

KENNETH S. GAINES, ESQ. SBN 049045  
ken@gaineslawfirm.com  
DANIEL F. GAINES, ESQ. SBN 251488  
daniel@gaineslawfirm.com  
ALEX P. KATOFISKY, ESQ. SBN 202754  
alex@gaineslawfirm.com  
SEPIDEH ARDESTANI, ESQ. SBN 274259  
sepideh@gaineslawfirm.com  
**GAINES & GAINES, APLC**  
27200 Agoura Rd., Suite 101  
Calabasas, CA 91301  
Telephone: (818) 703-8985  
Facsimile: (818) 703-8984

Attorneys for Plaintiff Anthony Nicoll  
and Proposed Class Counsel

VENTURA  
SUPERIOR COURT  
**FILED**

**JAN 28 2020**

**MICHAEL D. PLANET**  
Executive Officer and Clerk

BY: \_\_\_\_\_, Deputy

**M. CAMPOS**

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

ANTHONY NICOLL, on behalf of himself  
and all "aggrieved employees" pursuant to  
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

CAPPO MANAGEMENT XXXI, INC., a  
California corporation, and DOES 1  
through 10, inclusive,

Defendants.

CASE NO: 56-2019-005234-18-CU-OE-VTA

*Assigned to the Hon. Matthew Guasco, Dept. 20*

**[PROPOSED] ORDER GRANTING MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
LEAVE TO FILE FIRST AMENDED  
COMPLAINT**

**RESERVATION #:2476055**

**Date: January 24, 2020**

**Time: 8:30 a.m.**

**Dept.: 20**

*Action Filed: January 16, 2019*

Plaintiff Anthony Nicoll's Motion for Preliminary Approval of Class Action Settlement and Leave to file First Amended Complaint came on for hearing before this Court in Department 20, the Honorable Matthew Guasco presiding, on January 24, 2020. The Court, having considered the papers submitted in support of the motion and having heard oral argument of the parties, **HEREBY ORDERS THE FOLLOWING:**

1           1.       The Court grants preliminary approval of the settlement based upon the terms set  
2       forth in the Settlement Agreement and Release of Claims (the "Settlement Agreement") filed with  
3       the Court and incorporated in full by this reference and made a part of this Order. The settlement  
4       appears, on a preliminary basis, to be fair, adequate, and reasonable to the class when balanced  
5       against the probable outcome of further litigation relating to class certification, liability and  
6       penalties issues, and potential appeals of rulings. The settlement falls within the range of  
7       reasonableness and appears to be presumptively valid, subject only to any objections that may be  
8       raised at the final hearing;

9           2.       It further appears that significant informal discovery, investigation, and research  
10      were conducted such that the Parties' counsel was able to reasonably evaluate their respective  
11      positions. It further appears that settlement at this time will avoid substantial costs, delay, and risks  
12      that would be presented by the further prosecution of the litigation. It also appears that the proposed  
13      Settlement has been reached as the result of intensive, informed, and non-collusive negotiations;

14          3.       The Court approves, as to form and content, the Notice of Pendency of Class Action  
15      Settlement and Final Hearing, attached as Exhibit 1 to the Settlement Agreement (the "Notice");  
16      and the Request for Exclusion form, attached as Exhibit 2 to the Settlement Agreement (the  
17      "Exclusion Form"). A copy of the Notice is also appended hereto as Exhibit 1;

18          4.       The Court directs the mailing of the Notice and Exclusion Form by first class mail  
19      to the Settlement Class Members in accordance with the schedule set forth below. The Court finds  
20      that the dates selected for the mailing and distribution of the Notice and Exclusion Form, as set  
21      forth herein, meet the requirements of due process and provide the best notice practicable under the  
22      circumstances and shall constitute due and sufficient notice to all persons entitled thereto;

23          5.       It is ordered that the Settlement Class is preliminarily certified for settlement  
24      purposes only. The Settlement Class is defined as follows: "all persons employed by Defendant  
25      [Cappo Management XXXI, Inc., together with its affiliated entities, Cappo Management XII, Inc.,  
26      Cappo Management IX, Inc., Victory Automotive Group, Inc., Victory Automotive Group, LLC,  
27      Cappo Management XXXIII, Inc., Cappo Management XLVIII, LLC, Cappo Management  
28      XXXIV, Inc., Cappo Management XXXV, Inc., Cappo Management LI, LLC, Cappo Management

1 XXVIII, Inc., Downtown Ford Sales, Cappo Management XXIX, Inc., Cappo Management XXVI,  
2 Inc., Cappo Management XLVI, LLC, Cappo Management XL, LLC, Cappo Management XXVII,  
3 Inc., Cappo Management XXIII, Inc., Cappo Management XLI, LLC, Cappo Management XLV,  
4 LLC, and Cappo Management XLIX, LLC] as commissioned sales associate and service advisor  
5 employees from January 15, 2015 through August 20, 2019.”

