

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA
3 ORLANDO DIVISION
4

5
6 SANTIAGO CADENAS, SERGIO
7 SERRANO, ANDRE WRIGHT,
8 JOSE AYALA, and JEFF
9 SANTOS on behalf of
10 themselves and as
11 representative of other class
12 members similarly situated,
13

PUTATIVE COLLECTIVE CLASS
ACTION LAWSUIT

14
15 Plaintiffs,

16 v.

17
18 SUTHERLIN NISSAN ORLANDO,
19 INC.,
20

21 Defendant.
22

23 _____/

24
25
26 **COLLECTIVE ACTION COMPLAINT**

27 The above-named individual Lead Plaintiffs bring this collective action
28 lawsuit (individually and on behalf of others similarly situated) against
29 Sutherlin Nissan Orlando, Inc., ("*Sutherlin Nissan*"), and alleges, upon
30 personal information and knowledge as to their own actions, their counsel's
31 investigation and upon information and good faith belief as to all other
32 matters, the following:

33 **I. NATURE OF THIS ACTION**

34 1. Lead Plaintiffs, individually and on behalf of others similarly
35 situated, file this lawsuit in response to Sutherlin Nissan’s pattern and
36 practice of refusing to pay them wages lawfully earned in performing their job
37 responsibilities, which includes paying each of them at the federal minimum
38 wage standards, paying for overtime, failing to reimburse them for tools, and
39 other materials purchased by them to perform their job responsibilities for
40 their employer, among other violations of Fair Labor Standards Act, 29 U.S.C.
41 §§ 206 and 207 (the “*FLSA*”).

42 2. Lead Plaintiffs, like every individual that could opt to participate
43 in this collective action, was not paid all compensation due him, including
44 minimum wages, overtime wages, and other compensation lawfully due him,
45 for multiple weeks during the statutory period, which is a direct violation of
46 the FLSA.

47 **II. PARTIES TO THIS LAWSUIT**

48 1. Lead Plaintiffs are individuals who maintain their personal
49 residence in Orange County, Florida and worked for Sutherlin Nissan in this
50 District.

51

52 2. Lead Plaintiffs and putative members of the FLSA collective
53 are/were individuals employed as automotive mechanics and service
54 technicians by Sutherlin Nissan to perform traditional maintenance, repair,
55 and warranty services for Sutherlin Nissan customers within the last four (4)
56 years.

57 3. Lead Plaintiffs and each individual that would comprise the
58 collective action members are or were nonexempt employees that received an
59 IRS Form W2 for all wages earned as result of employment with Sutherlin
60 Nissan, and all were paid on an hourly basis, and were or currently are subject
61 to Sutherlin Nissan’s unlawful compensation program referred to generally as
62 “piece-rate” or “flat-rate” for services performed on behalf of Sutherlin Nissan.

63 4. Lead Plaintiffs and all members of the collective action were
64 “employees” of Sutherlin Nissan within the meaning of FLSA, 29 U.S.C. §
65 203(e)(1) during the requisite statutory period.

66 5. Sutherlin Nissan maintains its principal place of business and
67 conducts its business within the jurisdiction boundaries of this District.

68 6. Sutherlin Nissan is an authorized dealership of Nissan North
69 America, Inc., the manufacturer, and distributor of all Nissan motor vehicles
70 throughout the United States of America.

71

72 7. Sutherlin Nissan provides, in addition to selling motor vehicles
73 manufactured by Nissan North America, a variety of maintenance and repair
74 services to motor vehicles owned by its customers, including warranty repair
75 work under Nissan North America’s nationwide warranty repair program.

76 8. Sutherlin Nissan was and continues to be an enterprise governed
77 by the FLSA because it is engaged in commerce or the production of goods for
78 commerce within the meaning of Section 3(s) of the FLSA because it has had
79 employees engaged in commerce or in the production of goods for commerce, or
80 employees handling, selling, or otherwise working on goods or materials that
81 have moved in or were produced for commerce by any person. 29 U.S.C. §
82 203(s). Sutherlin Nissan’s annual gross volume of business exceeded
83 \$500,000.00 (exclusive of taxes) each year during the requisite statutory
84 period.

