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4 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
5 **FOR THE COUNTY OF MULTNOMAH**

6 SHAWN MCCRARY,

7 Plaintiff,

8 v.

9 LAPIN MOTOR COMPANY, and LEO LAPIN,
10 an individual,

11 Defendants.

Case No. _____

COMPLAINT

Retaliation for Whistleblowing under ORS 659A.199; Failure to Pay Oregon Sick Leave under ORS 653.601 *et seq.*; Retaliation for use of Oregon Sick Leave under ORS 653.641; Failure to Pay Overtime Wages in Violation of ORS 653.055 and 653.261; Failure to Pay Final Wages in Violation of ORS 652.140; Wrongful Discharge & Intentional Infliction of Emotional Distress

NOT SUBJECT TO MANDATORY
ARBITRATION

Prayer Amount: \$1,350,000; Filing Fee \$884
(ORS 21.160(1)(d))

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17 **INTRODUCTION**

18 1. In an unhinged, alcohol and drug-induced rage, defendant Leo Lapin publicly
19 berated, assaulted and battered plaintiff in a morning all-staff meeting at defendant Lapin Motor
20 Company as he screamed, “everyone, everyone, Shawn is fired – get the fuck out of my
21 company!” Defendants fired plaintiff in retaliation for his resistance to defendants’ cover-up of a
22 COVID-19 outbreak cluster at LMC and related unsafe and illegal practices. Defendants
23 directed employees to conceal the COVID-19 outbreak to ensure that customers and employees
24 would continue to come into the showroom such that defendants’ profits were maintained.

25 2. In this action for monetary and injunctive relief, plaintiff seeks compensation for
26 defendants’ extreme, outrageous and unlawful conduct. Plaintiff will amend this Complaint

1 pursuant to ORS 31.725 to assert claims for punitive damages to punish and deter defendants'
2 conduct, which knowingly endangered employees, customers and the local community for the
3 sole goal of maximizing defendants' profits.

4 **JURISDICTION**

5 3. This court has jurisdiction over plaintiff's claims for monetary and other relief
6 under Article VII, section 9 of the Oregon Constitution.

7 **VENUE**

8 4. Venue is proper in Multnomah County under ORS 14.080(2) because defendants
9 Lapin Motor Company and Leo Lapin conduct regular, sustained business activity in Multnomah
10 County.

11 **PARTIES**

12 5. Plaintiff Shawn McCrary ("plaintiff") is a resident of Portland, Oregon. During
13 the relevant period, plaintiff was an employee of defendant Lapin Motor Company at its location
14 at 2627 Southeast Holgate Boulevard in Portland.

15 6. Defendant Lapin Motor Company ("LMC") is a car dealership that conducts
16 regular, sustained business out of its operations in Multnomah County.

17 7. Defendant Leo Lapin ("Lapin") is the sole owner of LMC and resides in Portland,
18 Oregon.

19 **GENERAL ALLEGATIONS**

20 8. Plaintiff commenced employment at LMC in September 2019 as the dealership's
21 Finance Manager and Sales Manager. He was a highly successful employee whom Lapin
22 frequently praised for his efforts. Plaintiff assisted Lapin in creating an entirely new wholesale
23 business from which Lapin earns hundreds of thousands of dollars a year. At no time did
24 defendants discipline or criticize plaintiff related to his job performance.

25 9. Lapin's management style is bullying and tyrannical in the extreme. His conduct
26 is often fueled by alcohol and drug abuse. Lapin frequently is under the influence at work. On

multiple occasions, Lapin has had to be moved away from customers due to his extreme state of inebriation and impairment.

10. Part of Lapin's style of intimidation is to commit egregiously inappropriate and at times unlawful actions in the full view of LMC employees, thereby emphasizing that no one can defy or challenge him. He engages in improper business practices, unsafe and threatening conduct, open sexual harassment, and knowing non-compliance with the law. Employees quickly come to understand that they will be fired if they in any manner resist or oppose Lapin's open misconduct. Lapin makes it a point to fire employees who stand up to him in front of other employees, to send the clear message that total capitulation is required.