6 6. The Court confirms Kenneth S. Gaines, Esq., Daniel F. Gaines, Esq., and Alex P.  
7 Katofsky, Esq. of Gaines & Gaines, as Class Counsel, and grants preliminary approval of an award  
8 of attorneys’ fees of up to \$350,000 and documented litigation costs of up to \$15,000 to Class  
9 Counsel, subject to final approval by the Court following a further motion by Class Counsel;

10 7. The Court confirms Anthony Nicoll as the Class Representative and grants  
11 preliminary approval to the proposed service payment in an amount not to exceed \$10,000 to the  
12 Class Representative, subject to final approval by the Court following a further motion by Class  
13 Counsel;

14 8. The Court hereby approves ILYM Group, Inc. as the Claims Administrator and  
15 grants preliminary approval of the payment of fees and other charges of the Claims Administrator  
16 in an amount projected at \$18,000;

17 9. The Court orders Plaintiff to file the First Amended Complaint attached hereto as  
18 Exhibit 3 no later than five (5) court days after the date of entry of this Order. The Parties had  
19 attached the incorrect version of the First Amended Complaint to the Settlement Agreement as  
20 Exhibit 3; and

21 10. The Court orders the following schedule of dates for the specified actions/further  
22 proceedings:

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<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide to the Claims Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in California during the Release Period in a Covered Position ("Settlement Class Information")	21 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Claims Administrator to send via United States First Class Mail the Settlement Documents, consisting of the Court-approved Notice and Exclusion Form (collectively "Notice Packet")	21 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for exclusion requests from the settlement by Settlement Class Members to be postmarked to Claims Administrator	45 calendar days after mailing of Notice Packet
Last day for written objections to the settlement by Settlement Class Members to be postmarked to the Claims Administrator	45 calendar days after mailing of Notice Packet
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	April 14, 2020
Last day for Class Counsel to file with the Court and serve declaration by Claims Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	April 14, 2020
Final settlement approval hearing	May 6, 2020, at 8:20 a.m.

**IT IS SO ORDERED.**

Dated: Jan. 24, 2020

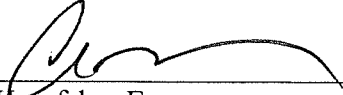
**MATTHEW P. GUASCO**

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

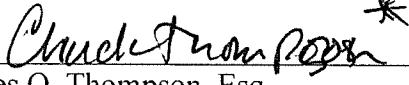
1 **Jointly Submitted By:**

2 Dated: January 24, 2020

GAINES & GAINES, APLC

3  
4 By:   
5 Alex P. Katofsky, Esq.  
6 Counsel for Plaintiff and Class  
7 Representative

8 GREENBERG TRAURIG

9 By: \*  
10 Charles O. Thompson, Esq.  
11 Counsel for Defendant, including its  
12 affiliated entities

13 \* As Authorized  
14 on 1/24/20  
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# EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF KERN

ANTHONY NICOLL, on behalf of himself and  
all “aggrieved employees” pursuant to Labor  
Code § 2698 *et seq.*

Plaintiffs,

v.

CAPO MANAGEMENT XXXI, INC., a  
California corporation, and DOES 1 through 10,  
inclusive,

Defendants.

Case No. 56-2019-00523418-CU-OE-VTA

*Assigned to Honorable Matthew P. Guasco,  
Department 20*

**NOTICE OF PENDENCY OF CLASS  
ACTION SETTLEMENT AND FINAL  
HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT**

*A California court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement will provide \$1,000,000 to pay claims to commissioned sales associate and service advisor employees employed by Defendant Cappo Management XXXI, Inc., together with its affiliated entities, Cappo Management XII, Inc., Cappo Management IX, Inc., Victory Automotive Group, Inc., Victory Automotive Group, LLC, Cappo Management XXXIII, Inc., Cappo Management XLVIII, LLC, Cappo Management XXXIV, Inc., Cappo Management XXXV, Inc., Cappo Management LI, LLC, Cappo Management XXVIII, Inc., Downtown Ford Sales, Cappo Management XXIX, Inc., Cappo Management XXVI, Inc., Cappo Management XLVI, LLC, Cappo Management XL, LLC, Cappo Management XXVII, Inc., Cappo Management XXIII, Inc., Cappo Management XLI, LLC, Cappo Management XLV, LLC, and Cappo Management XLIX, LLC (all together, “Cappo” or “Defendant”), in California at any time during the period January 15, 2015 through August 20, 2019
- The settlement resolves a lawsuit over whether Defendant failed to pay all wages due and owing during employment, including overtime wages, to timely issue wages upon separation of employment, to provide meal and rest periods or compensation in lieu thereof, and to issue accurate and complete wage statements. It avoids costs and risks to you from continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$350,000 as attorneys’ fees and \$15,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.
- **Your legal rights are affected whether you act or do not act. Read this notice carefully. Further information and documents are available on the settlement website, [www.CappManagementClassAction.com](http://www.CappManagementClassAction.com)**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>Do Nothing</b>	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If you move, you must notify the Settlement Administrator of your new address.
<b>Exclude Yourself</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Cappo about the legal claims that were brought in this case.
<b>Object</b>	Write to the Court about why you don't like the settlement.
<b>Go to a Hearing</b>	Ask to speak in Court about the fairness of the settlement.

### **WHY DID YOU RECEIVE THIS NOTICE?**

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

### **WHAT IS THIS LAWSUIT ABOUT?**

On January 15, 2019, plaintiff Anthony Nicoll filed this lawsuit in the Ventura County Superior Court. The lawsuit, as amended, alleges violations of the California Labor Code. The Lawsuit seeks to certify the following class: all persons employed by Defendant as commissioned sales associate and service advisor employees from January 15, 2015 through August 20, 2019 ("Class Period"). The lawsuit alleges that members of the Class were not paid all wages due and owing during employment, including overtime wages, were not timely issued wages upon separation of employment, were not provided all meal and rest periods or compensation in lieu thereof, and were not issued accurate and complete wage statements. It seeks recovery of wages, damages, interest, statutory and civil penalties, attorneys' fees and costs. Defendant denies all of the material allegations in the Lawsuit.