85 9. Sutherlin Nissan was and continues to be an “employer” within the
86 meaning of FLSA 29 U.S.C. § 203(d) because it is a corporation acting directly
87 in the interest of its associated agents/business partners—in relation to the
88 employees at issue—the technicians, mechanics, and maintenance servicemen.

89 10. Sutherlin Nissan is directly responsible and liable for the acts and
90 omissions alleged throughout this pleading and is liable to compensate Lead
91 Plaintiffs and all potential members of the collective action for financial harm

92 due to its failure to compensate them for work performed on behalf of their
93 employer.

94 **III. JURISDICTION AND VENUE**

95 11. This Court has original subject jurisdiction under the Fair Labor
96 Standards Act, 29 U.S.C. § 201, *et. seq.*; such jurisdiction lies under 28 U.S.C.
97 §§ 1331 and 1332.

98 12. Venue is proper in this District under the provisions of 28 U.S.C.
99 § 1391 because Sutherlin Nissan maintains its principal place of business and
100 conducts its business in this District.

101 **IV. COLLECTIVE ACTION ALLEGATIONS**

102 13. Sutherlin Nissan’s employee compensation program (described in
103 more detail later this this pleading) violates the Fair Labor Standards Act, 29
104 U.S.C. §§ 206 and 207, for failure to pay minimum wages, overtime wages,
105 wages for for all hours worked, or any combination of the foregoing.
106

107 14. Pursuant to 29 U.S.C. §§ 206 and 207, Lead Plaintiffs and all
108 others similarly situated, seek to prosecute their FLSA claims as a collective
109 action on behalf of all mechanics, technicians, and/or maintenance personnel—
110 together with Lead Plaintiffs, to be collectively referred to as “the Collective
111 Members”—who are or were employed by Sutherlin Nissan at any time from
112 June 2018 to the entry of judgement in this case (the “Collective Period”).

113 15. A collective action is appropriate in this circumstance because the
114 Lead Plaintiffs and the Collective Members are similarly situated in that 1)
115 they were subjected to Sutherlin Nissan's unlawful compensation program and
116 policies that compensated them less than the federal minimum wage for all
117 hours worked; 2) they were victim of Sutherlin Nissan's failure to pay overtime
118 wages; 3) they were forced to purchase large dollar amounts of tools which
119 reduced their compensation below the requisite minimum wage; and 4) further
120 acts of unlawful conduct described later in this pleading consistent with
121 applicable law.

122 16. Lead Plaintiffs' damages are substantially similar to other
123 individuals that could elected to part of the Collective Members because each
124 were 1) not paid wages at or above the federal minimum wage by Sutherlin
125 Nissan for all hours worked; 2) were victims of Sutherlin Nissan's unlawful
126 compensation program; 3) were forced to purchase expensive tools without
127 reimbursement up to the point needed to satisfy the minimum wage
128 requirement; 4) were not paid overtime wages for any hour worked in in excess
129 of forty hours per week; plus 5) statutory liquidated damages as provided by
130 federal law for Sutherlin Nissan's failure to pay minimum wage compensation
131 as required by the FLSA.

132 17. The collection of similarly situated individuals or potential
133 collective members (i.e., the “*Collective Members*”) sought to be certified under
134 29 U.S.C. § 216 is defined as:

135 All individuals that were employed by Sutherlin Nissan
136 during the Collective Period who were or are automobile
137 service persons compensated under an unlawful
138 compensation program implemented by Sutherlin Nissan
139 and referred to as “piece-rate” or “flat-rate”, in which they
140 performed services on behalf of Sutherlin Nissan and were
141 not compensated their A) statutory minimum wage for all
142 hours worked per week during one (1) or more weeks and/or
143 B) were not compensated time-and-a-half of their regular
144 hourly rate for all hours worked in excess of forty (40) hours.

145 18. The precise size and identity of the entire Collective Members is
146 easily ascertainable from Sutherlin Nissan’s business records, tax records,
147 and/or employee personnel records.

