

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

JOHN MCCRERY, individually and on  
behalf of others similarly situated,

*Plaintiff,*

vs.

PHIL LONG DEALERSHIPS, INC.,

*Defendant.*

COLLECTIVE AND CLASS ACTION  
COMPLAINT

Jury Trial Demanded

Civil Action No.:

**COLLECTIVE AND CLASS ACTION COMPLAINT**

Plaintiff John McCrery, individually and on behalf of all others similarly situated, by and through his attorneys, BROWN, LLC, hereby brings this Collective and Class Action Complaint against Defendant PHIL LONG DEALERSHIPS, INC., and alleges of his own knowledge and upon information and belief as to all other matters, as follows:

**INTRODUCTION**

1. Plaintiff John McCrery (“Plaintiff” or “McCrery”) brings this action for himself and all other similarly situated hourly-paid, non-exempt Express Technicians (and other similarly situated lube/express service technicians) to recover unpaid overtime wages, liquidated damages, and reasonable attorneys’ fees and costs resulting from Defendant Phil Long Dealerships, Inc.’s (“Defendant”) willful violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, and attendant regulations, including 29 C.F.R. Part 516.

2. Additionally, Plaintiff brings this action for himself and all other similarly situated hourly-paid, non-exempt employees to recover unpaid wages, liquidated damages, pre- and post-judgment interest, and reasonable attorneys’ fees and costs arising from Defendant’s willful violations of Colorado wage-and-hour law, including the Colorado Minimum Wage Act

(“CMWA”), C.R.S. § 8-6-101 *et seq.*, the Colorado Wage Claim Act (“CWCA”), C.R.S. § 8-4-101 *et seq.*, and each applicable version of the Colorado Overtime and Minimum Pay Standards (“COMPS”) Order, 7 C.C.R. 1103-1, *et seq.*

3. Defendant is an enterprise operating automobile dealerships in Colorado and New Mexico. Defendant employs persons at its dealerships in job positions identified as “technicians,” who primarily perform routine preventative maintenance and standardized service tasks on customers’ vehicles, including oil and filter changes, tire rotations, basic fluid checks and top-offs, replacement of common wear items, vehicle inspections, and related shop support tasks, typically following preset service procedures rather than diagnosing or performing complex mechanical repairs (“Technician”).

4. Defendant violated the FLSA and Colorado wage-and-hour law, including the CMWA, COMPS, and the CWCA by failing to pay Technicians overtime premium compensation owed for hours worked in excess of forty (40) in a workweek, failing to provide required rest periods for employees working shifts of four (4) or more hours, and failing to authorize and permit compliant duty-free meal periods when employees worked shifts exceeding five (5) hours.

5. As a result of Defendant’s pay practices, Defendant failed to pay Technicians for all overtime hours worked and failed to pay one and one-half (1.5) times their regular rate of pay for hours worked in excess of forty (40) in a workweek, in violation of the FLSA, the CMWA, COMPS, and the CWCA.

6. Plaintiff asserts the FLSA claims individually and on behalf of a putative “FLSA Collective” defined as follows:

*All Technicians employed by Defendant in the United States or any other place covered by the FLSA at any time during the three (3) years preceding the filing of this Complaint through the date of final judgment.*

7. Plaintiff seeks to send notice pursuant to 29 U.S.C. § 216(b) to all similarly situated hourly-paid, non-exempt employees of Defendant, informing them of their right to opt in to this action and assert claims under the FLSA.

8. Plaintiff asserts the Colorado wage-and-hour claims individually and pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a putative “Colorado Class” defined as follows:

*All Technicians employed by Defendant in the State of Colorado at any time during the two (2) years preceding the filing of this Complaint through the date of final judgment.*

### **JURISDICTION AND VENUE**

9. This Court has subject-matter jurisdiction over Plaintiff’s FLSA claims pursuant to 28 U.S.C. § 1331 because Plaintiff’s claims raise a federal question under 29 U.S.C. § 201, *et seq.*

10. This Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367 because those claims derive from a common nucleus of operative facts as Plaintiff’s federal claims.