The lawyers for the parties are:

#### Plaintiff's Attorneys

Daniel F. Gaines, Esq.  
 Alex P. Katofsky, Esq.  
 Gaines & Gaines, APLC  
 27200 Agoura Road, Suite 101  
 Calabasas, CA 91301  
 Phone: (866) 550-0855

#### Defendant's Attorneys

Charles O. Thompson, Esq.  
 Alexa Hankard, Esq.  
 Greenberg Traurig, LLP  
 Embarcadero Center, Suite 3000  
 San Francisco, CA 94111

### **SUMMARY OF THE SETTLEMENT**

#### **A. Why is there a Settlement?**



The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they all avoid the costs, risks, and uncertainty of a trial, and the people affected will get compensation. Plaintiff and Plaintiff's Attorneys think the settlement is fair, reasonable and adequate and in the best interests of all Class members.

**B. Who is in the Settlement Class?**

The Settlement encompasses the following class: All persons employed by Defendant as commissioned sales associate and service advisor employees from January 15, 2015 through August 20, 2019.

**C. What does the Settlement provide?**

1. Gross Settlement Amount.

Defendant will pay \$1,000,000 (the "Maximum Settlement Amount") to settle the lawsuit. The following sums will be paid from the Maximum Settlement Amount: (1) \$37,500 to the California Labor and Workforce Development Agency; (2) Class Counsel's attorneys' fees in an amount set by the Court not to exceed \$350,000 and Class Counsel's documented litigation costs in an amount set by the Court not to exceed \$15,000; (3) a service payment to the Class Representative set by the court, not to exceed \$10,000, for his service in the Action; and (4) a reasonable amount set by the Court to the settlement administrator for administering the settlement, not to exceed \$18,000. The amount of the Maximum Settlement Amount remaining after these payments is the "Net Settlement Proceeds."

2. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

**D. What are you giving up to get a payment or stay in the Class?**

Upon the Effective Date, Plaintiff and all Settlement Class members who do not timely opt-out will be deemed to have fully released and discharged Defendant, and any of its related companies, assigns, current and former employees, insurers and attorneys ("Released Parties") from any and all Released Claims which arose during the Release Period (January 15, 2015 through [release period end date]). "Released Claims" are all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that each participating Class Member had, now has, or may hereafter claim to have against the Released Parties that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in the Action. The Released Claims specifically include, but are not limited to, wages, damages, interest or penalties recoverable for (1) failure to pay all wages due; (2) failure to provide meal or rest periods or compensation in lieu thereof; (3) knowing and intentional failure to comply with itemized employee wage statement provisions; (4) failure to timely pay all wages due at separation of employment; (5) violation of Business and Professions Code section 17200 related to the claims alleged herein; and (6) penalties under PAGA related to the claims alleged herein.

**E. How is my share of the Settlement calculated?**

Each participating claimant (those who do not opt out of the Settlement) shall receive an individual payment amount, which is a share of the Net Settlement Proceeds (Net Settlement Proceeds is

calculated by deducting attorneys' fees and costs, claims administration costs, any service payment to the Class Representative, and the LWDA's share of the PAGA penalty payment from the Maximum Settlement Amount) ("Individual Payment Amount").

The Individual Payment Amount will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all Class Members in California in a Covered Position (either a commissioned sales employee or a service advisor) during the Class Period to yield the applicable weekly rate. The weekly rate will be multiplied by the number of weeks each individual Class Member worked for Defendant in California in a Covered Position during the Class Period to yield the Individual Payment Amount for each Class Member. All weeks worked calculations shall be made by reference to Class Members' hire and termination dates and payroll data contained in the records kept by Defendant in the ordinary course of business during the Class Period.

For tax purposes, each Individual Payment Amount will be apportioned (a) 25% to wages (reported on an IRS Form W-2 and subject to applicable withholdings); (b) 50% to penalties (reported on an IRS Form 1099, if required); and (c) 25% to interest (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

**According to the records of Defendant, you worked [ ] weeks while employed in California in a Covered Position between January 15, 2019 and [release period end date]. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[ ]. This amount is subject to change based on the final ruling of the Court.**

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than \_\_\_\_\_, 2019. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

### **THE SETTLEMENT HEARING**

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on \_\_\_\_\_, 2020, at \_\_\_\_\_ a.m., in Courtroom 20, Judge Matthew P. Guasco presiding, of the Ventura County Superior Court, located at [Court address on Victoria]. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiffs' Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

### **WHAT ARE YOUR OPTIONS?**

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

**IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.** If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [45 days after mailing]. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. If you object in writing, you may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Objections must be postmarked no later than \_\_\_\_\_ [45 days after mailing].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than \_\_\_\_\_ [45 days after mailing].

**ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Ventura County Superior Court, located at [clerk's address].

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may contact the Settlement Administrator at [address], [telephone number] or Plaintiff's Counsel, Gaines & Gaines, APLC, at 866-550-0855. Please refer to the Cappo Management Class Action Settlement. Further information and documents are also available on the settlement website, [www.CappManagementClassAction.com](http://www.CappManagementClassAction.com).

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF  
THE STATE OF CALIFORNIA**

## **EXHIBIT 3**

1 KENNETH S. GAINES, ESQ. SBN 049045  
ken@gaineslawfirm.com  
2 DANIEL F. GAINES, ESQ. SBN 251488  
daniel@gaineslawfirm.com  
3 ALEX P. KATOFISKY, ESQ. SBN 202754  
alex@gaineslawfirm.com  
4 SEPIDEH ARDESTANI, ESQ. SBN 274259  
sepideh@gaineslawfirm.com  
5 **GAINES & GAINES, APLC**  
27200 Agoura Rd., Suite 101  
6 Calabasas, CA 91301  
Telephone: (818) 703-8985  
7 Facsimile: (818) 703-8984

8 Attorneys for Plaintiff Anthony Nicoll, on behalf of himself and all "aggrieved employees"  
9 pursuant to Labor Code § 2698 *et seq.*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF VENTURA**

12 ANTHONY NICOLL, on behalf of himself  
13 and all "aggrieved employees" pursuant to  
14 Labor Code § 2698 *et seq.*,

15 Plaintiffs,

16 v.