11. Lapin brags about his own misconduct in front of his employees, as if to dare anyone to raise objections. This includes, for example, on one recent occasion, bragging in a text message to numerous employees about the fact that he threw a log at a neighbor's car, denting the car on the driver's side. The neighbor had threatened to sue Lapin for his drunken misconduct in her yard where she had been hosting a party for high school students and Lapin wandered in, uninvited and without a mask. Lapin also openly engages in sexually harassing conduct – as he did during the meeting in which he fired plaintiff, as further discussed below. This conduct is focused on a female employee with whom he repeatedly has made plain to virtually all LMC employees he desires a sexual relationship. Lapin's misconduct also includes openly engaging in other illegal practices, including misclassifying all sales employees who reported to plaintiff as "independent contractors," and generally flouting laws governing employment, including, for example, the Oregon Sick Leave Law, the Oregon Family and Medical Leave Act, Families First Coronavirus Response Act, and other laws, as described below. Employees who resist are fired and made to serve as examples.

12. From the outset of the COVID-19 pandemic, Lapin refused to close the business in March 2020 or to institute effective social distancing or other adequate safety measures in response to the Oregon governor's orders. In or around March 2020, Lapin fired a sales

1 representative who reported to plaintiff because the sales representative had expressed safety
2 concerns about coming into work. This firing occurred via text message on which almost all
3 Company employees were included.

4 13. Also, near the outset of the COVID-19 pandemic crisis, defendants applied for
5 and received a \$150,000 forgivable loan under the federal Paycheck Protection Program. Lapin
6 bragged to LMC employees that the money was deposited into his personal bank account.
7 Shortly thereafter, Lapin purchased a Mastercraft boat for approximately \$160,000. He brought
8 it to the dealership and posted photographs of his new acquisition on social media for all to see.

9 14. But while Lapin paid close attention to COVID-19-related legislation that favored
10 him, he did nothing to comply with the Families First Coronavirus Response Act (FFCRA),
11 which requires defendants to provide LMC employees with paid sick leave and expanded family
12 and medical leave for specified reasons related to COVID-19. Defendants did not advise
13 employees of their rights under this statute, post the required notice, or provide FFCRA leave to
14 any employees at any time. Defendants made no effort to comply with the FFCRA, even as
15 multiple employees became ill with COVID-19. On the contrary, Lapin actively penalized and
16 threatened employees who wished to take time off due to COVID-19-related reasons.

17 15. On July 8, 2020, General Manager Joel Rosabal was obviously sick and feverish
18 at work. Rosabal texted employees saying that he had thrown up four times at work that day.
19 Despite the fact that Rosabal's girlfriend had tested positive for COVID-19, Rosabal refused to
20 be tested for the virus and continued to work at the dealership while ill with the active
21 encouragement of Lapin.

22 16. On Thursday, July 9, 2020, LMC sales staff met for a dinner at the El Gaucho
23 restaurant in downtown Portland to celebrate LMC's record sales during June 2020. It was
24 evident to the attendees that Rosabal was feverish and ill; he was sweating and appeared to be in
25 significant discomfort. Employees were concerned for their own safety and for him and asked
26 him to leave.

1 17. During the celebration, plaintiff was in close proximity with a member of the
2 sales staff who was being celebrated for his achievements the prior month – at one point with an
3 arm around his shoulder. The next day, the employee became ill and plaintiff learned soon
4 thereafter that this staff member tested positive for COVID-19. The salesperson told plaintiff
5 that he was concerned because Lapin stated he would not pay for anyone taking time off due to
6 COVID-19.

7 18. On July 11, 2020 Lapin took plaintiff aside and stated, “If anyone tests positive
8 for COVID-19, nobody gets days off work.” Lapin insisted that he expected employees to
9 continue to come in to work even with the virus.

10 19. That same day, another employee informed plaintiff that a total of three Lapin
11 employees were sick with symptoms associated with COVID-19, and that another employee was
12 now throwing up at work. The employee also indicated that two staff members’ “significant
13 others” had tested positive for COVID-19.

14 20. On July 12, 2020 Lapin was present at the LMC dealership along with Rosabal
15 and Rosabal’s girlfriend, who had tested positive for COVID-19. Plaintiff is informed and
16 believes that Lapin was aware that Rosabal was symptomatic and that Rosabal’s girlfriend had
17 tested positive, yet Lapin allowed Rosabal and his girlfriend to remain in the dealership for hours
18 that day.