148 19. Sutherlin Nissan compensated Lead Plaintiffs and the Collective
149 Members in the same manner and under the same unlawful employee
150 compensation program, and each has worked in Florida during the Collective
151 Period.

152 20. Lead Plaintiffs and the Collective Members are owed straight time
153 and overtime wages under the FLSA.

154 21. Lead Plaintiffs maintain the right to modify the Collective Member
155 definition, create additional subclasses or classes, if necessary, and to revise
156

157 these definitions to maintain cohesive classes which do not require individual
158 inquiry to determine liability.

159 **V. UNLAWFUL BUSINESS PRACTICES**

160 22. Sutherlin Nissan has engaged in willful and systematic
161 misconduct by depriving Lead Plaintiffs and all Collective Members of wages
162 they are lawfully entitled to in violation of the FLSA, including its failure to
163 properly reimburse Collective Members for all business expenses including,
164 without limitation, the cost to procure and maintain tools, equipment, and
165 supplies necessary for the discharge of their duties, resulting in failure to pay
166 minimum wages and unpaid wages.

167 23. Sutherlin Nissan willfully engages in wage compensation
168 misconduct that denies Lead Plaintiffs and Collective Members the right to be
169 compensated for all work hours performed and benefits provided on behalf of
170 Sutherlin Nissan.

171 24. Sutherlin Nissan is an employer as defined under 29. U.S.C. §
172 203(d), that benefits financially and reputationally from the work performed
173 by Lead Plaintiffs and the Collective Members, such as the maintenance and
174 repair on automobiles.¹

¹ Collective members perform a specialty job integral to Sutherlin Nissan's business given that they are responsible for servicing Nissan vehicles under manufacturer warranties.

175 25. Lead Plaintiffs and the Collective Members work under a payment
176 system referred to as “piece-rate” pay or “flat-rate” pay, where employees are
177 paid a fixed rate for each unit produced or service performed (“*flagged hours*”),
178 regardless of the amount of time the employee spent working on the task.

179 26. All Nissan authorized dealerships are required to comply with this
180 payment system, which was established by Nissan North America, which is
181 why the impact of its application affects all members of this collective action in
182 the same manner.

183 27. Under this payment system, the rate of pay per service varies by
184 the task performed and whether the service is “warranty-paid” or “customer-
185 paid”. The rate of pay is defined directly by Nissan North America to each of
186 its dealerships in its Products Resource Manual published by Nissan North
187 America and updated from time to time as part of its nationwide authorized
188 dealership compliance programs.

189 28. Traditionally, this payment system was common with automotive
190 technicians and was initially created as an incentive for their employees to
191 work at a faster pace; in fact, it was quite lucrative for many technicians in
192 previous years before intentionally amending its policies in order to continue
193 compensating employees at a flat-rate or piece-rate system, while forcing them
194 to work many hours over forty hours per week, ultimately reducing the
195 compensation to its employees.

196 29. Sutherlin Nissan’s misconduct and misuse of this payment system
197 fails to properly compensate employees for a substantial number of hours
198 worked in the day, including time working non-flagged hours for such tasks as
199 training, cleaning the workshop, or prepping tools.

200 30. Sutherlin Nissan’s willful misuse of the “flat-rate pay” system
201 withholds wages owed to their technicians, thereby resulting in decreased
202 expenses and increased profits for Sutherlin Nissan.

203 31. In comparison to other vehicle manufacturers and their respective
204 dealerships, Sutherlin Nissan established additional policies, causing their
205 technicians to suffer a significant amount of unpaid wages over the past
206 several years.

207 32. For instance:

208 a. Lead Plaintiffs and the Collective Members, are
209 required to perform various unpaid “non-repair” tasks,
210 including, but not limited to cleaning, attending meetings
211 and/or on-site/virtual trainings, traveling to offsite locations
212 in connection with Sutherlin Nissan’s business, reviewing
213 service orders, and completing invoices. These tasks
214 comprise a large portion of their “worktime”, for which the
215 employees are not paid. Lead Plaintiffs and Collective
216 Members are not compensated for the hours spent
217 conducting “non-piece-rate” or “non-flat-rate” tasks.