17 CAPPO MANAGEMENT XXXI, INC., a  
California corporation, CAPPO  
18 MANAGEMENT XII, INC., a California  
corporation, CAPPO MANAGEMENT IX,  
19 INC., a California corporation, VICTORY  
AUTOMOTIVE GROUP, INC., a California  
20 corporation, VICTORY AUTOMOTIVE  
GROUP, LLC, a California limited liability  
21 company, CAPPO MANAGEMENT XXXIII,  
INC., a California corporation, CAPPO  
22 MANAGEMENT XLVIII, LLC, a California  
limited liability company, CAPPO  
23 MANAGEMENT XXXIV, INC., a California  
corporation, CAPPO MANAGEMENT  
24 XXXV, INC., a California corporation,  
CAPPO MANAGEMENT LI, LLC, a  
25 California limited liability company, CAPPO  
MANAGEMENT XXVIII, INC., a California  
26 corporation, DOWNTOWN FORD SALES,  
CAPPO MANAGEMENT XXIX, INC., a  
27 California corporation, CAPPO  
MANAGEMENT XXVI, INC., a California  
28 corporation, CAPPO MANAGEMENT XLVI,  
LLC, a California limited liability company,  
CAPPO MANAGEMENT XL, LLC, a

CASE NO: 56-2019-005234-18-CU-OE-VTA

*Assigned to the Hon. Matthew Guasco, Dept.  
20*

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

**1. FAILURE TO PAY ALL WAGES  
(LABOR CODE §§ 510, 558, 1194 AND  
1194.2)**

**2. FAILURE TO PROVIDE REST  
PERIODS OR COMPENSATION IN LIEU  
THEREOF (LABOR CODE §§ 226.7 and  
558; IWC WAGE ORDER 7-2001)**

**3. FAILURE TO PROVIDE MEAL  
PERIODS OR COMPENSATION IN LIEU  
THEREOF (LABOR CODE §§ 226.7, 512  
AND 558; IWC WAGE ORDER 7-2001)**

**4. KNOWING AND INTENTIONAL  
FAILURE TO COMPLY WITH  
ITEMIZED EMPLOYEE WAGE  
STATEMENT PROVISIONS (LABOR  
CODE § 226(a), (e))**

**5. FAILURE TO PAY WAGES DUE AT  
SEPARATION OF EMPLOYMENT  
(LABOR CODE §§ 201-203)**

1 California limited liability company, CAPPO  
2 MANAGEMENT XXVII, INC., a California  
3 corporation, CAPPO MANAGEMENT XXIII,  
4 INC., a California corporation, CAPPO  
5 MANAGEMENT XLI, LLC, a California  
6 limited liability company, CAPPO  
7 MANAGEMENT XLV, LLC, a California  
8 limited liability company, CAPPO  
9 MANAGEMENT XLIX, LLC, a California  
10 limited liability company, and DOES 1  
11 through 10, inclusive,

12 Defendants.

**6. VIOLATION OF BUSINESS AND  
PROFESSIONS CODE § 17200**

**7. PENALTIES PURSUANT TO LABOR  
CODE § 2699(f) FOR VIOLATIONS OF  
LABOR CODE §§ 201-203, 226(a), 226.7,  
510, 512, 1194 AND 1194.2 AND  
PURSUANT TO LABOR CODE § 2699(a)  
FOR VIOLATIONS OF LABOR CODE §  
558**

**DEMAND FOR JURY TRIAL**

*Complaint Filed: January 16, 2019*

13 Plaintiff EDWARD FINDORA ("Plaintiff"), individually and on behalf of all similarly  
14 situated individuals (the "Class" or "Plaintiff Class"), on behalf of the general public, and as an  
15 "aggrieved employee" under the Labor Code Private Attorneys General Act of 2004, complains of  
16 CAPPO MANAGEMENT XXXI, INC., a California corporation, CAPPO MANAGEMENT XII,  
17 INC., a California corporation, CAPPO MANAGEMENT IX, INC., a California corporation,  
18 VICTORY AUTOMOTIVE GROUP, INC., a California corporation, VICTORY AUTOMOTIVE  
19 GROUP, LLC, a California limited liability company, CAPPO MANAGEMENT XXXIII, INC., a  
20 California corporation, CAPPO MANAGEMENT XLVIII, LLC, a California limited liability  
21 company, CAPPO MANAGEMENT XXXIV, INC., a California corporation, CAPPO  
22 MANAGEMENT XXXV, INC., a California corporation, CAPPO MANAGEMENT LI, LLC, a  
23 California limited liability company, CAPPO MANAGEMENT XXVIII, INC., a California  
24 corporation, DOWNTOWN FORD SALES, CAPPO MANAGEMENT XXIX, INC., a California  
25 corporation, CAPPO MANAGEMENT XXVI, INC., a California corporation, CAPPO  
26 MANAGEMENT XLVI, LLC, a California limited liability company, CAPPO MANAGEMENT  
27 XL, LLC, a California limited liability company, CAPPO MANAGEMENT XXVII, INC., a  
28 California corporation, CAPPO MANAGEMENT XXIII, INC., a California corporation, CAPPO  
MANAGEMENT XLI, LLC, a California limited liability company, CAPPO MANAGEMENT  
XLV, LLC, a California limited liability company, CAPPO MANAGEMENT XLIX, LLC, a  
California limited liability company, and/or any subsidiaries or affiliated companies (hereinafter  
referred to as "Defendants"), as follows:

I.