19 21. That evening, two of the sales representatives who reported to plaintiff called
20 plaintiff together and told him that they did not feel safe in the workplace. The employees
21 indicated they were afraid of Lapin but stated, “we need to take a stand.” Plaintiff responded by
22 stating that he agreed and that he would support them.

23 22. By this time, plaintiff was increasingly alarmed regarding the apparent
24 COVID-19 outbreak in the small LMC building, and regarding defendants’ wholly inadequate
25 response. Plaintiff’s wife was five months pregnant. Consequently, plaintiff feared that he
26 might contract COVID-19 and spread it to his wife and cause damage to her and the child they

1 are expecting. Plaintiff previously had disclosed his wife's pregnancy to Lapin.

2 23. Plaintiff contacted other staff, including the female employee whom Lapin was
3 sexually harassing, to attempt to learn more about how many employees had tested positive or
4 were symptomatic, or who had a boyfriend, girlfriend or spouse who had tested positive.
5 Following their discussion, the female staff member informed Lapin of plaintiff's inquiries. As
6 Lapin later made clear, he was furious that plaintiff had expressed concerns about defendants'
7 failure to appropriately respond to the growing COVID-19 outbreak at LMC.

8 24. During the week of July 13, 2020, two employees confirmed that they had tested
9 positive for COVID-19. During this time, the General Manager, Mr. Rosabal, whose girlfriend
10 had tested positive, continued to appear to be obviously ill in the LMC facility and continued to
11 refuse to be tested.

12 25. Lapin failed to advise LMC staff or LMC customers of the positive COVID-19
13 cases of the staff, failed to send Mr. Rosabal home, failed to close the facility, failed to ensure
14 that professional cleaning occurred, failed to implement required social distancing protocols as
15 required by the Oregon governor's executive orders, and failed to take action to ensure that
16 symptomatic or positive-tested employees stay out of the workplace, away from both employees
17 and LMC customers.

18 26. Lapin lied to employees, telling them both orally and via text message that no one
19 at LMC was sick. During this time, LMC remained open for business and hundreds of customers
20 came through the facility.

21 27. On Monday, July 13, 2020, one of the sales representatives who had called
22 plaintiff the day before, sent a text message to staff and Lapin stating that he did not feel safe.
23 Plaintiff responded to the staff and Lapin saying that he too did not feel safe in the LMC
24 workplace, particularly in light of his wife's pregnancy.

25 28. That same day, plaintiff spoke on the phone with Lapin and urged him to address
26 the unsafe conditions at LMC by, at a minimum, closing the business for two days and having

1 the dealership cleaned and disinfected. Lapin expressed agitation and made clear that he had no
2 such plans.

3 29. Plaintiff also told Lapin that, particularly in light of his concern for his pregnant
4 wife, he needed to take a couple of days off during which he would get tested. Plaintiff said he
5 would return as soon as he received confirmation that he had not tested positive. Plaintiff took
6 July 14 and 15, 2020 off to get tested and to await his results. He was tested on July 14, 2020,
7 and received a negative test result the next day and promptly returned to work.

8 30. Several days later, plaintiff realized that defendants had unlawfully and without
9 any comment deducted \$1000 from his paycheck, evidently because plaintiff had taken two days
10 off to get tested.

11 31. Lapin also communicated to all staff – including purportedly exempt employees
12 like plaintiff – that they would not be paid for days off due to COVID-19 concerns.

13 32. Despite the fact that two LMC employees had tested positive, and two significant
14 others of other staff (who continued to come to work) had tested positive, and despite the fact
15 that the General Manager obviously was symptomatic at work and had been exposed to his
16 girlfriend who had tested positive, defendant Lapin sent text messages to LMC employees
17 pressuring them to continue to come to work.

18 33. In group text messages to the staff, Lapin referred to employees who continued to
19 come in to work as “my warriors” and “my soldiers.” Lapin stated in a July 13, 2020 message
20 that he “applaud[ed]” those who “went to the front of the line for me.” He went on: “My soldiers
21 were next to me today,” and “I respect you strongly in return!” In another text to staff, defendant
22 Lapin stated that, in response to the COVID-19 pandemic, “I choose to raise my head high and
23 go at the enemy in full force. I invite each and every single one of you to join me. I will not be
24 held back!”