218 b. The total amount of hours spent “on the job” by
219 Lead Plaintiffs and Collective Members are not documented
220 as required and paystubs denote what purports to be
221 “flagged hours” only, with no supportive information.
222
223

224 c. Lead Plaintiffs and Collective Members are
225 required to purchase tools and equipment to fulfill their
226 duties as a Sutherlin Nissan service technician. When they
227 purchase these tools and equipment, their weekly rate of pay
228 falls below the required statutory minimum wage to which
229 they are never recompensed.
230

231 d. When Lead Plaintiffs and Collective Members
232 purchase the tools to fulfill their duties for Sutherlin Nissan,
233 they are conferring a benefit onto Sutherlin Nissan to which
234 Sutherlin Nissan accepts. Sutherlin Nissan never pays the
235 value of the benefit back to the employees, therefore
236 retaining an unjust enrichment in the benefit conferred.
237

238 33. Sutherlin Nissan has also established and employed an arbitrary
239 system where services paid by customers directly provides a significantly
240 higher flat-rate pay-out to the Sutherlin Nissan employee conducting the work;
241 on the other end of the spectrum, that same work, but for a customer with a
242 vehicle under warranty (which consists of approximately 80% of Sutherlin
243 Nissan's customer base/service-work as of recent years) pays a *substantially*
244 lower flat-rate pay-out to the employee than if it were to be paid directly by a
245 customer.

246 34. There is no difference in the work being performed between
247 "customer-paid" and "warranty-paid" work, other than the rate being paid to
248 the employee.

249 a. For example, the flat-rate pay-out to a
250 technician for replacing a transmission in a Nissan Sentra
251 that is paid directly by the customer is eight (8) hours.
252

253 b. When the same transmission is brought in by a
254 customer with the same vehicle, but under a warranty
255 (either manufacturer or an extended warranty), the
256 transmission replacement conducted by the technician will
257 now only pay four (4) hours, with no justification for the
258 significant discrepancy in pay.
259

260 c. This drastic change in the flat-rate paid to the
261 technician is arbitrary and capricious, as there is no
262 difference in the work performed or the time it takes to
263 replace a transmission (for example) in a warranty-paid
264 versus customer-paid vehicle.
265

266 35. “Warranty-paid” work provides a substantially lower payout to the
267 employees than “customer-paid” work because the warranty work constitutes
268 a great majority of the service requested at Sutherlin Nissan.

269 36. The disparity between the amount of “warranty-paid” vs.
270 “customer-paid” work has resulted in reduced profit-margins for Sutherlin
271 Nissan. To claw-back profits, Sutherlin Nissan reduces the pay-out to its
272 employees through the unlawful method described herein.

273 37. Consequently, mechanics, technicians, and maintenance
274 personnel did not and are not receiving fair compensation for all hours worked
275 while providing valuable benefits and services to Sutherlin Nissan, for which
276 Sutherlin Nissan receives profits. These invaluable Sutherlin Nissan
277 employees have outstanding unpaid wages² owed to them.

² “Unpaid wages” means the difference between the wages actually paid to an employee and the wages required to be paid to the employee including all compensation for services.

278 38. Sutherlin Nissan's employee compensation program violates the
279 Fair Labor Standards Act, 29 U.S.C. §§ 206 and 207, for failure to pay
280 minimum and/or overtime wages for all hours worked, as will be described in
281 Counts I and II of this complaint.

282 39. Lead Plaintiffs and the Collective Members are routinely required
283 to purchase, and maintain their own tools, equipment, and supplies necessary
284 for the discharge of their duties for the direct benefit of Sutherlin Nissan.

285 40. Sutherlin Nissan has been unjustly enriched through their
286 conduct by failing to reimburse employees for expenses relating to these
287 equipment purchases resulting in profit and benefit for Sutherlin Nissan to the
288 detriment of the employees/Class Members.

289 41. Sutherlin Nissan's failure to reimburse Lead Plaintiffs and
290 Collective Members for out-of-pocket expenses resulted in a benefit to the
291 employer, as it decreased the employees' regular wages below the minimum
292 wage resulting in injury to the Lead Plaintiffs and Collective Member.