**INTRODUCTION AND FACTUAL BACKGROUND**

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and certain individuals who currently work or formerly worked for Defendants within the State of California.

2. From the date at least four (4) years prior to the filing of this Action and continuing to the present (the “liability period”), Defendants have had a consistent policy of failing to pay all minimum and overtime wages due and owing to Class Members (as defined below) during the course of their employment; failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members; failing to provide accurately itemized wage statements to Class Members; and failing to timely pay wages upon separation of employment to Class Members.

3. Plaintiff, on behalf of himself and members of the Class, brings this action pursuant to Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 558, 1194, seeking compensation for all unpaid wages, liquidated damages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and members of the Class and pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages to Class Members.

5. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties and wages for Defendants’ various violations of the California Labor Code.

6. Venue as to each Defendant is proper in Ventura County Superior Court. Defendant’s principal place of business is located in Ventura County, California.

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**II.**  
**PARTIES**

**A. Plaintiff**

7. Plaintiff ANTHONY NICOLL was employed by Defendants from July 2017 through July 2018 as an overtime exempt, inside salesperson in Ventura County, California.

8. During his work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all minimum and overtime wages due during the course of his employment;
- b. Willfully denied meal and rest breaks or compensation in lieu thereof;
- c. Willfully denied accurately itemized wage statements; and
- d. Denied the timely payment of wages upon separation of his employment.

**B. Defendants**

9. Defendant CAPPO MANAGEMENT XXXI, INC., is a California corporation. Defendant CAPPO MANAGEMENT XXXI, INC., employed Plaintiff and Class Members throughout the State of California, including Ventura County, California.

10. Defendant CAPPO MANAGEMENT XII, INC., is a California corporation. Defendant CAPPO MANAGEMENT XII, INC., employed Plaintiff and Class Members throughout the State of California, including Ventura County, California.

11. Defendant CAPPO MANAGEMENT IX, INC., is a California corporation. Defendant CAPPO MANAGEMENT IX, INC., employed Plaintiff and Class Members throughout the State of California, including Ventura County, California.

12. Defendant VICTORY AUTOMOTIVE GROUP, INC., is a California corporation. Defendant VICTORY AUTOMOTIVE GROUP, INC., employed Plaintiff and Class Members throughout the State of California, including Ventura County, California.

13. Defendant VICTORY AUTOMOTIVE GROUP, LLC, is a California limited liability company. Defendant VICTORY AUTOMOTIVE GROUP, LLC, employed Plaintiff and Class Members throughout the State of California, including Ventura County, California.



1           14. Defendant CAPPO MANAGEMENT XXXIII, INC., is a California corporation.  
2 Defendant CAPPO MANAGEMENT XXXIII, INC., employed Plaintiff and Class Members  
3 throughout the State of California, including Ventura County, California.

4           15. Defendant CAPPO MANAGEMENT XLVIII, LLC, is a California limited liability  
5 company. Defendant CAPPO MANAGEMENT XLVIII, LLC, employed Plaintiff and Class  
6 Members throughout the State of California, including Ventura County, California.

7           16. Defendant CAPPO MANAGEMENT XXXIV, INC., is a California corporation.  
8 Defendant CAPPO MANAGEMENT XXXIV, INC., employed Plaintiff and Class Members  
9 throughout the State of California, including Ventura County, California.

10          17. Defendant CAPPO MANAGEMENT XXXV, INC., is a California corporation.  
11 Defendant CAPPO MANAGEMENT XXXV, INC., employed Plaintiff and Class Members  
12 throughout the State of California, including Ventura County, California.

13          18. Defendant CAPPO MANAGEMENT LI, LLC, is a California limited liability  
14 company. Defendant CAPPO MANAGEMENT LI, LLC, employed Plaintiff and Class Members  
15 throughout the State of California, including Ventura County, California.

16          19. Defendant CAPPO MANAGEMENT XXVIII, INC., is a California corporation.  
17 Defendant CAPPO MANAGEMENT XXVIII, INC., employed Plaintiff and Class Members  
18 throughout the State of California, including Ventura County, California.

19          20. Defendant DOWNTOWN FORD SALES, CAPPO MANAGEMENT XXIX, INC.,  
20 is a California corporation. Defendant DOWNTOWN FORD SALES, CAPPO MANAGEMENT  
21 XXIX, INC., employed Plaintiff and Class Members throughout the State of California, including  
22 Ventura County, California.

23          21. Defendant CAPPO MANAGEMENT XXVI, INC., is a California corporation.  
24 Defendant CAPPO MANAGEMENT XXVI, INC., employed Plaintiff and Class Members  
25 throughout the State of California, including Ventura County, California.

26          22. Defendant CAPPO MANAGEMENT XLVI, LLC, is a California limited liability  
27 company. Defendant CAPPO MANAGEMENT XLVI, LLC employed Plaintiff and Class Members  
28 throughout the State of California, including Ventura County, California.

1           23. Defendant CAPPO MANAGEMENT XL, LLC, is a California limited liability  
2 company. Defendant CAPPO MANAGEMENT XL, LLC employed Plaintiff and Class Members  
3 throughout the State of California, including Ventura County, California.

4           24. Defendant CAPPO MANAGEMENT XXVII, INC., is a California corporation.  
5 Defendant CAPPO MANAGEMENT XXVII, INC., employed Plaintiff and Class Members  
6 throughout the State of California, including Ventura County, California.

