's and/or Defendant First Book Equity Holdings' and/or Defendant Norm Reeves' and/or Defendant Irvine Auto Retail I's and/or Defendant Irvine Auto Retail II's and/or Defendant Irvine Auto Retail III's and/or Defendant Costal Auto Sales' and/or Defendant Vista Auto Retail's and/or Defendant Cerritos Infiniti's and/or Defendant Conant Auto Retail's and/or Defendant Cerritos Ford's and/or Defendant Modernity Equity Holdings' and/or Defendant Parkway Premium Motorcars' during the PAGA PERIOD.

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

43. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like PLAINTIFF, 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

44. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated July 7, 2021, PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. By certified letter, return receipt requested, dated September 13, 2021, PLAINTIFF submitted an amended notice to the LWDA adding Doe Defendants (See **Exhibit 1**).

45. As of September 13, 2021, more than sixty-five (65) days after serving the LWDA with 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

1 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFFS may
2 commence and is authorized to pursue this cause of action.

3 46. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
4 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
5 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5,
6 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804 in the following amounts:

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

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

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

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

26 e. For violations of Labor Code Section 2269(a), a civil penalty in the
27 amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE
28 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, 1194.2, 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 AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

47. 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. PLAINTIFF 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).

///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

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

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

7 (c) For such other relief as the Court deems just and proper.
8

9 Dated: September 13, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

11 By: 
12 Jean-Claude Lapuyade
13 Attorneys for PLAINTIFF

14 **DEMAND FOR JURY TRIAL**

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

16 Dated: September 13, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

18 By: 
19 Jean-Claude Lapuyade
20 Attorneys for PLAINTIFF
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28

EXHIBIT 1



3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Tel: 619-599-8292
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Toll Free: 1-888-498-6999
www.jcl-lawfirm.com
Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

September 13, 2021

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

**FIRST BOOK EQUITY HOLDINGS
LITTLE HILLS, INC.**
c/o Deborah D. Hill
20322 SW Acacia Street, Suite 100
Newport Beach, CA 92660

NORM REEVES, INC.
c/o Deborah D. Hill
20322 SW Acacia Street, Suite 100
Newport Beach, CA 92660

IRVINE AUTO RETAIL I, INC.
c/o Deborah D. Hill
20322 SW Acacia Street, Suite 100
Newport Beach, CA 92660

WEST COVINA AUTO RETAIL, INC
c/o Deborah D. Hill
20322 SW Acacia Street, Suite 100
Newport Beach, CA 92660

COASTAL AUTO SALES, INC
c/o Deborah D. Hill
20322 SW Acacia Street, Suite 100
Newport Beach, CA 92660

VISTA AUTO RETAIL, INC.
c/o Deborah D. Hill
20322 SW Acacia Street, Suite 100
Newport Beach, CA 92660

CERRITOS INFINITI, INC.
c/o Deborah D. Hill
20322 SW Acacia Street, Suite 100 Newport
Beach, CA 92660

IRVINE AUTO RETAIL II, INC.
c/o Deborah D. Hill
20322 SW Acacia Street, Suite 100
Newport Beach, CA 92660

CONANT AUTO RETAIL, SAN DIEGO, INC.
c/o Deborah D. Hill
20322 SW Acacia Street, Suite 100
Newport Beach, CA 92660

CERRITOS FORD, INC.
c/o Deborah D. Hill
20322 SW Acacia Street, Suite 100
Newport Beach, CA 92660

**MODERNITY EQUITY HOLDINGS LITTLE
HILLS, INC.**
c/o Deborah D. Hill
20322 SW Acacia Street, Suite 100
Newport Beach, CA 92660

PARKWAY PREMIUM MOTORCARS, INC.
c/o Deborah D. Hill
20322 SW Acacia Street, Suite 100
Newport Beach, CA 92660

IRVINE AUTO RETAIL III, INC.
c/o Janice L. Dietz
20322 SW Acacia St, Suite 100
Newport Beach, CA 92660

Via Certified Mail and Return Receipt No. 7021 0350 0000 8465 3066

Case Name: *Louis Mesquita v. West Covina Auto Retail, Inc., et al.*
Case Number: 21STCV27391
LWDA Case No.: 837175-21
Re: AMENDED Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 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:

This office represents LOUIS MESQUITA (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against WEST COVINA AUTO RETAIL, INC. (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with amended notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff’s original claim was submitted to the LWDA on July 7, 2021, against Defendant WEST COVINA AUTO RETAIL, INC. Plaintiff has since identified DOE Defendants 1 - 12 as additional entities who acted as Plaintiff’s joint-employers:

**DOE 1 - FIRST BOOK EQUITY HOLDINGS LITTLE HILLS, INC.
DOE 2 - NORM REEVES, INC.
DOE 3 - IRVINE AUTO RETAIL I, INC.
DOE 4 - COASTAL AUTO SALES INC.
DOE 5 - VISTA AUTO RETAIL INC.
DOE 6 - IRVINE AUTO RETAIL II, INC.
DOE 7 - CERRITOS INFINITI, INC.
DOE 8 - CONANT AUTO RETAIL, SAN DIEGO, INC.
DOE 9 - CERRITOS FORD, INC.
DOE 10 - MODERNITY EQUITY HOLDINGS LITTLE HILLS, INC.
DOE 11 - PARKWAY PREMIUM MOTORCARS, INC.
DOE 12 - IRVINE AUTO RETAIL III, INC.**

Plaintiff therefore amends his July 7, 2021 Notice to add FIRST BOOK EQUITY HOLDINGS LITTLE HILLS, INC., NORM REEVES, INC., IRVINE AUTO RETAIL I, INC., COASTAL AUTO SALES INC., VISTA AUTO RETAIL INC., IRVINE AUTO RETAIL II, INC., CERRITOS INFINITI, INC., CONANT AUTO RETAIL, SAN DIEGO, INC., CERRITOS FORD, INC., MODERNITY EQUITY HOLDINGS LITTLE HILLS, INC., PARKWAY PREMIUM MOTORCARS, INC., IRVINE AUTO RETAIL III, INC. as DOE Defendants and additional employers in this case.

Plaintiff has been employed by Defendant in California since 2003. Plaintiff was paid in part on an hourly wage, piece-rate compensation, non-discretionary commissions and bonuses, and entitled to minimum wages, overtime pay, and legally required meal and rest periods. At all

times during his employment, Defendant failed to, among other things, provide Plaintiff and other Aggrieved Employees with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other Aggrieved Employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Defendant also failed to reimburse Plaintiff and other Aggrieved Employees for their business expenses that were necessary to complete their job duties for Defendant, including using their personal cell phones to conduct business for Defendant. Plaintiff further contends that Defendant 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 associated with their rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff is seeking to represent all Aggrieved Employees, defined as all former and present employees, including both exempt and non-exempt, commissioned and hourly employees, who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. 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. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members.

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.

Enclosure (1)

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff LOUIS MESQUITA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LOUIS MESQUITA, an individual, in his
representative capacity on behalf of the himself,
the State of California, and fellow current and
former AGGRIEVED EMPLOYEES

Plaintiff,

vs.

WEST COVINA AUTO RETAIL, INC., FIRST
BOOK EQUITY HOLDINGS LITTLE HILLS,
INC., previously named as fictitious DOE 1;
NORM REEVES, INC. , previously named as
fictitious DOE 2; IRVINE AUTO RETAIL I,
INC. , previously named as fictitious DOE 3;
IRVINE AUTO RETAIL II, INC., previously
named as fictitious DOE 4; IRVINE AUTO
RETAIL III, INC., previously named as fictitious
DOE 5; COASTAL AUTO SALES, INC. ,
previously named as fictitious DOE 6; VISTA
AUTO RETAIL, INC. , previously named as
fictitious DOE 7; CERRITOS INFINITI, INC.,
previously named as fictitious DOE 8; CONANT
AUTO RETAIL, SAN DIEGO, INC.,
previously named as fictitious DOE 9;

Case No. 21STCV27391

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

CERRITOS FORD, INC. , previously named as
fictitious DOE 10; MODERNITY EQUITY
HOLDINGS LITTLE HILLS, INC., previously
named as fictitious DOE 11; PARKWAY
PREMIUM MOTORCARS, INC. , previously
named as fictitious DOE 12; and Does 13 through
50, Inclusive,

Defendants.