293 42. In other words, by requiring the Lead Plaintiffs and Collective
294 Members to purchase their own tools to complete their duties, the cost of such
295 tools purchased by the employee diminishes the overall compensation of the
296 employee resulting in lower than minimum wage compensation.

297 43. By requiring Lead Plaintiffs and the Collective Members to
298 purchase their own tools, Sutherlin Nissan is effectively requiring employees
299 to kick-back their wages to the employer.

300 44. Sutherlin Nissan's arbitrary decisions to deduct certain hours from
301 employees' wages is an incomprehensible violation of employment laws and
302 constitutes a kickback for the benefit of Sutherlin Nissan.

303 45. As a result of Sutherlin Nissan's misconduct and misuse of the flat
304 rate pay system including failure to adequately compensate employees for
305 hours worked and/or overtime hours, and kickbacks, employees are not
306 compensated in accordance with the requisite minimum wage.

307 46. Sutherlin Nissan and its agents/representatives are aware of and
308 materially participated in the implementation of the unfair wage
309 compensation system.

310 47. Sutherlin Nissan employs unlawful wage compensation systems to
311 capture more profits and combat shrinking profit margins by underpaying
312 their essential technicians, mechanics, and maintenance personnel and failing
313 to pay them the wages they are legally entitled to for the skilled labor they
314 perform.

315 48. This action represents a situation typical of class treatment.
316

317 49. Sutherlin Nissan’s failure to pay wages for all hours worked by all
318 mechanics, technicians, and maintenance personnel employed by Sutherlin
319 Nissan is uniform throughout its entire business operations. These employees
320 are also similarly situated due to the application of “piece-rate” and or “flat-
321 rate” pay.

322 50. Determining liability for violations of the Federal Fair Labor
323 Standards Act, Code of Federal Regulations, and other laws will ensure that
324 all mechanics, technicians, and maintenance personnel of Sutherlin Nissan are
325 fairly and legally compensated under these laws then, now, and in the future.

326 **VI. BASIC CONDITIONS PRECEDENT ALLEGATIONS**

327 51. Lead Plaintiffs have engaged the law firm of éclat law, PA to serve as
328 its lead trial counsel and are obligated to compensate these law firms for services
329 rendered in connection with prosecuting the Collective Members rights as alleged
330 herein.

331 52. All conditions precedent to bring this action have taken place, are
332 futile, expired or were effectively waived.

333

334 **COUNT I**
335 **VIOLATION OF THE FLSA - MINIMUM WAGES**
336

337 53. Lead Plaintiffs reallege and incorporate by reference the
338 allegations contained in paragraphs 1 through 52 above as if fully set forth
339 herein.

340 54. Lead Plaintiffs bring this cause of action to recover unpaid
341 minimum wages owed to Lead Plaintiffs and the Collective Members pursuant
342 to the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.*

343 55. This includes failure to pay minimum wage for all hours worked
344 by the Lead Plaintiffs and the Collective Members and includes reductions in
345 the employees' paychecks for the benefit of the employer in which they required
346 employees to purchase tools to perform their work without reimbursement or
347 compensation up to the statutory minimum wage.

348 56. Lead Plaintiffs and Collective Members were or continue to be
349 automobile service or maintenance employees (or former-employees) of
350 Sutherlin Nissan—including but not limited to mechanics/technicians and
351 maintenance servicemen as described in more detail earlier in this pleading.

352 57. Lead Plaintiffs and the Collective Members consent to sue in this
353 action pursuant to 29 U.S.C. § 216(b); additional potential opt-in Plaintiffss
354 may execute and file forms consenting to "opt in" and joining as Plaintiffss in
355 this collective action.

356 58. Lead Plaintiffs and the Collective Members were hired by
357 Sutherlin Nissan in Florida to perform duties as a technician on behalf of
358 Sutherlin Nissan and for Sutherlin Nissan's profit during the Collective
359 Period.

360 59. Lead Plaintiffs and the Collective Members were employed by
361 Sutherlin Nissan.