7           25. Defendant CAPPO MANAGEMENT XXIII, INC., is a California corporation.  
8 Defendant CAPPO MANAGEMENT XXIII, INC., employed Plaintiff and Class Members  
9 throughout the State of California, including Ventura County, California.

10          26. Defendant CAPPO MANAGEMENT XLI, LLC, is a California limited liability  
11 company. Defendant CAPPO MANAGEMENT XLI, LLC employed Plaintiff and Class Members  
12 throughout the State of California, including Ventura County, California.

13          27. Defendant CAPPO MANAGEMENT XLV, LLC, is a California limited liability  
14 company. Defendant CAPPO MANAGEMENT XLV, LLC employed Plaintiff and Class Members  
15 throughout the State of California, including Ventura County, California.

16          28. Defendant CAPPO MANAGEMENT XLIX, LLC, is a California limited liability  
17 company. Defendant CAPPO MANAGEMENT XLIX, LLC employed Plaintiff and Class Members  
18 throughout the State of California, including Ventura County, California.

19          29. The true names and capacities, whether individual, corporate, associate, or  
20 otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to  
21 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §  
22 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants  
23 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to  
24 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and  
25 capacities of the Defendants designated hereinafter as DOES when such identities become known.

26          30. Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
27 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
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1 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are  
2 legally attributable to the other Defendants.

3 31 The Defendants named herein as DOE 1 through DOE 10 are and were persons  
4 acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one  
5 or more provisions of the California Labor Code as alleged herein.

### 6 III.

#### 7 CLASS ACTION ALLEGATIONS

8 32. Plaintiff brings this action on behalf of himself and all others similarly situated as a  
9 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the  
10 following class composed of and defined as follows (hereinafter, "Class Members"):

#### 11 THE CLASS

12 All persons employed by Defendants as commissioned sales associate  
13 and service advisor employees from January 16, 2015 through August  
14 20, 2019 (the "Class Period").

15 33. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or  
16 modify these class descriptions with greater specificity or further division into subclasses or  
17 limitation to particular issues.

18 34. This action has been brought and may properly be maintained as a class action under  
19 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community  
20 of interest in the litigation and the proposed Class is easily ascertainable.

#### 21 A. Numerosity

22 35. The potential members of the Class as defined are so numerous that joinder of all the  
23 members the Class is impracticable. While the precise number of members of the Class has not  
24 been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that  
25 Defendants currently employ, and during the relevant time periods employed, over 100 persons in  
26 the State of California who fall within the Class definition.

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1           36.     Accounting for employee turnover during the relevant period necessarily increases  
2 this number. Plaintiff alleges Defendants' employment records would provide information as to the  
3 number and location of members of the Class. Joinder of members of the Class is not practicable.

4     **B.     Commonality**

5           37.     There are questions of law and fact common to the Class that predominate over any  
6 questions affecting only individual Class Members. These common questions of law and fact  
7 include, without limitation:

- 8           a.     Whether Defendants failed to pay Plaintiff and Class Members all minimum  
9                   and overtime wages due and owing during the course of their employment, in  
10                  violation of Labor Code §§ 510, 558, 1194, and 1194.2;
- 11          b.     Whether Defendants failed to properly provide rest periods or compensation  
12                  in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§  
13                  226.7 and 558, and IWC Wage Order 7-2001;
- 14          c.     Whether Defendants failed to properly provide meal periods or compensation  
15                  in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§  
16                  226.7, 512, and 558 and IWC Wage Order 7-2001;
- 17          d.     Whether Defendants failed to provide Plaintiff and Class Members with  
18                  accurately itemized wage statements, in accordance with Labor Code §  
19                  226(a) and (e);
- 20          e.     Whether Defendants failed to timely pay Plaintiff and members of the Class  
21                  all wages due and owing at the separation of their employment, in violation  
22                  of Labor Code §§ 201-203; and
- 23          f.     Whether Plaintiff and Class Members are entitled to equitable relief pursuant  
24                  to Business & Professions Code § 17200 *et seq.*

25     **C.     Typicality**

26           38.     The claims of the named Plaintiff are typical of the claims of members of the Class.  
27 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by  
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1 Defendants' common course of conduct in violation of laws, regulations that have the force and  
2 effect of law, and statutes as alleged herein.

3 **D. Adequacy of Representation**

4 39. Plaintiff will fairly and adequately represent and protect the interests of members of  
5 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large  
6 employment class actions.

7 **E. Superiority of Class Action**

8 40. A class action is superior to other available means for the fair and efficient  
9 adjudication of this controversy. Individual joinder of all proposed members of the Class is not  
10 practicable, and questions of law and fact common to the proposed Class predominate over any  
11 questions affecting only individual members of the proposed Class. Each member of the proposed  
12 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policies and/or  
13 practices.

14 41. Class action treatment will allow those similarly situated persons to litigate their  
15 claims in the manner that is most efficient and economical for the parties and the judicial system.  
16 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this  
17 action that would preclude its maintenance as a class action.

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1 IV.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

5 FAILURE TO PAY ALL WAGES

6 (LABOR CODE §§ 510, 558, 1194 AND 1194.2)

7 42. Plaintiff incorporates paragraphs 1 through 41 of this Complaint as though fully set  
8 forth herein.