Plaintiff LOUIS MESQUITA (“PLAINTIFF”), an individual, in his representative capacity on
behalf of the himself, the State of California, and fellow current and former AGGRIEVED
EMPLOYEES, defined *supra*, alleges on information and belief, except for his own acts and knowledge
which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF brings 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 DEFENDANT for engaging in a pattern and practice of wage and hour
violations under the California Labor Code, against WEST COVINA AUTO RETAIL, INC. and/or
FIRST BOOK EQUITY HOLDINGS LITTLE HILLS, INC., previously named as fictitious DOE 1
and/or NORM REEVES, INC., previously named as fictitious DOE 2 and/or IRVINE AUTO RETAIL
I, INC., previously named as fictitious DOE 3 and/or IRVINE AUTO RETAIL II, INC., previously
named as fictitious DOE 4 and/or IRVINE AUTO RETAIL III, INC., previously named as fictitious DOE
5 and/or COASTAL AUTO SALES, INC., previously named as fictitious DOE 6 and/or VISTA AUTO
RETAIL, INC., previously named as fictitious DOE 7 and/or CERRITOS INFINITI, INC., previously
named as fictitious DOE 8 and/or CONANT AUTO RETAIL, SAN DIEGO, INC., previously named as
fictitious DOE 9, and/or CERRITOS FORD, INC. , previously named as fictitious DOE 10 and/or
MODERNITY EQUITY HOLDINGS LITTLE HILLS, INC., previously named as fictitious DOE 11
and/or PARKWAY PREMIUM MOTORCARS, INC., previously named as fictitious DOE 12 (referred
to herein as “DEFENDANT” and/or “DEFENDANTS”) seeking only to recover PAGA civil penalties
for himself, and on behalf of all current and former AGGRIEVED EMPLOYEES that worked for
DEFENDANTS. PLAINTIFF **does not seek to recover anything other than civil penalties as**

permitted by California Labor Code § 2699. To the extent statutory violations are mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special damages for those violations, but simply the civil penalties permitted by California Labor Code § 2699.

2. PLAINTIFF is informed and believes and thereon allege, that DEFENDANT decreased their employment-related costs by systematically violating California wage and hour laws.

3. DEFENDANT's systematic pattern of wage and hour and IWC Wage Order violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- a. Failure to provide compliant meal periods;
- b. Failure to provide compliant rest periods;
- c. Failure to separately compensate for rest periods at the regular rate of pay;
- d. Failure to pay all minimum, regular and overtime wages, including at the correct rate of pay;
- e. Failure to reimburse for business expenses;
- f. Failure to maintain true and accurate records;
- g. Failure to pay sick time at the correct rate of pay;
- h. Failure to provide accurate itemized wage statements; and
- i. Failure to timely pay wages due during, and upon termination of employment.

4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of himself and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

5. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

THE PARTIES

6. Defendant WEST COVINA AUTO RETAIL, INC. ("Defendant West Covina Auto Retail") is a California corporation and at all relevant times mentioned owns and operates multiple new and used car dealerships throughout the State of California. In addition to selling a variety of used and new automobiles, Defendant West Covina Auto Retail also provides repair services.

1 7. Defendant FIRST BOOK EQUITY HOLDINGS LITTLE HILLS, INC., previously
2 named as fictitious DOE 1 (“Defendant First Book Equity Holdings”) is a California corporation and at
3 all relevant times mentioned owns and operates multiple new and used car dealerships throughout the
4 State of California. In addition to selling a variety of used and new automobiles, Defendant First Book
5 Equity Holdings also provides repair services.

6 8. Defendant NORM REEVES, INC., previously named as fictitious DOE 2 (“Defendant
7 Norm Reeves”) is a California corporation and at all relevant times mentioned owns and operates
8 multiple new and used car dealerships throughout the State of California. In addition to selling a variety
9 of used and new automobiles, Defendant Norm Reeves also provides repair services.

10 9. Defendant IRVINE AUTO RETAIL I, INC., previously named as fictitious DOE 3
11 (“Defendant Irvine Auto Retail I”) is a California corporation and at all relevant times mentioned owns
12 and operates multiple new and used car dealerships throughout the State of California. In addition to
13 selling a variety of used and new automobiles, Defendant Irvine Auto Retail I also provide repair
14 services.