362 60. Lead Plaintiffs and the Collective Members were required by
363 Sutherlin Nissan to procure and maintain tools, equipment, and supplies
364 necessary for the discharge of their duties, which reduced the employees'
365 weekly wage to an amount that was below the requisite minimum wage.
366 These tool purchases further reduced the employees' weekly wage to an
367 amount that was below the statutory minimum wage.

368 61. By failing to pay minimum wages, Sutherlin Nissan has violated,
369 and continues to violate Sections 206 and 215 of the FLSA.

370 62. The conduct described throughout this Complaint constitutes a
371 willful violation of the FLSA.

372 63. Sutherlin Nissan knew that it was required to pay its employees
373 at least the requisite minimum wage for all hours worked.

374

375 64. Instead of lawfully paying its employees, Sutherlin Nissan
376 established and maintained systems, policies, and procedures that were
377 intentionally designed to avoid paying employees their earned wages as
378 detailed in the paragraphs above.

379 65. Sutherlin Nissan has engaged in a widespread systematic pattern,
380 policy, and practice of violating the FLSA, as detailed throughout this
381 Complaint. Application of these practices does/did not depend on the personal
382 circumstances of the Lead Plaintiffs or any of the Collective Members. Rather,
383 the same practices which result in the non-payment of minimum wages to Lead
384 Plaintiffs and the Collective Members apply to all Collective Members.

385 66. Lead Plaintiffs and the Collective Members are/were entitled to be
386 paid at least minimum wage for all hours worked during the workweek
387 pursuant to FLSA 29 U.S.C. § 206.

388 67. Further, when tool and equipment purchases decrease the
389 employees' weekly paycheck below the statutory minimum wage, Lead
390 Plaintiffs and the Collective Members are entitled to reimbursement up to and
391 including the statutory minimum wage.

392 68. Sutherlin Nissan violated FLSA 29 U.S.C. § 206 by failing to pay
393 minimum wages, as described above, and caused Lead Plaintiffs and the
394 Collective Members to suffer lost wages and interest thereon.

395 69. Lead Plaintiffs and the Collective Members have been required to
396 work eight (8) hours per day, and beyond, without receiving the full
397 compensation for the hours worked.

398 70. Due to Sutherlin Nissan’s misconduct and misuse of the employee
399 compensation system, Lead Plaintiffs and the Collective Members did not earn
400 wages at the minimum wage rate for all their hours worked during one or more
401 work weeks.

402 71. Lead Plaintiffs and the Collective Members were only
403 compensated for “flagged hours”, which sufficiently reduced the compensable
404 hours included in their pay-out, effectively lowering their rate of pay in a
405 manner which falls below the federal minimum wage rate.

406 72. By way of example, on April 17, 2019, Lead Plaintiffs received a
407 paycheck stating that he worked 13 hours and was paid \$416.00 (gross), but
408 worked at least 60 hours, which is \$.32 per hour below the federal minimum
409 wage rate of \$7.25 per hour for 2019. For this one week, he is owed a total of
410 \$19.20 in unpaid federal minimum wages.

411 73. Sutherlin Nissan knowingly, willfully, or with reckless disregard
412 carried out its illegal pattern or practice of failing to pay proper minimum
413 wages as compensation with respect to Lead Plaintiffs and the Collective
414 Members.

415 74. Sutherlin Nissan knew that Lead Plaintiffs and the Collective
416 Members were owed compensation and that Sutherlin Nissan was required to
417 pay such compensation. However, Sutherlin Nissan failed to do so.

418 75. As a result of Sutherlin Nissan's intentional, willful, and unlawful
419 acts in refusing to pay Lead Plaintiffs and the Collective Members, and those
420 similarly situated to them, minimum wage rates per hour worked per
421 workweek in one or more workweeks, Lead Plaintiffs and the Collective
422 Members have suffered damages, and incurred reasonable attorneys' fees and
423 costs as provided in 29 U.S.C. § 216.

424 76. As a result of Sutherlin Nissan's willful violation of FLSA § 206,
425 Lead Plaintiffs and the Collective Members are entitled to recover the full
426 amount of any unpaid back wages unlawfully withheld, plus the same amount
427 as liquidated damages as per 29 U.S.C. § 216.