9 43. During the liability period, Defendants have failed to pay Plaintiff and Class  
10 Members for all hours worked and all wages due, in violation of Labor Code §§ 510, 558, and  
11 1194. Plaintiff and Aggrieved Employees were classified as overtime-exempt inside salespersons.  
12 Under California law, an inside salesperson is exempt from overtime pay only if more than half of  
13 the employee's pay is from commissions, so long as the hourly earnings are more than one and one-  
14 half times the minimum wage. Cal. Code Regs., tit. 8, § 11040, subd. 3(D). Frequently, however,  
15 their aggregate commissions were less than 1.5 times the applicable minimum wage per pay period.  
16 Accordingly, Plaintiff and other Aggrieved Employees were not paid all overtime wages due when  
17 they worked over 8 hours in one workday and over 40 hours in one workweek. Defendant also  
18 failed to pay Plaintiff and other Aggrieved Employees all minimum wages earned during the course  
19 of employment. They were forced to clock-out and continue to work, resulting in unpaid off-the-  
20 clock work.

21 44. During the liability period, Defendants have also failed to pay Plaintiff and Class  
22 Members for all minimum wages earned, in violation of Labor Code §§ 510, 1194 and 1194.2.  
23 Plaintiff and other Aggrieved Employees were paid commissions based on the performance of  
24 certain duties (i.e., selling cars), they were not paid at all for their time when they worked but could  
25 not earn a commission. When employees are paid on a commission or piece rate basis, they must  
26 be paid separately for non-commission associated activities, such as administrative tasks and wait  
27 time between sales. *Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 47 ("the  
28 obligation to pay minimum wages attaches to each and every separate hour worked during the

1 payroll period, and that payment must be made for all such hours on the established payday . . . .”);  
2 *Vaquero v. Stoneledge Furniture LLC*, (Cal. Ct. App., Feb. 28, 2017, No. B269657) 2017 WL  
3 770635 (holding that commission-based employees must be separately compensated for all non-  
4 productive time.). Plaintiff and other Aggrieved Employees were not paid separately for such tasks  
5 and, thus, were denied the minimum wage for certain portions of their workday.

6 45. As a result of the unlawful acts of Defendants in willfully failing to pay all minimum  
7 and overtime wages, Plaintiff and members of the Class have been deprived of wages in amounts to  
8 be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest  
9 thereon, attorneys’ fees, and costs pursuant to Labor Code § 1194, and liquidated damages, pursuant  
10 to Labor Code § 1194.2.

11 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

12 V.

13 **SECOND CAUSE OF ACTION**

14 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

15 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

16 **(LABOR CODE §§ 226.7 AND 558 AND IWC WAGE ORDER 7-2001)**

17 46. Plaintiff incorporates paragraphs 1 through 45 of this Complaint as though fully set  
18 forth herein.

19 47. Plaintiff and Class Members are entitled to one hour of pay for each day that  
20 Defendant failed to properly provide one or more rest periods as set forth in Labor Code §§ 226.7  
21 and 558 and IWC Wage Order 7-2001.

22 48. Defendant failed to provide Plaintiff and Class Members proper rest periods, or  
23 compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order 7-  
24 2001. Due to the busy nature of their work schedule, they were unable to always take, and not  
25 authorized to take, 10-minute rest periods for every four hours of work or major fraction thereof.  
26 When they were provided with a rest break, they were not permitted to leave the work premises,  
27 thus resulting in an impermissible on-duty rest period.

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49. Pursuant to Labor Code §§ 226.7 and 558 and IWC Wage Order 7-2001, Plaintiff seeks the payment of all rest period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

## VI.

### THIRD CAUSE OF ACTION

**PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

**FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**  
**(LABOR CODE §§ 226.7, 512 AND 558 AND IWC WAGE ORDER 7-2001)**

50. Plaintiff incorporates paragraphs 1 through 49 of this Complaint as though fully set forth herein.

51. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendant failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 7-2001.

52. Defendant failed to provide Plaintiff and Class Members proper meal periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 7-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeds five or more hours in duration, but were not paid premium wages of one hour's pay for each missed meal period. Furthermore, Defendants impermissibly required Plaintiff and Class Members to remain on Defendants' premises during their meal breaks. This violates Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 7-2001.

53. Pursuant to Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 7-2001, Plaintiff seeks the payment of all meal period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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**VII.**  
**FOURTH CAUSE OF ACTION**  
**PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**  
**KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**  
**EMPLOYEE WAGE STATEMENT PROVISIONS**  
**(LABOR CODE § 226(a), (e), (h))**

54. Plaintiff incorporates paragraphs 1 through 53 of this Complaint as though fully set forth herein.

55. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

56. As stated above, Plaintiff and Class Members were not paid all wages due. As such, certain wage statements issued by Defendants fail to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), the total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

57. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and members of the Class have been

1 injured because they have not been paid all wages due and/or were issued wage statements which  
2 do not reflect, and fail to state, all information required by Labor Code § 226(a). The missing  
3 information cannot be discerned at all from the face of the wage statements themselves. As a result,  
4 Plaintiff and members of the Class are entitled to penalties pursuant to Labor Code § 226(e) to  
5 recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs  
6 and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate  
7 penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees  
8 pursuant to Labor Code § 226(h).

9 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

10 **VIII.**

11 **FIFTH CAUSE OF ACTION**

12 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

13 **FAILRE TO TIMELY PAY WAGES UPON SEPARATION EMPLOYMENT**

14 **(LABOR CODE §§ 201-203)**

15 58. Plaintiff incorporates paragraphs 1 through 57 of this Complaint as though fully set  
16 forth herein.

17 59. Labor Code § 201 and § 202 require Defendants to pay employees all wages due  
18 within 72 hours after resignation of employment or the day of termination of employment. Labor  
19 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer  
20 must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid  
21 in full or an action is commenced. The penalty cannot exceed 30 days of wages.