15 10. Defendant IRVINE AUTO RETAIL II, INC., previously named as fictitious DOE 4
16 (“Defendant Irvine Auto Retail II”) is a California corporation and at all relevant times mentioned owns
17 and operates multiple new and used car dealerships throughout the State of California. In addition to
18 selling a variety of used and new automobiles, Defendant Irvine Auto Retail II also provides repair
19 services.

20 11. Defendant IRVINE AUTO RETAIL III, INC., previously named as fictitious DOE 5
21 (“Defendant Irvine Auto Retail III”) is a California corporation and at all relevant times mentioned owns
22 and operates multiple new and used car dealerships throughout the State of California. In addition to
23 selling a variety of used and new automobiles, Defendant Irvine Auto Retail III also provides repair
24 services.

25 12. Defendant COASTAL AUTO SALES, INC., previously named as fictitious DOE 6
26 (“Defendant Coastal Auto Sales”) is a California corporation and at all relevant times mentioned owns
27 and operates multiple new and used car dealerships throughout the State of California. In addition to
28

1 selling a variety of used and new automobiles, Defendant Coastal Auto Sales also provides repair
2 services.

3 13. Defendant VISTA AUTO RETAIL, INC., previously named as fictitious DOE 7
4 (“Defendant Vista Auto Retail”) is a California corporation and at all relevant times mentioned owns
5 and operates multiple new and used car dealerships throughout the State of California. In addition to
6 selling a variety of used and new automobiles, Defendant Vista Auto Retail also provides repair services.

7 14. Defendant CERRITOS INFINITI, INC., previously named as fictitious DOE 8 (“Defendant
8 Cerritos Infiniti”) is a California corporation and at all relevant times mentioned owns and operates
9 multiple new and used car dealerships throughout the State of California. In addition to selling a variety
10 of used and new automobiles, Defendant Cerritos Infiniti also provides repair services.

11 15. Defendant CONANT AUTO RETAIL, SAN DIEGO, INC., previously named as fictitious
12 DOE 9 (“Defendant Conant Auto Retail”) is a California corporation and at all relevant times mentioned
13 owns and operates multiple new and used car dealerships throughout the State of California. In addition
14 to selling a variety of used and new automobiles, Defendant Conant Auto Retail also provides repair
15 services.

16 16. Defendant CERRITOS FORD, INC., previously named as fictitious DOE 10 (“Defendant
17 Cerritos Ford”) is a California corporation and at all relevant times mentioned owns and operates
18 multiple new and used car dealerships throughout the State of California. In addition to selling a variety
19 of used and new automobiles, Defendant Cerritos Ford also provides repair services.

20 17. Defendant MODERNITY EQUITY HOLDINGS LITTLE HILLS, INC., previously
21 named as fictitious DOE 11 (“Defendant Modernity Equity Holdings”) is a California corporation and at
22 all relevant times mentioned owns and operates multiple new and used car dealerships throughout the
23 State of California. In addition to selling a variety of used and new automobiles, Defendant Modernity
24 Equity Holdings also provides repair services.

25 18. Defendant PARKWAY PREMIUM MOTORCARS, INC., previously named as fictitious
26 DOE 12 (“Defendant Parkway Premium Motorcars”) is a California corporation and at all relevant times
27 mentioned owns and operates multiple new and used car dealerships throughout the State of California.
28

1 In addition to selling a variety of used and new automobiles, Defendant Parkway Premium Motorcars
2 also provides repair services.

3 19. PLAINTIFF has been employed by DEFENDANT in California since 2003, paid in part
4 an hourly wage, piece-rate compensation, non-discretionary commissions and bonuses, and entitled to
5 minimum wages, overtime pay and legally complaint meal and rest periods.