428 77. Lead Plaintiffs and the Collective Members are entitled to recover
429 from Sutherlin Nissan their unpaid minimum wages, damages for
430 unreasonably delayed payment of wages, liquidated damages or pre-judgment
431 interests, reasonable attorneys' fees, and costs and disbursements of the action
432 pursuant to 29 U.S.C. §§ 206 and 216.

433 78. Because Sutherlin Nissan's violations of the FLSA have been
434 willful, a three-year statute of limitations applies pursuant to 29 U.S.C. § 255.

455 83. All other collective action Plaintiffs were, always relevant to this
456 action, adults residing in Florida. Lead Plaintiffs and the Collective Members
457 consent to sue in this action pursuant to 29 U.S.C. § 216(b); additional potential
458 opt-in Plaintiffs may execute and file forms consenting to “opt in” and joining
459 as Plaintiffs in this collective action.

460 84. Lead Plaintiffs and the Collective Members were hired by
461 Sutherlin Nissan dealerships in Florida to perform duties as a technician on
462 behalf of Sutherlin Nissan and for Sutherlin Nissan’s profit during the
463 Collective Period.

464 85. Lead Plaintiffs and the Collective Members were employed by
465 Sutherlin Nissan.

466 86. By failing to pay overtime wages, Sutherlin Nissan has violated
467 and continues to violate the FLSA sections 207 and 215.

468 87. The conduct described throughout this Complaint and above
469 constitutes a willful violation of the FLSA.

470 88. Sutherlin Nissan knew that it was required to pay its employees
471 the requisite overtime for all overtime hours worked.

472 89. Instead of lawfully paying its employees, Sutherlin Nissan
473 established and maintained systems, policies, and procedures that were
474 intentionally designed to avoid paying employees their earned wages as
475 detailed in the paragraphs above.

476 90. Sutherlin Nissan has engaged in a widespread systematic pattern,
477 policy, and practice of violating the FLSA, as detailed throughout this
478 Complaint.

479 91. Application of these practices does/did not depend on the personal
480 circumstances of the Lead Plaintiffs and the Collective Members. Rather, the
481 same practices which result in the non-payment of overtime wages to Lead
482 Plaintiffs and the Collective Members apply to all Collective Action Members.

483 92. Lead Plaintiffs and the Collective Members are entitled to be paid
484 overtime at a rate not less than one and one-half times their regular rate for
485 all hours worked more than forty hours per week pursuant to FLSA 29 U.S.C.
486 § 207.

487 93. Sutherlin Nissan violated the FLSA, 29 U.S.C. § 207, by failing to
488 pay Lead Plaintiffs and the Collective Members overtime wages at a rate of
489 time and a half of their regular pay during the weeks that they worked more
490 than forty (40) hours, as described in the paragraphs above, and caused Lead
491 Plaintiffs and the Collective Members to suffer lost wages and interest thereon.

492 94. Lead Plaintiffs and the Collective Members were only
493 compensated for “flagged hours”, which sufficiently reduced the compensable
494 hours included in their pay-out. Furthermore, “flagged hours” were the only
495 hours that were counted for purposes of determining whether Collective

496 Members were entitled to overtime, rather than the actual hours worked by
497 the Collective Members.

498 95. Therefore, Lead Plaintiffs and the Collective Members frequently
499 worked over forty hours per week but did not receive the required overtime for
500 every hour worked more than forty (40) hours per week, since flagged hours
501 were the only hours that were counted for purposes of overtime.

502 96. By way of example, on January 31, 2020, Lead Plaintiffs received
503 a paycheck stating that he worked 48 hours and was paid \$1,536.00 (gross). He
504 was paid at his straight rate for each of these hours. Under 29 U.S.C. § 207,
505 Lead Plaintiffs should have been paid at a rate not less than one and one-half
506 times the regular rate at which he is employed for every hour in excess of forty
507 (40) hours, which he was not. For this one week, he is owed a total of \$384 in
508 unpaid overtime wages.

509 97. Moreover, despite working more than forty (40) hours per week,
510 Sutherlin Nissan failed to pay Collective Members overtime compensation at
511 the appropriate rate.