11. The Court has general personal jurisdiction over Defendant because Defendant is incorporated in Colorado and is domiciled in this state.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendant resides in this district and because a substantial portion of the events and omissions that give rise to the claim occurred in this district.

### **PARTIES**

#### **Defendant**

13. Defendant Phil Long Dealerships, Inc. is a business entity operating automobile dealerships and service centers in Colorado and New Mexico, including Phil Long Hyundai.

14. Defendant's principal office is located at 1212 Motor City Dr, Colorado Springs, CO 80905. Defendant was formed in and is incorporated in the State of Colorado.

15. Defendant conducts substantial business in Colorado, including operating dealership service departments where Plaintiff and other similarly situated employees performed vehicle service and maintenance work.

**Plaintiff**

16. Plaintiff John McCrery is an individual residing in El Paso County, Colorado.

17. Plaintiff has been employed by Defendant as a Technician from January 2024 through the present.

18. As a Technician, Plaintiff was paid pursuant to compensation practices tied to his hourly rate, including compensation practices that later incorporated "flag time," and was subject to Defendant's timekeeping and payroll policies.

19. Plaintiff performed work for Defendant in Colorado as a Technician at Defendant's Phil Long Hyundai dealership service department located in Colorado Springs, Colorado.

20. Plaintiff's primary duties as a Technician consisted of performing routine preventative maintenance and express-service tasks on customers' vehicles, including oil and filter changes, tire rotations, basic fluid checks and top-offs, replacement of common wear items, and vehicle inspections.

21. Defendant paid Plaintiff primarily through compensation tied to his hourly rate, including by multiplying his hourly rate by the number of hours he worked.

22. Some of the compensation Plaintiff received was identified on his paystubs as "flag time," even though Defendant computed that compensation by reference to Plaintiff's hourly rate and hours worked.

23. Plaintiff’s written consent to become a party plaintiff under the FLSA is filed herewith pursuant to 29 U.S.C. § 216(b). *See* Exhibit 1.

**FACTUAL ALLEGATIONS<sup>1</sup>**

***Defendant’s Business and Coverage***

24. Defendant operates multiple automotive dealership enterprises across Colorado and New Mexico, at which it employs Technicians.

25. Defendant operates an enterprise engaged in commerce as defined under the FLSA.

26. Defendant is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000.

27. Defendant is an enterprise that has two (2) or more employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

28. Technicians are individually engaged in commerce for purposes of FLSA coverage.

29. Defendant is the “employer” of Technicians within the meaning of the FLSA, COMPS, and the CWCA.

***Technicians’ Job Duties and Pay Structure***

30. Technicians are “employees” of Defendant within the meaning of the FLSA, COMPS, and CWCA.

31. Technicians work for Defendant in its automotive service departments at Defendant’s dealerships in Colorado and New Mexico.

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<sup>1</sup> The allegations in this Complaint, unless otherwise specified, refer to the time period of three (3) years prior to the filing of this Complaint through the present.

32. Technicians work in positions commonly referred to as Express Lane Technicians, Express Service Technicians, or Lube Technicians.

33. Technicians' primary job duties consist of performing routine preventative maintenance and standardized service tasks on customers' vehicles, including oil and filter changes, tire rotations, basic fluid checks and top-offs, replacement of common wear items, vehicle inspections, and related shop support tasks, typically following preset service procedures rather than diagnosing or performing complex mechanical repairs.

34. Defendant tracks and pays Technicians through an electronic timekeeping and payroll system.

35. Supervisors and managers control scheduling, time approval, and payroll practices affecting Technicians' paid hours.

36. Technicians are non-exempt employees under the FLSA and applicable state wage-and-hour laws, and their primary duties do not involve the type of skilled mechanical repair work that would qualify them as exempt "mechanics" for overtime purposes.