6 20. PLAINTIFF brings this action in his representative capacity on behalf of the State of
7 California and on behalf of all of Defendant West Covina Auto Retail's and/or Defendant First Book
8 Equity Holdings' and/or Defendant Norm Reeves' and/or Defendant Irvine Auto Retail I's and/or
9 Defendant Irvine Auto Retail II's and/or Defendant Irvine Auto Retail III's and/or Defendant Costal
10 Auto Sales' and/or Defendant Vista Auto Retail's and/or Defendant Cerritos Infiniti's and/or Defendant
11 Conant Auto Retail's and/or Defendant Cerritos Ford's and/or Defendant Modernity Equity Holdings'
12 and/or Defendant Parkway Premium Motorcars' current and former non-exempt, piece-rate based,
13 and/or commission-based employees employed in California (at any of "DEFENDANTS'
14 LOCATIONS" as defined herein) who suffered one or more Labor Code violations enumerated in
15 Labor Code §§ 2698 *et seq.* (hereinafter "AGGRIEVED EMPLOYEES") and who worked for
16 DEFENDANT between July 7, 2020 and the present ("PAGA PERIOD"). DEFENDANTS'
17 LOCATIONS include, but are not limited to Norm Reeves Genesis, Norm Reeves Honda Superstore
18 Cerritos, Norm Reeves Honda Superstore Irvine, Norm Reeves Honda Superstore West Covina, Norm
19 Reeves Honda Superstore Huntington Beach, Norm Reeves Honda Superstore Vista, Norm Reeves
20 Volkswagen Superstore Irvine, Norm Reeves Cerritos Infiniti, Norm Reeves Toyota San Diego, Norm
21 Reeves Ford Superstore Cerritos, Norm Reeves Hyundai Superstore Cerritos, and Norm Reeves
22 Lincoln Cerritos.

23 21. PLAINTIFF is an "AGGRIEVED EMPLOYEE" within the meaning of Labor Code §
24 2699(c) because he was employed by DEFENDANT and suffered one or more of the alleged Labor Code
25 violations committed by DEFENDANT.

26 22. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were,
27 employees of DEFENDANTS, within the meanings set forth in the California Labor Code and the
28 applicable Industrial Welfare Commission Wage Order.

23. Defendant West Covina Auto Retail's, Defendant First Book Equity Holdings', Defendant Norm Reeves', Defendant Irvine Auto Retail I's, Defendant Irvine Auto Retail II's, Defendant Irvine Auto Retail III's, Defendant Costal Auto Sales', Defendant Vista Auto Retail's, Defendant Cerritos Infiniti's, Defendant Conant Auto Retail's, Defendant Cerritos Ford's, Defendant Modernity Equity Holdings', and Defendant Parkway Premium Motorcars' were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein. PLAINTIFF further alleges there has existed a unity of interest and ownership between Defendant West Covina Auto Retail's, Defendant First Book Equity Holdings', Defendant Norm Reeves', Defendant Irvine Auto Retail I's, Defendant Irvine Auto Retail II's, Defendant Irvine Auto Retail III's, Defendant Costal Auto Sales', Defendant Vista Auto Retail's, Defendant Cerritos Infiniti's, Defendant Conant Auto Retail's, Defendant Cerritos Ford's, Defendant Modernity Equity Holdings', and Defendant Parkway Premium Motorcars' such that any individuality and separateness between the entities has ceased and all Defendants are collectively referred to herein as "DEFENDANT" and/or "DEFENDANTS."

24. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 13 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 13 through 50, inclusive, when they are ascertained. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the defendants named as DOES 13 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts alleged in this Complaint.

25. PLAINTIFF alleges DOES 13-50 are the partners, agents, owners, or managers of DEFEDANTS at all relevant times. PLAINTIFF alleges there has existed a unity of interest and

ownership between DEFENDANTS such that any individuality and separateness between the entities has ceased. Defendant West Covina Auto Retail's, Defendant First Book Equity Holdings', Defendant Norm Reeves', Defendant Irvine Auto Retail I's, Defendant Irvine Auto Retail II's, Defendant Irvine Auto Retail III's, Defendant Costal Auto Sales', Defendant Vista Auto Retail's, Defendant Cerritos Infiniti's, Defendant Conant Auto Retail's, Defendant Cerritos Ford's, Defendant Modernity Equity Holdings', Defendant Parkway Premium Motorcars', and DOES 13-50 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.