25 34. Lapin made clear that employees who expressed concerns about their safety
26 would be fired. He stated in a text message to staff: “If you don’t feel safe working here, let me

1 know and we can plan an exit plan for you.”

2 35. By these and numerous other messages, Lapin sought to pressure plaintiff and all
3 other employees of LMC to continue to come to work and knowingly expose themselves to the
4 COVID-19 virus in order to maintain defendants’ profits.

5 36. As employees became aware of the positive cases among employees, Lapin texted
6 employees instructing them to keep the outbreak confidential so that customers would keep
7 coming in to buy cars. He wrote: “keep this down please. Don’t share this information with
8 anyone since we do not want to scare away business.”

9 37. On or about July 18, 2020 Lapin gathered employees around and proceeded to
10 berate and make an example of sales employee Brian Almendares, who was one of the two
11 employees who had contacted plaintiff to seek his support in expressing concerns about the
12 unsafe workplace. While visibly intoxicated and smelling of alcohol, Lapin yelled at
13 Almendares in front of other staff, stating that he did not like the fact that he and another
14 employee had raised concerns about safety in the workplace related to COVID-19. Lapin,
15 concluded his tirade by yelling, “Brian, you’re fucking fired. Get the fuck out of here!”

16 38. On July 22, 2020 defendant Lapin once again underscored that he would not
17 comply with Oregon Sick Leave requirements, nor would he comply with the leave provisions of
18 the FFCRA. He texted: “no one gets any days off this week.... I’m tired of this shit!”

19 39. At a 9:00 a.m. all staff meeting on Friday, July 31, 2020, Lapin came in
20 approximately forty-five minutes late and announced that he had been drinking since he woke up
21 that morning. He also stated that he had taken the drug Adderall. And he proceeded to smoke
22 marijuana with his vape pen during the meeting as he launched into an unhinged tirade.

23 40. At the meeting, Lapin expressed his fury that, unlike in June, during which LMC
24 had made a record profit, July sales had not been as strong as Lapin expected. Lapin began
25 haranguing individual members of the staff, shouting comments such as, “are you fucking stupid
26 or are you lazy?!” Pointing his finger at another employee, he repeated, “are you fucking stupid,

1 or just lazy?! Which one is it?!”

2 41. Lapin then approached General Manager Rosabal and angrily slapped him on the
3 back of the neck multiple times, while shouting: “You give me my fucking money!” He
4 continued “you all owe me \$60,000,” referring to the failure to meet Lapin’s sales expectations
5 for the month. And, “no one is getting days off until you get me my money!”

6 42. For the next approximately forty-five minutes Lapin screamed and berated
7 employees, interrogating individual employees with questions like “are you giving me a hundred
8 percent?!” Lapin stopped at one point, however, and silently stared at the buttocks of the female
9 employee he had been sexually harassing who was dressed in shorts, before finally stating, “oh
10 my God, you are so fucking hot.” Lapin’s conduct made plain to all that he was completely out
11 of control.

12 43. Eventually Lapin made his way to where plaintiff was seated. He pointed his
13 finger directly at plaintiff and stated, “you know what you did to me.” Plaintiff responded by
14 stating that he did not know what Lapin was referring to. Lapin moved toward plaintiff and
15 stood inches away from him. With his stomach and waist right next to plaintiff’s face, Lapin
16 looked down and yelled at plaintiff: “You know what you fucking did to me?!” Plaintiff
17 responded by stating “I don’t know what you’re referring to.” Plaintiff sought to deescalate the
18 situation by suggesting that, whatever it was that Lapin was so angry about, they should discuss
19 it one-on-one, and not in front of the entire staff of more than twenty employees who were
20 looking on in horror.

21 44. Feeling physically intimidated as Lapin stood over him yelling at him, and aware
22 that Lapin was intoxicated, under the influence of at least two drugs, and out of control, plaintiff
23 stood up to address him. At that point, Lapin forcefully grabbed plaintiff by the arm and stated:
24 “Everyone, everyone, Shawn is fired! Get the fuck out of my company!” Plaintiff was shocked.
25 He asked, “why are you firing me?”