37. Technicians' primary job duties do not include performing diagnostic mechanical repair work.

38. Technicians' primary job duties do not include independently servicing major vehicle systems.

39. Technicians are paid primarily through compensation tied to their hourly rates, including compensation calculated by multiplying their hourly rates by the number of hours they work.

40. Some of the compensation Technicians receive is identified on Defendant's paystubs or payroll records as "flag time," even though, under Defendant's compensation

practices, Technicians continue to receive hourly compensation and compensation tied to their hourly rates before and as flag-time compensation applies.

***Defendant's Overtime Pay Practices***

41. Defendant regularly suffers or permits Technicians to work more than forty (40) hours in one or more workweeks.

42. Despite suffering or permitting Technicians to work more than forty (40) hours in one or more workweeks, Defendant fails to pay Technicians overtime premium pay at one and one-half (1.5) times each Technician's regular rate of pay for hours worked over forty (40).

43. To the extent that Defendant pays Technicians for hours worked in excess of forty (40) in a workweek, it does so through straight-time compensation, and without including any overtime premium compensation.

44. As a result, Defendant suffers and permits Technicians to work hours in excess of forty (40) in a workweek, without paying overtime compensation.

***Defendant's Rest Break Practices***

45. Defendant maintains workplace practices that routinely prevent Technicians from taking paid, duty-free rest periods.

46. The COMPS Order requires employers to authorize and permit a compensated rest period of at least ten (10) minutes for each four (4) hours of work or major fraction thereof.

47. Under COMPS, when an employer fails to authorize and permit a required paid rest period, the employer has failed to pay ten (10) minutes of wages at the employee's agreed-upon or legally required rate of pay.

48. During busy shifts, including regularly scheduled Saturday shifts, Technicians are expected to remain on task and available for work and are not relieved of duty to take the required paid rest periods.

49. As a result, Technicians regularly miss required rest periods.

50. Defendant does not maintain policies or practices that ensure employees are authorized and permitted to take such breaks.

51. Defendant's failure to authorize and permit required paid rest periods results in a failure to pay the ten (10) minutes of wages owed for each required rest period under COMPS.

52. Defendant does not pay employees the additional ten (10) minutes of wages owed when required rest periods are not authorized and permitted.

53. Defendant fails to include that compensable time in overtime calculations when employees work more than forty (40) hours in a workweek.

54. Technicians regularly work periods of four (4) hours or more without being authorized and permitted to take the required ten-minute rest periods and are not allowed sufficient opportunities to take such breaks, especially during busy days such as Saturdays, when they are expected to remain working continuously.

55. Defendant does not consistently authorize or permit Technicians to take a compliant, duty-free, uninterrupted thirty (30)-minute meal period as required by the COMPS Order.

56. Defendant's timekeeping records reflect repeated "Missing Meal" alerts for Plaintiff's shifts.

57. Management instructs Technicians not to clock out for lunch on Saturdays, including when the dealership provides them with lunch and instructs them to work while eating, rather than taking a duty-free meal period.

58. When management posted that there would be a service meeting for technicians “upstairs in the lunch room,” Defendant classified that meeting time as a “lunch break” even though technicians were being paid and the time was not a duty-free meal period, after which technicians returned to work.

59. As a result of Defendant’s meal-period practices, Technicians are denied compliant duty-free meal periods and are not relieved of all duties for at least thirty (30) uninterrupted minutes during shifts exceeding five (5) hours, in violation of the COMPS Order.

***Defendant’s Violations were Willful***

60. Employees have raised concerns to management regarding Defendant’s failure to pay overtime compensation.

61. Plaintiff raised such concerns in a meeting with management and Human Resources, during which Defendant stated that Technicians were not entitled to overtime compensation based on how Defendant classified their work. Despite this notice, Defendant continued its overtime pay practices unchanged.

62. As a result of Defendant’s overtime pay practices, Plaintiff and other similarly situated Technicians were underpaid for overtime hours worked.

63. Defendant’s overtime practices are applied similarly to other Technicians working at Defendant’s dealership locations in Colorado and New Mexico.