26. PLAINTIFF alleges that Defendant West Covina Auto Retail's, Defendant First Book Equity Holdings', Defendant Norm Reeves', Defendant Irvine Auto Retail I's, Defendant Irvine Auto Retail II's, Defendant Irvine Auto Retail III's, Defendant Costal Auto Sales', Defendant Vista Auto Retail's, Defendant Cerritos Infiniti's, Defendant Conant Auto Retail's, Defendant Cerritos Ford's, Defendant Modernity Equity Holdings', and Defendant Parkway Premium Motorcars' 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 West Covina Auto Retail's, Defendant First Book Equity Holdings', Defendant Norm Reeves', Defendant Irvine Auto Retail I's, Defendant Irvine Auto Retail II's, Defendant Irvine Auto Retail III's, Defendant Costal Auto Sales', Defendant Vista Auto Retail's, Defendant Cerritos Infiniti's, Defendant Conant Auto Retail's, Defendant Cerritos Ford's, Defendant Modernity Equity Holdings', and Defendant Parkway Premium Motorcars' have the same entity address and/or mailing address and/or Agent for Service of Process; and,
- b. On information and belief, Defendant West Covina Auto Retail's, Defendant First Book Equity Holdings', Defendant Norm Reeves', Defendant Irvine Auto Retail I's, Defendant Irvine Auto Retail II's, Defendant Irvine Auto Retail III's, Defendant Costal Auto Sales', Defendant Vista Auto Retail's, Defendant Cerritos Infiniti's, Defendant Conant Auto Retail's, Defendant Cerritos Ford's, Defendant Modernity

Equity Holdings', and Defendant Parkway Premium Motorcars' utilize the same standardized employment forms and issue the same employment policies.

27. DEFENDANTS, including DOES 13 THROUGH 50 (hereinafter collectively "DEFENDANT" and/or "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.

28. DEFENDANTS were PLAINTIFF'S 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.

JOINT EMPLOYER

29. The Private Attorney General Act ("PAGA"), permits an aggrieved employee to enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

30. Section 558 of the California Labor Code provides that "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall be subject to a civil penalty..." (*Lab. Code* § 558(a).);

31. Section 1197.1 of the Labor Code provides that "[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty..." (*Lab. Code* § 1197.1(a).)

32. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that a corporate employer's owners, officers and directors, are subject to civil penalties for the employer's failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does

not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

33. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS, and each of them, are subject to civil penalties for their failure to pay PLAINTIFFS and the aggrieved employees the appropriate wages as complained of herein and proximately caused the complaints, injuries, and damages alleged herein.

34. At all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of each other Defendant, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of the other.

35. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's wages, working hours, and/or working conditions.

36. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy, and the acts of each Defendant are legally attributable to the other DEFENDANTS.

JURISIDICION AND VENUE

37. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFF's claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

38. 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, resides in this County, and DEFENDANTS (i) currently maintains 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 Aggrieved Employees.

THE CONDUCT

A. Regular Rate Violation – Overtime and Sick Pay

1. From time-to-time, during the PAGA PERIOD, DEFENDANT failed and continue to fail

1 to accurately calculate and pay PLAINTIFF and the AGRIEVED EMPLOYEES for their overtime hours
2 worked and sick pay. As a result, PLAINTIFF and the AGRIEVED EMPLOYEES forfeited wages due
3 to them for working overtime and for sick pay without compensation at the correct overtime and sick
4 pay rates. DEFENDANT's uniform policy and practice to not pay the AGRIEVED EMPLOYEES the
5 correct overtime rate for all overtime worked and sick pay in accordance with applicable law is
6 evidenced by DEFENDANT's business records.

7 2. State law provides that employees must be paid overtime pay at one-and-one-half times
8 their "regular rate of pay." PLAINTIFF and the AGRIEVED EMPLOYEES were compensated at an
9 hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific elements
10 of an employee's performance and/or commissions.

11 3. DEFENDANT's non-discretionary commission and bonus program provided the
12 AGRIEVED EMPLOYEES, including PLAINTIFF, with commissions and/or bonus compensation
13 when the employees met the various performance goals set by DEFENDANT. However, when
14 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the AGRIEVED
15 EMPLOYEES worked overtime and earned non-discretionary bonus and/or commission wages,
16 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
17 commission wages as part of the employees' "regular rate of pay."

18 4. In other instances, when calculating the regular rate of pay, in those pay periods where
19 PLAINTIFF and the AGRIEVED EMPLOYEES worked overtime and earned this non-discretionary
20 bonus, DEFENDANT failed to (1) accurately include the non-discretionary bonus compensation into
21 the regular rate of pay and/or (2) calculated all hours worked rather than just all non-overtime hours
22 worked into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4 Cal.5th 542.