26 45. Lapin angrily grabbed plaintiff by the shirt and collar and attempted to forcefully

1 pull plaintiff out of the dealership. Plaintiff stated, “get your hands off me. Don’t you ever
2 touch me like that.” Plaintiff’s resistance further enraged Lapin who again yelled, “get the fuck
3 out of my company!”

4 46. Other employees appeared shocked and stricken; several appeared to be crying.
5 Plaintiff left the workplace, having been publicly humiliated and fired from a job at which he had
6 only excelled.

7 47. Approximately one hour later, Lapin sent plaintiff lengthy text messages in which
8 he made clear that he had fired plaintiff because he was angry that plaintiff had “created drama”
9 by standing up for staff regarding concerns about the unsafe workplace and that plaintiff had
10 advocated for basic precautions and compliance with the law, including closing the facility for
11 cleaning to prevent spread of COVID-19. Lapin also indicated in his text messages that he was
12 angered that plaintiff resisted his berating, assault and battery in the meeting. He wrote, in
13 pertinent part:

14 I'm very sorry. I really didn't want it to go that way. I just felt disrespected
15 and my mind reacted. Your [sic] a man of respect. And you deserve every
16 bit of it. I appreciate you as a person. You are a good person, your [sic]
17 just going through some tough times in your life at the moment. Reach out
to Jesus, you know him, he will help you....

18 You are worth every penny. You have done so much for my company.
19 You have helped me very much. It hurts me to hurt someone I care about.
20 Your [sic] a great human being. I truly respect you. I said a few words in
frustration when I felt disrespected by you. I am really sorry for saying
those hurtful things. I love you....

21 You should have worked with me. Communicated with me, not with lower
22 level positions staff.... On Monday without any communication with me
23 as one of my leaders, you create drama with people of lower position than
24 you. Discussing all this and riling people up. And with no communication
with me, you announce that we should be closed....

25 Deals had to be funded. We're a fast past [sic] business. Do you see what
26 you did to me? You work for me Shawn. I pay for your time and
value....

1 I was out of line. I only reacted because I felt you showed me disrespect
2 by the way you responded to me. You know I'm a straight shooter. I call
people out when they do things wrong. Not my way.

3 But I didn't think that you would react to me that proudly and make me
4 react my way. I hate that it got to that....Your [sic] going through a tough
5 time in your life right now. I'm sorry about that, but hold yourself
together. You will get back up.

6 48. Despite his long apologetic messages, defendants failed to reinstate plaintiff.
7 LMC failed to pay him all wages due within one business day of his termination, including the
8 \$1000 that was wrongfully deducted from his paycheck as alleged above.

9
10 **FIRST CLAIM FOR RELIEF**
11 **Discrimination for Whistleblowing in Violation of ORS 659A.199**
12 **Against Defendant Lapin Motor Company and Aiding &**
13 **Abetting Against Defendant Lapin**

14 49. Plaintiff incorporates and realleges paragraphs 1 - 48 above.

15 50. Plaintiff engaged in protected activity by reporting information in good faith
16 about what he believed was evidence of a violation of a law, rule, or regulation, in particular,
17 defendants' failure to maintain a safe workplace as required by the Occupational Health and
18 Safety Act, and the Oregon Health and Safety Act, and to follow state mandates, including the
governor's executive orders, regarding mandated social distancing and hygiene practices, as well
the Oregon Sick Leave Act, the FFCRA, and other legal authority.

19 51. Plaintiff also engaged in protected activity when he resisted and opposed Lapin's
20 assault and battery.

21 52. LMC terminated plaintiff in retaliation for his protected activity and publicly
22 berated, assaulted and battered him in retaliation for his protected activity.

23 53. Lapin aided and abetted that conduct in violation of ORS 659A.030(1)(g).

24 54. Defendants' actions were intentional and constituted an unlawful employment
25 practice in violation of ORS 659A.199(1).