64. Defendant’s failure to pay overtime compensation as required constitutes a violation of the FLSA and the COMPS Order.

65. Defendant's failure to pay all earned wages owed, including overtime wages, constitutes a violation of the CWCA.

66. Defendant's violations were willful in that Defendant had actual knowledge of employee concerns regarding unpaid overtime and nevertheless continued its unlawful pay practices.

67. As a result of Defendant's unlawful practices, Plaintiff and similarly situated employees have suffered wage losses and are entitled to recover unpaid overtime wages and other relief available under the FLSA, COMPS, and the CWCA.

### **COLLECTIVE ACTION ALLEGATIONS**

68. Plaintiff re-alleges and incorporates all previous paragraphs herein.

69. Plaintiff brings this action pursuant to Section 216(b) of the FLSA individually and as an opt-in representative action on behalf of the FLSA Collective defined above.

70. As a result of Defendant's unlawful pay practices, in one or more workweeks, Defendant failed to compensate Plaintiff and members of the FLSA Collective at an overtime premium rate of not less than one and one-half (1.5) times their regular rates of pay for hours worked in excess of forty (40) per workweek, as required by the FLSA.

71. Plaintiff alleges that FLSA Collective members worked in excess of forty (40) hours in a workweek for Defendant during the relevant period and were denied overtime compensation at one and one-half (1.5) times their regular rates of pay. The precise number and identities of these individuals are readily ascertainable from Defendant's payroll, timekeeping, and personnel records.

72. Plaintiff brings this collective action to recover unpaid overtime wages, liquidated damages, and reasonable attorneys' fees and costs as permitted by Section 216(b) of the FLSA.

73. Plaintiff alleges that Defendant’s violations of the FLSA were willful and seeks the applicable three-year limitations period.

74. Plaintiff seeks to send notice to all FLSA Collective members informing them of their rights to join this action and assert FLSA claims by filing written consents, as provided by 29 U.S.C. § 216(b) and applicable law.

75. Certification of the collective action is appropriate because the members of the proposed FLSA Collective are “similarly situated” to Plaintiff within the meaning of 29 U.S.C. § 216(b). They were subject to the same or similar pay practices, and their claims arise from the same or similar factual and legal theories.

76. Plaintiff anticipates that this litigation is manageable as a collective action. The manner of identifying the FLSA Collective and providing appropriate relief can be determined from a review of Defendant’s records.

77. Plaintiff and the putative FLSA Collective members demand a trial by jury.

**RULE 23 CLASS ACTION ALLEGATIONS**

78. Plaintiff re-alleges and incorporates all previous paragraphs herein.

79. Plaintiff also seeks to maintain this action pursuant to Fed. R. Civ. P. 23 as an opt-out class action on behalf of all putative members of the “Colorado Class,” as defined above.

80. Plaintiff brings this Rule 23 class action to recover unpaid wages, statutory damages, or other relief available under Colorado law, pre- and post-judgment interest, and reasonable attorneys’ fees and costs pursuant to the CMWA, COMPS, and the CWCA.

81. The members of the Colorado Class are so numerous that joinder of all class members is impracticable. Upon information and belief, a substantial number of Technicians

worked for Defendant in Colorado during the relevant period. The members of the Colorado Class are readily identifiable from Defendant's payroll, timekeeping, and personnel records.

82. There is a well-defined community of interest among the Colorado Class members, and common questions of law and fact predominate over any questions affecting individual members, including whether Defendant maintained common pay practices that resulted in failures to pay overtime compensation, authorize and permit required rest periods, and provide compliant meal periods as required by Colorado wage-and-hour law.

83. Plaintiff's claims are typical of the claims of the Colorado Class members because Plaintiff and the Colorado Class members were subject to the same or similar pay practices and suffered wage loss as a direct and proximate result of those practices.

84. Plaintiff will fairly and adequately protect the interests of the Colorado Class members and has retained counsel experienced in prosecuting wage-and-hour class and collective actions. Plaintiff's interests are not antagonistic to those of the Colorado Class members.