512 98. Sutherlin Nissan knowingly, willfully, or with reckless disregard
513 carried out its illegal pattern or practice of failing to pay Collective Members
514 the required overtime wages.

515 99. Sutherlin Nissan knew that Lead Plaintiffs and the Collective
516 Members were owed compensation and that Sutherlin Nissan was required to
517 pay such compensation. However, Sutherlin Nissan failed to do so.

518 100. As a result of Sutherlin Nissan's intentional, willful, and unlawful
519 acts in refusing to pay Lead Plaintiffs and the Collective Members, and those
520 similarly situated to them, overtime wage rates per hour worked per workweek
521 in one or more workweeks, Lead Plaintiffs and the Collective Members, and
522 those similarly situated to them, have suffered damages, and incurred
523 reasonable attorneys' fees and costs as provided in 29 U.S.C. § 216.

524 101. As a result of Sutherlin Nissan's willful violation of FLSA § 207,
525 Lead Plaintiffs and the Collective Members are entitled to recover the full
526 amount of any unpaid back wages unlawfully withheld, plus the same amount
527 as liquidated damages or pre-judgement interest as per 29 U.S.C. § 216. They
528 are further entitled to reasonable attorneys' fees, costs, and disbursements.

529 102. Because Sutherlin Nissan's violations of the FLSA have been
530 willful, a three-year statute of limitations applies pursuant to 29 U.S.C. § 255.

531 103. Lead Plaintiffs and the Collective Members request designation of
532 this action as a collective action and prompt issuance of notice pursuant to 29
533 U.S.C. § 216(b) to all similarly situated members of an FLSA Opt-In Class,
534 apprising them of the pendency of this action, permitting them to assert timely
535 FLSA claims in this action by filing individual Consents to Join, and

536 appointing Plaintiffs and their counsel to represent the Collective Action
537 Members.

538 PRAYER FOR RELIEF

539 WHEREFORE, Lead Plaintiffs and the Collective Members respectfully
540 request that judgment be entered in their favor, against Sutherlin Nissan, and:

541 a. Certification and acknowledgement of the Collective Action
542 and appointing the Lead Plaintiffs and trial counsel the opportunity to
543 represent the Collective Members.

544 b. Awarding Lead Plaintiffs and the Collective Members
545 his/their unpaid wages in the amount due to him/them for Lead Plaintiffs
546 and the Collective Members, time worked in each work week at
547 minimum wage, any owed overtime wages, and any other relief provided
548 for under law.

549 c. Awarding Lead Plaintiffs and the Collective Members
550 liquidated damages as permitted by law.

551 d. Awarding Lead Plaintiffs and the Collective Members
552 reasonable attorneys' fees and costs and expenses of the litigation
553 pursuant to the FLSA.

554 e. Awarding Lead Plaintiffs and the Collective Members
555 punitive damages and/or pre-judgment interest as permitted by law.

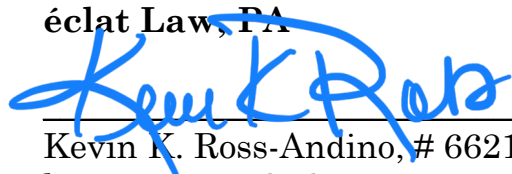
556 f. Granting Lead Plaintiffs and the Collective Members an
557 Order, on an expedited basis, allowing them to send notice of this action
558 as a collective action pursuant to 29 U.S.C. § 216(b) to those similarly
559 situated Collective Action Members; and

560 g. Granting any other further relief, the Court deems just and
561 proper.

562 **JURY TRIAL DEMANDED**

563 Class Members respectfully demand a trial by jury on all issues so
564 triable.

565
566 **éclat Law, PA**



567
568 Kevin K. Ross-Andino, # 66214

569 kevin.ross@eclatlaw.com

570 307 Cranes Roost Boulevard # 2010

571 Altamonte Springs, Florida 32701

572 Main Line: (407) 636-7004

573
574 *Lead Trial Counsel to the*
575 *Plaintiffs and each Class Member*
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