26 55. As a direct and proximate result of defendants' actions as alleged herein, plaintiff

1 has suffered economic losses in an amount to be proven at trial, plus interest thereon at the
2 statutory rate of 9%.

3 56. As a direct and proximate result of defendants' actions as alleged herein, plaintiff
4 has suffered noneconomic harm in the form of emotional and mental distress, degradation,
5 embarrassment and humiliation, for which plaintiff seeks compensation in an amount of
6 \$1,000,000.

7 57. Plaintiff is entitled to all appropriate injunctive relief.

8 58. The actions of defendants as alleged herein were intentional, willful, and were
9 conducted with reckless disregard to plaintiff's statutory rights. Such conduct exceeds the
10 bounds of social toleration and is of the type that punitive damages deter. Plaintiff intends to
11 amend this Complaint to seek punitive damages.

12 59. Plaintiff has engaged legal counsel to prosecute his claims and is entitled to his
13 reasonable attorneys' fees and costs incurred, including expert witness fees, pursuant to
14 ORS 659A.885 and ORS 20.107.

15 **SECOND CLAIM FOR RELIEF**
16 **Against Defendant Lapin Motor Company**
17 **Discrimination for Opposing Unsafe Practices**
18 **ORS 654.062(5)**

19 60. Plaintiff incorporates and realleges claims 1 - 59.

20 61. Plaintiff opposed unsafe work practices and raised health and safety concerns to
21 defendants.

22 62. In retaliation for those complaints, LMC deducted payment from plaintiff's
23 paycheck, berated him in public, assaulted and battered him, and discharged him.

24 63. As a direct and proximate result of LMC's actions as alleged herein, plaintiff has
25 suffered economic losses in an amount to be proven at trial, plus interest thereon at the statutory
26 rate of 9%.

64. As a direct and proximate result of LMC's actions as alleged herein, plaintiff has

1 suffered noneconomic harm in the form of emotional and mental distress, degradation,
2 embarrassment and humiliation, for which plaintiff seeks compensation in an amount of
3 \$1,000,000.

4 65. Plaintiff is entitled to all appropriate injunctive relief.

5 **SECOND CLAIM FOR RELIEF**
6 **OREGON SICK LEAVE**
7 **ORS 653.641**
8 **Against Defendant Lapin Motor Company**

9 66. Plaintiff realleges and incorporates the allegations set forth in paragraphs 1 - 65
10 above.

11 67. LMC failed to provide plaintiff with Oregon Sick Leave he was due and for which
12 he was eligible on July 14 and 15, 2020 when plaintiff sought medical attention and testing after
13 being closely exposed to another COVID-19-positive LMC employee.

14 68. LMC retaliated against plaintiff for his attempted use of Oregon Sick Leave by
15 wrongfully deducting \$1000 from his pay and discharging plaintiff two weeks later for no
16 legitimate work-related reason.

17 69. As a direct and proximate result of LMC's actions as alleged herein, plaintiff has
18 suffered economic losses in an amount to be proven at trial, plus interest thereon at the statutory
19 rate of 9%.

20 70. As a direct and proximate result of LMC's actions as alleged herein, plaintiff has
21 suffered noneconomic harm in the form of emotional and mental distress, degradation,
22 embarrassment and humiliation, for which plaintiff seeks compensation in an amount of
23 \$1,000,000.

24 71. Plaintiff is entitled to all appropriate injunctive relief.

25 72. Plaintiff has engaged legal counsel to prosecute his claims and is entitled to his
26 reasonable attorneys' fees and costs incurred, including expert witness fees, pursuant to
ORS 659A.885 and ORS 20.107

THIRD CLAIM FOR RELIEF
Violation of ORS 652.610(3) & ORS 652.615
Improper Deduction Against Defendant Lapin Motor Company

73. Plaintiff incorporates by reference the allegations of paragraphs 1 - 72.

74. LMC improperly and without authorization deducted \$1000 from plaintiff's paycheck in July 2020.

75. Plaintiff is entitled to repayment of such wrongfully deducted amount along with his attorneys' fees and costs pursuant to ORS 652.615.

FOURTH CLAIM FOR RELIEF
Against Defendant Lapin Motor Company
Violation of ORS 653.055, 653.261
Failure to Pay Overtime Wages

76. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 - 75.