85. Defendant acted on grounds generally applicable to the Colorado Class by applying the same or similar pay practices to Colorado Class members, making final injunctive or declaratory relief, and corresponding monetary relief, appropriate for the class as a whole.

86. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Class treatment will allow the claims of many similarly situated employees to be resolved in a single proceeding, avoiding inconsistent results and promoting judicial economy.

87. Plaintiff, individually and on behalf of the Colorado Class members, demands a trial by jury.

**COUNT I**  
**(Individual and 29 U.S.C. § 216(b) Collective Action Claims)**

**Violation of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.**  
**Failure to Pay Overtime Wages**

88. Plaintiff re-alleges and incorporates all previous paragraphs herein.

89. 29 U.S.C. § 207(a)(1) provides:

[N]o employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

90. Plaintiff and the FLSA Collective members worked over forty (40) hours in one or more workweeks for Defendant during the relevant time period.

91. As a result of the policies and practices alleged herein, Defendant failed to pay Plaintiff and the FLSA Collective members all overtime compensation owed for hours worked in excess of forty (40) hours in a workweek.

92. Defendant's conduct and practices, as alleged herein, were willful. Because Defendant willfully violated the FLSA, a three (3) year statute of limitations applies pursuant to 29 U.S.C. § 255(a).

93. As a result of Defendant's uniform policies and practices described above, Plaintiff and the FLSA Collective members were deprived of overtime wages earned in amounts to be determined at trial, and are entitled to recover unpaid overtime wages, liquidated damages, reasonable attorneys' fees, costs, and other relief pursuant to 29 U.S.C. § 216(b).

**COUNT II**  
**(Individual and Rule 23 Class Claims)**  
**Violation of the Colorado Minimum Wage Act, C.R.S. § 8-6-101, et seq., and the COMPS**  
**Order, 7 C.C.R. 1103-1**  
**Failure to Pay Overtime Wages**

94. Plaintiff re-alleges and incorporates all previous paragraphs herein.

95. The COMPS Order requires covered employers to pay non-exempt employees overtime compensation for hours worked over forty (40) in a workweek, at a rate of one and one-half (1.5) times the employee's regular rate of pay unless a specific exemption applies. *See* 7 C.C.R. 1103-1.

96. Plaintiff and the Colorado Class members worked over forty (40) hours in one or more workweeks for Defendant during the relevant time period.

97. As a result of Defendant's policies and practices alleged herein, Defendant failed to pay Plaintiff and the Colorado Class members overtime compensation at one and one-half (1.5) times their regular rates of pay for all hours worked over forty (40) in a workweek, as required by COMPS and the CMWA.

98. Defendant's conduct and practices, as alleged herein, were willful.

99. As a result of Defendant's violations of Colorado wage-and-hour law, Plaintiff and the Colorado Class members are entitled to recover unpaid overtime wages, liquidated damages, and/or statutory remedies available under Colorado law, pre- and post-judgment interest, reasonable attorneys' fees and costs, and all other relief permitted by law.

**COUNT III**  
**(Individual and Rule 23 Class Claims)**  
**Violation of the COMPS Order, 7 C.C.R. 1103-1, et seq.**  
**Failure to Provide Rest Periods**

100. Plaintiff re-alleges and incorporates all previous paragraphs herein.

101. The COMPS Order, 7 C.C.R. 1103-1, requires employers to authorize and permit employees who work four (4) or more hours in a shift to take a paid rest period of at least ten (10) minutes for each four (4) hours worked or major fraction thereof.

102. Defendant failed to authorize and permit Plaintiff and the Colorado Class members to take required paid rest periods.

103. Under COMPS, paid rest period time constitutes hours worked and must be compensated at the employee's agreed-upon or legally required rate of pay.

104. Because Defendant failed to authorize and permit required paid rest periods, Plaintiff and the Colorado Class members are entitled to compensation for the required rest-period time and all related relief available under Colorado law.