23 5. Management and supervisors described the bonus and commissions programs and
24 commission compensation program to potential and new employees as part of the compensation package
25 for new and used car salespersons including PLAINTIFF and the AGRIEVED EMPLOYEES. As a
26 matter of law, the incentive and commission compensation received by PLAINTIFFS and other
27 AGRIEVED EMPLOYEES must be included and correctly calculated into the "regular rate of pay" for
28 purposes of overtime compensation and sick pay. DEFENDANT's failure to do so has resulted in

DEFENDANT's systematic underpayment of overtime compensation and sick pay to PLAINTIFF and other AGRIEVED 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 non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANT'S 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.

B. Piece-Rate Violations

6. From time-to-time during the PAGA PERIOD, PLAINTIFF and the AGRIEVED EMPLOYEES were paid in part on a piece-rate basis. In those instances where PLAINTIFF and the AGRIEVED EMPLOYEES were paid in part on a piece-rate basis, PLAINTIFF and the C AGRIEVED 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 PLAINTIFF and the AGRIEVED EMPLOYEES were paid in part on a 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 AGRIEVED 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.

C. Meal and Rest Period Violations

7. 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 5 hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than 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 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period

1 was not waived. If an employer fails to provide an employee with a mandated meal period, the employer
2 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
3 workday that the meal period is not provided.

4 8. From time-to-time during the PAGA PERIOD, as a result of understaffing and their
5 rigorous work schedule, PLAINTIFF and other AGRIEVED EMPLOYEES were from time to time
6 unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for meal
7 periods. PLAINTIFF and other AGRIEVED EMPLOYEES were from time to time required to perform
8 work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
9 duty meal break. Further, DEFENDANT from time-to-time failed to provide PLAINTIFF and
10 AGRIEVED EMPLOYEES with a second off-duty meal period from time to time in which these
11 employees were required by DEFENDANT to work ten (10) hours of work from time to time.
12 PLAINTIFF and the other AGRIEVED EMPLOYEES therefore forfeited meal breaks without
13 additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

14 9. Further, pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
15 required to pay PLAINTIFF and AGRIEVED EMPLOYEES for all their time worked, meaning the
16 time during which an employee is subject to the control of an employer, including all the time the
17 employee suffered or permitted to work. DEFENDANT required PLAINTIFF and AGRIEVED
18 EMPLOYEES to work without paying them for all the time they were under the DEFENDANT's
19 control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was
20 supposed to be PLAINTIFF's off duty meal break due to PLAINTIFF's rigorous work schedule and
21 DEFENDANT's understaffing. PLAINTIFF was from time to time interrupted by work assignments
22 while clocked out for what should have been PLAINTIFF's off-duty meal break. Further, DEFENDANT
23 from time to time required PLAINTIFF and the other AGRIEVED EMPLOYEES to carry cordless
24 communication devices on them during meal breaks in order to answer to DEFENDANT's supervisors
25 and customers for work-related tasks. As a result, the PLAINTIFF and other AGRIEVED EMPLOYEES
26 forfeited minimum wage and overtime compensation by regularly working without their time being
27 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
28 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other AGRIEVED

1 EMPLOYEES for all time worked is evidenced by DEFENDANT's business records.

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

8 11. Additionally, during the PAGA PERIOD, PLAINTIFF and other AGRIEVED
9 EMPLOYEES were from time-to-time required to work in excess of four (4) hours without being
10 provided duty-free, uninterrupted, ten (10) minute rest period. Further, for the same reasons, these
11 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
12 least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts
13 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
14 (10) minutes for some shifts worked of ten (10) hours or more from time to time. DEFENDANT
15 required PLAINTIFF and the other AGRIEVED EMPLOYEES to remain on the premises during their
16 rest periods. Further, DEFENDANT from time to time required PLAINTIFF and the other AGRIEVED
17 EMPLOYEES to carry cordless communication devices on them during rest periods in order to answer
18 to DEFENDANT's supervisors and customers for work-related tasks. As a result, PLAINTIFF and the
19 other AGRIEVED EMPLOYEES were from time to time required to remain on the premises and on-
20 call during their rest periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not
21 provided with one-hour wages in lieu thereof.