77. LMC reduced plaintiff's pay for time not worked when he took two days off to obtain a COVID-19 test.

78. Defendants announced that employees who were absent due to COVID-19-related concerns, including those employees such as plaintiff whom defendants classified as exempt from overtime requirements, would be subject to pay reductions based on the amount of worktime.

79. Consequently, plaintiff was not paid on a "salary basis" within the meaning of OAR 839-020-0004(30).

80. Plaintiff was therefore not properly classified as exempt from the requirement to pay one and a half time plaintiff's regular rate of pay for all hours worked in excess of forty in a workweek.

81. LMC failed to pay plaintiff overtime compensation for overtime hours worked as required by ORS 653.055, ORS 653.261 and OAR 839-020-0030.

82. Plaintiff worked approximately 700 hours of overtime since he commenced employment at LMC.

1 83. Plaintiff is entitled to an overtime premium for the hours he worked over forty
2 hours each week, amounting to total overtime pay due and owing to plaintiff of approximately
3 \$36,000.

4 84. In failing to pay plaintiff overtime for hours worked in excess of forty in a week,
5 LMC's actions were willful, as evidenced by the fact that LMC knowingly and willfully violates
6 numerous wage and hour and other laws, including for example, purporting to classifying all
7 sales staff as "independent contractors" who are paid without required tax withholdings and who
8 also receive no overtime compensation, or mandated meal and rest periods.

9 85. Pursuant to ORS 653.055 and ORS 652.150, plaintiff is entitled to all
10 compensation due plus a penalty in the amount of thirty days' wages at the time of his
11 termination.

12 86. Plaintiff is entitled to prejudgment interest from the date each item of unpaid
13 compensation became due and owing.

14 87. Plaintiff is entitled to reasonable attorneys' fees, expert fees, costs and
15 disbursements incurred pursuant to ORS 652.200.

16
17 **FIFTH CLAIM FOR RELIEF**
18 **Against Defendant Lapin Motor Company and Defendant Lapin**
19 **Violation of ORS 652.140**
20 **Failure to Pay Final Wages**

21 88. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 - 87.

22 89. Defendants failed to pay plaintiff all wages earned by the end of the first business
23 day following the date it terminated his employment in violation of ORS 652.140 including the
24 \$1000 defendants unlawfully deducted from plaintiff's pay in July 2020 and the overtime
25 compensation it failed to pay plaintiff as alleged above.

26 90. Pursuant to ORS 652.150, plaintiff is entitled to all compensation due plus a
penalty in the amount of thirty days' wages.

 91. Plaintiff is entitled to prejudgment interest from the date each item of unpaid

1 compensation became due and owing, pursuant to ORS 82.010.

2 92. Plaintiff is entitled to reasonable attorneys' fees, expert fees, costs and
3 disbursements incurred pursuant to ORS 652.200.

4 **SIXTH CLAIM FOR RELIEF**
5 **Against Defendant Lapin Motor Company**
6 **Wrongful Discharge**

7 93. Plaintiff incorporates by reference the allegations of paragraphs 1 - 92.

8 94. Plaintiff fulfilled an important public duty and sought to protect important private
9 rights related to employment by opposing practices that he believed in good faith to be in
10 violation of laws governing workplace safety, including the general duty to provide a safe
11 workplace under the Occupational Health and Safety Act and the Oregon Health and Safety Act,
12 and the Governor of Oregon's Executive Orders governing employers and places of public
13 accommodation responding to the COVID-19 pandemic, as well as the Oregon Sick Leave Law,
14 ORS 653.601 et seq., and federal laws governing paid time off under the FFCRA.

15 95. LMC retaliated against and terminated plaintiff for fulfilling an important public
16 duty and private rights related to employment as described above, including by discharging him
17 on July 31, 2020.

18 96. As a direct and proximate result of defendant's actions as alleged herein, plaintiff
19 has suffered economic losses in the form of back pay, front pay, lost benefits, and out-of-pocket
20 expenses, in an amount to be proven at trial, plus interest thereon at the statutory rate of 9%.