105. During the relevant period, Defendant failed to provide Plaintiff and the Colorado Class members the required rest periods in violation of the COMPS Order.

106. Defendant's failure to provide timely rest periods was a systemic and company-wide practice that affected all Colorado Class members, including Plaintiff, who worked shifts of four (4) or more hours during the relevant time period.

107. As a result of Defendant's failure to authorize and permit required rest periods, Plaintiff and the Colorado Class members are deprived of rest-period compensation and suffer damages, including lost wages and other relief available under Colorado law.

108. Defendant's conduct is willful in that Defendant knows or should know of the requirements of the COMPS Order, yet fails to authorize and permit required rest periods.

109. As a result of Defendant's violations of the COMPS Order, Plaintiff and the Colorado Class members are entitled to recover unpaid rest-period compensation, statutory penalties where applicable, pre- and post-judgment interest, reasonable attorneys' fees and costs, and all other relief available under Colorado law.

**COUNT IV**  
**(Individual and Rule 23 Class Claims)**  
**Violation of the COMPS Order, 7 C.C.R. 1103-1, et seq.**  
**Failure to Provide Compliant Meal Periods**

110. Plaintiff re-alleges and incorporates all previous paragraphs herein.

111. The COMPS Order, 7 C.C.R. 1103-1, requires that covered, non-exempt employees who work shifts exceeding five (5) hours be authorized and permitted to take an uninterrupted meal period of at least thirty (30) minutes during which they are relieved of all duties.

112. During the relevant period, Defendant suffered or permitted Plaintiff and the Colorado Class members to work shifts exceeding five (5) hours but failed to authorize and permit compliant duty-free meal periods as required by COMPS.

113. Because Defendant failed to provide compliant duty-free meal periods, Plaintiff and the Colorado Class members are entitled to all relief available under Colorado law, including compensation for meal-period time that was not duty-free and was therefore compensable, related statutory remedies, pre- and post-judgment interest, and reasonable attorneys' fees and costs.

**COUNT V**  
**(Individual and Rule 23 Class Claims)**  
**Violation of the Colorado Wage Claim Act, C.R.S. § 8-4-101, et seq.**  
**Failure to Pay All Earned Wages, Including Overtime Wages**

114. Plaintiff re-alleges and incorporates all previous paragraphs herein.

115. The CWCA requires an employer to pay employees all “wages” or “compensation” that are earned, vested, and determinable, including all earned hourly wages and overtime wages owed. See C.R.S. § 8-4-101 *et seq.*

116. Plaintiff and the Colorado Class members earned wages and compensation during their employment with Defendant, including overtime wages for hours worked in excess of forty (40) in a workweek, wages owed for required paid rest periods, and wages for meal-period time that was not duty-free and therefore constituted compensable work time.

117. As a result of Defendant’s policies and practices alleged herein, Defendant failed to pay Plaintiff and the Colorado Class members all earned, vested, and determinable wages owed, including overtime wages.

118. Defendant's failure to timely pay all earned wages owed to Plaintiff and the Colorado Class members constitutes a violation of the CWCA.

119. Plaintiff and the Colorado Class members are entitled to recover all relief available under the CWCA, including unpaid wages, statutory penalties where applicable under C.R.S. § 8-4-109, pre- and post-judgment interest as allowed by law, reasonable attorneys' fees and costs, and such other relief as the Court deems just and proper.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief against Defendant:

A. A declaratory judgment that Defendant's wage practices alleged herein violate the overtime provisions of the FLSA, the CMWA, the COMPS Order, and the CWCA;

B. An Order for injunctive relief requiring Defendant to comply with the FLSA, the CMWA, the COMPS Order, and the CWCA, and to cease the unlawful pay practices alleged herein;

C. Certifying this case as a collective action pursuant to 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein;

D. Certifying this action as a class action pursuant to Fed. R. Civ. P. 23 with respect to Plaintiff's Colorado claims under the CMWA, the COMPS Order, and the CWCA;