22 **D. Wage Statement Violations**

23 12. California Labor Code Sections 226 and 226.2 require an employer to furnish its
24 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
25 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5)
26 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
27 the employee and only the last four digits of the employee's social security number or an employee
28 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.

13. From time-to-time during the PAGA PERIOD, DEFENDANT furnished PLAINTIFF and the AGRIEVED EMPLOYEES 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.

14. As a result, DEFENDANTS issued PLAINTIFF and the AGRIEVED EMPLOYEES 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.

E. Unreimbursed Business Expenses

15. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the AGRIEVED EMPLOYEES or required business expenses they incurred 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."

1 16. From time-to-time during the PAGA PERIOD, PLAINTIFF and the AGRIEVED
2 EMPLOYEES were required by DEFENDANTS to use their own personal cellular phones and personal
3 vehicles as a result of and in furtherance of their job duties as employees for DEFENDANTS. But for
4 the use of their personal cell phones and personal vehicles, PLAINTIFF and the AGRIEVED
5 EMPLOYEES could not complete their essential job duties. Notwithstanding, DEFENDANTS did not
6 reimburse or indemnify PLAINTIFF or the AGRIEVED EMPLOYEES for the cost associated with the
7 use of their personal cellular phones and personal vehicles for DEFENDANTS' benefit. As a result, in
8 the course of their employment with DEFENDANTS, PLAINTIFF and the AGRIEVED EMPLOYEES
9 incurred unreimbursed business expenses which included, but were not limited to, costs related to the
10 use of their personal cellular phones, gas and associated vehicle expenses, all on behalf of and for the
11 benefit of DEFENDANTS.

12 **F. Failure to Pay Wages When Due**

13 17. As a result of the aforementioned conduct during the PAGA PERIOD and CLASS
14 PERIOD, DEFENDANTS willfully failed to pay PLAINTIFF the and other AGGRIEVED
15 EMPLOYEES all wages due and owed by the times set forth by Labor Code §§ 201, 202, and 204.

16 18. The amount in controversy for PLAINTIFF individually does not exceed the sum or value
17 of \$75,000.

18 **FIRST CAUSE OF ACTION**

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

20 **[Cal. Lab. Code §§ 2698, et seq.]**

21 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

22 39. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
23 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

24 40. PAGA is a mechanism by which the State of California itself can enforce state labor laws
25 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
26 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
27 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
28 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.

41. PLAINTIFF brings this Representative Action on behalf of the State of California with respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by Defendant West Covina Auto Retail's and/or Defendant First Book Equity Holdings' and/or Defendant Norm Reeves' and/or Defendant Irvine Auto Retail I's and/or Defendant Irvine Auto Retail II's and/or Defendant Irvine Auto Retail III's and/or Defendant Costal Auto Sales' and/or Defendant Vista Auto Retail's and/or Defendant Cerritos Infiniti's and/or Defendant Conant Auto Retail's and/or Defendant Cerritos Ford's and/or Defendant Modernity Equity Holdings' and/or Defendant Parkway Premium Motorcars' during the PAGA PERIOD.

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

43. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like PLAINTIFF, 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

44. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated July 7, 2021, PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. By certified letter, return receipt requested, dated September 13, 2021, PLAINTIFF submitted an amended notice to the LWDA adding Doe Defendants (See **Exhibit 1**).

45. As of September 13, 2021, more than sixty-five (65) days after serving the LWDA with 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.

46. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and 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, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 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 AGGRIEVED 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 EMPLOYEE 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 AGGRIEVED 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

1 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per
2 Labor Code Section 226.3];

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

6 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
7 1199, a civil penalty in the amount of one hundred dollars (\$100) per
8 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
9 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
10 for each subsequent violation [penalty per Labor Code Section].

11 47. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor
12 Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each
13 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars
14 (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation.
15 PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable
16 attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor
17 Code Section 2699(g)(1).

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

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

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

7 (c) For such other relief as the Court deems just and proper.
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9 Dated: September 13, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

11 By: 
12 Jean-Claude Lapuyade
13 Attorneys for PLAINTIFF

14 **DEMAND FOR JURY TRIAL**

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

16 Dated: September 13, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

18 By: 
19 Jean-Claude Lapuyade
20 Attorneys for PLAINTIFF
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