21 97. As a direct and proximate result of defendant's actions as alleged herein, plaintiff
22 has suffered noneconomic harm in the form of emotional and mental distress, degradation,
23 embarrassment and humiliation, for which plaintiff seeks compensation in the amount of
24 \$1,000,000.

25 98. The actions of defendants as alleged herein were intentional, willful, and with
26 reckless disregard to plaintiff's statutory rights. Such conduct exceeds the bounds of social

1 toleration and is of the type that punitive damages deter. Plaintiff, therefore, will amend this
2 Complaint to seek punitive damages.

3
4 **EIGHTH CLAIM FOR RELIEF**
5 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
6 **Against Defendant Lapin Motor Company and Defendant Lapin**

7 99. Plaintiff realleges and incorporates paragraphs 1 - 98 above.

8 100. Defendants terminated plaintiff in a highly abusive manner that included a public
9 assault and battery, obscenity and aggressive drunken and drug-induced conduct that was so
10 extreme and outrageous that some in the meeting were visibly crying.

11 101. Defendants engaged in this conduct and fired plaintiff for seeking to ensure his
12 own, his family's, and his coworkers' safety through compliance with the most basic legal and
13 safety expectations in the midst of a pandemic.

14 102. Defendants engaged in this abusive conduct knowing, as Lapin repeatedly
15 referenced in text messages sent approximately one hour after the abusive termination, that
16 plaintiff was in a vulnerable position with a wife who was five months pregnant.

17 103. Defendants engaged in this abusive public firing as part of an intentional pattern
18 and strategy to intimidate employees into tolerating and not resisting defendants' pattern of
19 unlawful conduct, including his coercion of employees to work in an unsafe workplace at high
20 risk of contracting COVID-19, his open sexual harassment and his open flouting of laws
21 governing his business, including wage and hour and other employment laws, among others.
22 This intimidation took various forms, including the practice of publicly firing and shaming
23 employees who raised concerns about defendants' brazenly unlawful conduct.

24 104. Lapin publicly revealed to the employees at the meeting where he fired plaintiff
25 that he was under the influence of drugs and alcohol and it was evident by his conduct that he
26 was out of control.

105. Lapin's conduct was physically violent, extreme and outrageous, and far beyond

1 the standards of conduct tolerated in a civilized society. At the time he engaged in the actions
2 alleged herein, Lapin was acting as an agent of LMC.

3 106. Lapin's acts caused plaintiff shock, embarrassment, humiliation and emotional
4 distress in an amount to be proven at trial, but which is not less than \$1,000,000.

5 **NINTH CLAIM FOR RELIEF**
6 **ASSAULT & BATTERY**
7 **Against Defendant Lapin**

8 107. Plaintiff incorporates and realleges paragraphs 1 - 106.

9 108. At the July 31, 2020 meeting, Lapin placed himself within inches of plaintiff,
10 after having battered another employee just minutes earlier in the same meeting, and began an
11 aggressive, obscenity-laced tirade against plaintiff, placing plaintiff in apprehension of a harmful
12 or offensive physical contact.

13 109. Lapin proceeded to subject plaintiff to harmful or offensive physical contact by
14 grabbing him forcefully by the arm and tugging him out of the dealership while yelling that he
15 was fired.

16 110. Plaintiff apprehended and then experienced harmful or offensive contact at the
17 hands of Lapin in the July 31, 2020 meeting thereby causing plaintiff emotional distress and
18 bodily pain.

19 WHEREFORE, plaintiff prays for judgment against defendant as follows:

- 20 1. For economic damages in an amount to be determined at trial.
- 21 2. For non-economic damages including damages for emotional distress,
22 humiliation, reputational injuries in the amount of \$1,000,000.
- 23 3. For unpaid overtime and wrongfully withheld wages as alleged.
- 24 4. For penalty wages for failure to pay all wages due upon termination in the
25 amount of \$24,000.
- 26 5. For overtime wages in the amount \$36,000.

1 6. For attorneys' fees and costs expended in prosecution of this action.
2

3 Dated: October 5, 2020.

4 BUCHANAN ANGELI ALTSCHUL
5 & SULLIVAN LLP

6 s/Paul Buchanan

7 Paul Buchanan, OSB 940551

8 paul@baaslaw.com

9 Attorney for Plaintiff
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