22 60. Defendants paid Plaintiffs and members of the Class their final wages beyond the  
23 time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiffs  
24 and members of the Class were not paid all wages due, including minimum and overtime wages,  
25 and meal and rest period premium wages due and owing throughout the course of their  
26 employment, as detailed herein. Consequently, at the time of their separation from employment  
27 with Defendants, they were not paid all final wages due and owing for the entirety of their  
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1 employment. Moreover, when Plaintiff was provided his final wages, it was 4 days after he resigned  
2 from his employment.

3 61. More than 30 days have passed since Plaintiffs and certain Class Members have left  
4 Defendants' employ.

5 62. As a consequence of Defendants' willful conduct in not paying wages owed timely  
6 upon separation of employment, Plaintiffs and certain members of the Class are entitled to up to 30  
7 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages  
8 at separation of employment.

9 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

10 **IX.**

11 **SIXTH CAUSE OF ACTION**

12 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

13 **UNFAIR COMPETITION PURSUANT TO**

14 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

15 63. Plaintiff incorporates paragraphs 1 through 62 of this Complaint as though fully set  
16 forth herein.

17 64. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and  
18 on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant  
19 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this  
20 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general  
21 public, and members of the Class. Plaintiff seeks to enforce important rights affecting the public  
22 interest within the meaning of Code of Civil Procedure § 1021.5.

23 65. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,  
24 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other  
25 appropriate equitable relief.

26 66. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business  
27 practices.  
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1           67.     Wage and hour laws express fundamental public policies. Properly providing  
2 employees with all wages due are fundamental public policies of this State and of the United States.  
3 Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum  
4 labor standards, to ensure that employees are not required or permitted to work under substandard  
5 and unlawful conditions, and to protect law-abiding employers and its employees from competitors  
6 who lower their costs by failing to comply with minimum labor standards.

7           68.     Defendants have violated statutes and public policies. Through the conduct alleged  
8 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have  
9 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair  
10 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,  
11 and all persons similarly situated, and all interested persons of rights, benefits, and privileges  
12 guaranteed to all employees under law.

13           69.     Defendants' conduct, as alleged herein, constitutes unfair competition in violation of  
14 §17200 *et seq.* of the Business & Professions Code.

15           70.     Defendants, by engaging in the conduct herein alleged, either knew or in the exercise  
16 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §  
17 17200 *et seq.* of the Business & Professions Code.

18           71.     As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others  
19 similarly situated have been damaged in a sum as may be proven.

20           72.     Unless restrained by this Court, Defendants will continue to engage in the unlawful  
21 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court  
22 should make such orders or judgments, including the appointment of a receiver, as may be  
23 necessary to prevent the use or employment, by Defendants, its agents, or employees, of any  
24 unlawful or deceptive practice prohibited by the Business & Professions Code, and/or, including but  
25 not limited to, disgorgement of profits which may be necessary to restore Plaintiff and members of  
26 the Class to the money Defendants have unlawfully failed to pay.

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XI

SEVENTH CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS  
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF  
LABOR CODE §§ 201-203, 226(a), 226.7, 510, 512, 1194 AND 1194.2 AND PURSUANT TO  
LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE § 558

73 Plaintiff incorporates paragraphs 1 through 72 of this Complaint as though fully set forth herein.

74. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

75. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 1194 and 1194.2, \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period; and

b. Pursuant to Labor Code § 2699(a), the penalties and wages as authorized by Labor Code § 558.

76. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

77. On November 15, 2018, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of November 15, 2018. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief as described below.

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XI.

**RELIEF REQUESTED**

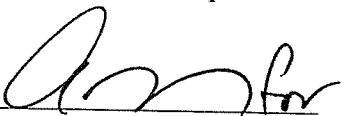
WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code §§ 558, 1194 and 1194.2 in the amount of all unpaid wages due to Plaintiff and Class Members;
2. For liquidated damages pursuant to Labor Code § 1194.2 to Plaintiff and Class Members;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7, 512 and 558;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and members of the Class;
5. For penalties pursuant to Labor Code § 203 for Plaintiff and members of the Class who are no longer employed by Defendants;
6. An award of prejudgment and post-judgment interest;
7. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
8. An award providing for payment of costs of suit;
9. An award of attorneys' fees; and
10. Such other and further relief as this Court may deem just and proper

Dated: January 24, 2020

Respectfully submitted,

GAINES & GAINES  
A Professional Law Corporation

By:   
DANIEL F. GAINES  
Attorney for Plaintiff


**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: January 24, 2020

Respectfully submitted,

GAINES & GAINES  
A Professional Law Corporation

By:   
DANIEL F. GAINES  
Attorney for Plaintiff

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**PROOF OF SERVICE AND CERTIFICATION**

I am employed in the County of LOS ANGELES, State of California. I am over the age of 18 and not a party to the within action; my business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301

On January 24, 2020, I served the foregoing documents described as **PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND LEAVE TO FILE FIRST AMENDED COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Chuck Thompson, Esq.  
Greenberg Traurig, LLP  
1201 K Street, Suite 1100  
Sacramento, CA 95814

Alexa Hankard, Esq.  
Greenberg Traurig, LLP  
4 Embarcadero Ctr, Ste. 3000  
San Francisco, CA 94111-5983

✓ (BY ☒ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

\_\_\_\_ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

\_\_\_\_ (BY FACSIMILE TRANSMISSION) On \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m., at Calabasas, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (\_\_\_\_) \_\_\_\_-\_\_\_\_. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

\_\_\_\_ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

\_\_\_\_ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

\_\_\_\_ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission of File & ServeXpress on the counsel of record listed above.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 24, 2020, at Calabasas, California.

  
BEATRIZ FRANCO