E. Ordering Defendant to produce, in computer-readable format (or print if unavailable), the names, last known addresses, e-mail addresses, telephone numbers, job titles, dates of employment, and locations of employment of all putative FLSA Collective members and Colorado Class members;

F. Authorizing Plaintiff's counsel to send notice of this action to all putative FLSA Collective members and to administer the opt-in process, including such forms and methods of notice as the Court deems appropriate;

G. Appointing Plaintiff as representative of the FLSA Collective and the Colorado Class;

H. Appointing Brown, LLC as counsel for the FLSA Collective and the Colorado Class;

I. Entering judgment for Plaintiff and the FLSA Collective members for unpaid overtime wages and liquidated damages as provided by the FLSA, plus reasonable attorneys' fees and costs;

J. Entering judgment for Plaintiff and the Colorado Class members for unpaid wages (including overtime wages), all available statutory remedies and penalties (as applicable), pre- and post-judgment interest as allowed by law, and reasonable attorneys' fees and costs under Colorado law;

K. Awarding Plaintiff a service award for serving as representative of the FLSA Collective and the Colorado Class, to the extent permitted by law;

L. Awarding such other and further relief as the Court deems necessary, just, and proper.

**JURY DEMAND**

Plaintiff John McCrery, individually and on behalf of all other similarly situated employees, hereby demands a trial by jury on all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Respectfully Submitted,

Dated: March 26, 2026

By: /s Eric Sands

Eric Sands

Nicholas Conlon

Michael Rinderman (to seek PHV)

BROWN, LLC

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*Counsel for Plaintiff*

# **Exhibit 1**



JS 44 (Rev. 10/20) District of Colorado

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b>                  JOHN MCCRERY, individually and on behalf of others                  similarly situated</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>El Paso County, CO</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number)                  Eric Sands, BROWN, LLC, (877) 561-0000                  111 Town Square Place Suite 400, Jersey City, NJ 07310</p>	<p style="text-align: center;"><b>DEFENDANTS</b></p> <p>PHIL LONG DEALERSHIPS, INC</p> <p>County of Residence of First Listed Defendant _____                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p>1 U.S. Government Plaintiff      <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p>2 U.S. Government Defendant      4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td style="text-align: center;">1</td> <td style="text-align: center;">1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;">4</td> <td style="text-align: center;">4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;">2</td> <td style="text-align: center;">2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;">5</td> <td style="text-align: center;">5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;">3</td> <td style="text-align: center;">3</td> <td>Foreign Nation</td> <td style="text-align: center;">6</td> <td style="text-align: center;">6</td> </tr> </tbody> </table>		PTF	DEF		PTF	DEF	Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4	Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5	Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6
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Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6																				

**IV. NATURE OF SUIT** (Place an "X" in One Box Only) Click here for: [Nature of Suit Code Descriptions.](#)

<p><b>CONTRACT</b></p> <p>110 Insurance                  120 Marine                  130 Miller Act                  140 Negotiable Instrument                  150 Recovery of Overpayment &amp; Enforcement of Judgment                  151 Medicare Act                  152 Recovery of Defaulted Student Loans (Excludes Veterans)                  153 Recovery of Overpayment of Veteran's Benefits                  160 Stockholders' Suits                  190 Other Contract                  195 Contract Product Liability                  196 Franchise</p> <p><b>REAL PROPERTY</b></p> <p>210 Land Condemnation                  220 Foreclosure                  230 Rent Lease &amp; Ejectment                  240 Torts to Land                  245 Tort Product Liability                  290 All Other Real Property</p>	<p><b>PERSONAL INJURY</b></p> <p>310 Airplane                  315 Airplane Product Liability                  320 Assault, Libel &amp; Slander                  330 Federal Employers' Liability                  340 Marine                  345 Marine Product Liability                  350 Motor Vehicle                  355 Motor Vehicle Product Liability                  360 Other Personal Injury                  362 Personal Injury - Medical Malpractice</p> <p><b>CIVIL RIGHTS</b></p> <p>440 Other Civil Rights                  441 Voting                  442 Employment                  443 Housing/Accommodations                  445 Amer. w/Disabilities - Employment                  446 Amer. w/Disabilities - Other                  448 Education</p>	<p><b>PERSONAL INJURY</b></p> <p>365 Personal Injury - Product Liability                  367 Health Care/Pharmaceutical Personal Injury Product Liability                  368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p>370 Other Fraud                  371 Truth in Lending                  380 Other Personal Property Damage                  385 Property Damage Product Liability</p> <p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b>                  463 Alien Detainee                  510 Motions to Vacate Sentence                  530 General                  535 Death Penalty</p> <p><b>Other:</b>                  540 Mandamus &amp; Other                  550 Civil Rights                  555 Prison Condition                  560 Civil Detainee - Conditions of Confinement</p>	<p><b>FORFEITURE/PENALTY</b></p> <p>625 Drug Related Seizure of Property 21 USC 881                  690 Other</p> <p><b>LABOR</b></p> <p><input checked="" type="checkbox"/> 710 Fair Labor Standards Act                  720 Labor/Management Relations                  740 Railway Labor Act                  751 Family and Medical Leave Act                  790 Other Labor Litigation                  791 Employee Retirement Income Security Act</p> <p><b>IMMIGRATION</b></p> <p>462 Naturalization Application                  465 Other Immigration Actions</p>	<p><b>BANKRUPTCY</b></p> <p>422 Appeal 28 USC 158                  423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p>820 Copyrights                  830 Patent                  835 Patent - Abbreviated New Drug Application                  840 Trademark                  880 Defend Trade Secrets Act of 2016</p> <p><b>SOCIAL SECURITY</b></p> <p>861 HIA (1395ff)                  862 Black Lung (923)                  863 DIWC/DIWW (405(g))                  864 SSID Title XVI                  865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p>870 Taxes (U.S. Plaintiff or Defendant)                  871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p>375 False Claims Act                  376 Qui Tam (31 USC 3729(a))                  400 State Reapportionment                  410 Antitrust                  430 Banks and Banking                  450 Commerce                  460 Deportation                  470 Racketeer Influenced and Corrupt Organizations                  480 Consumer Credit (15 USC 1681 or 1692)                  485 Telephone Consumer Protection Act                  490 Cable/Sat TV                  850 Securities/Commodities/Exchange                  890 Other Statutory Actions                  891 Agricultural Acts                  893 Environmental Matters                  895 Freedom of Information Act                  896 Arbitration                  899 Administrative Procedure Act/Review or Appeal of Agency Decision                  950 Constitutionality of State Statutes</p>
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**V. ORIGIN** (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 Fair Labor Standards Act, 29 U.S.C. § 201, et seq. AP Docket

Brief description of cause:  
 Failure to properly pay for all overtime hours worked under the FLSA and Colorado State law

**VII. REQUESTED IN COMPLAINT:**       CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.      DEMAND \$ \_\_\_\_\_      CHECK YES only if demanded in complaint:  
**JURY DEMAND:**       Yes      No

**VIII. RELATED CASE(S) IF ANY** (See instructions):  
 JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: Mar 26, 2026      SIGNATURE OF ATTORNEY OF RECORD: /s/ Eric Sands

**FOR OFFICE USE ONLY**

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Colorado

JOHN MCCRERY, individually and on behalf of
others similarly situated

Plaintiff(s)

v.

PHIL LONG DEALERSHIPS, INC.

Defendant(s)

Civil Action No. 1:26-cv-01276

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PHIL LONG DEALERSHIPS, INC.
1212 Motor City Drive
Colorado Springs, CO 80905

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Eric Sands, BROWN, LLC, 111 Town Square Place, Suite 400, Jersey City, NJ 07310, (877) 561-0000

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 03/26/2026

Signature of Clerk or Deputy Clerk

Civil Action No. 1:26-cv-01276

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: