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**JEFFREY BERGER, MARIO LABIB,
HUSSAM RAMADAN, AND MATTHEW
TATALIKAS, INDIVIDUALLY AND ON
BEHALF OF THOSE SIMILARLY
SITUATED,**

PLAINTIFFS,

V.

**OPEN ROAD AUTO GROUP, OPEN ROAD
MERCEDES, OPEN ROAD HONDA, OPEN
ROAD SUBARU OF UNION, BMW OF
MORRISTOWN, OPEN ROAD MINI OF
MORRISTOWN, OPEN ROAD MINI
EDISON, BMW OF NEWTON, OPEN ROAD
CADILLAC, OPEN ROAD BMW OF EDISON,
BMW ROXBURY, OPEN ROAD
VOLKSWAGEN OF BRIDGEWATER, OPEN
ROAD ACURA OF WAYNE, OPEN ROAD
ACURA OF EAST BRUNSWICK, OPEN
ROAD MAZDA OF MORRISTOWN, OPEN
ROAD CHEVROLET, OPEN ROAD VOLVO
CARS OF EDISON, OPEN ROAD MAZDA OF
EAST BRUNSWICK, W. RODMAN RYAN,
MICHAEL MORAIS, VANGUARD DEALER
SERVICES, JOHN DOES (1-100) AND ABC
CORPORATIONS (1-100),**

DEFENDANTS.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.**

CIVIL ACTION

**CLASS ACTION COMPLAINT AND
JURY DEMAND**

THE PLAINTIFFS, JEFFREY BERGER, MARIO LABIB, HUSSAM RAMADAN, AND MATTHEW TATALIKAS, INDIVIDUALLY AND ON BEHALF OF THOSE SIMILARLY SITUATED, BY WAY OF COMPLAINT AGAINST THE DEFENDANTS STATE AS FOLLOWS:

PARTIES

1. Plaintiff, Jeff Berger was employed at Defendant, Open Road Mini of Edison from March 2017 until March 21, 2020. Thereafter, he was employed at Open Road Cadillac from March 21, 2020 until on or about July 9, 2020.
2. Plaintiff, Mario Labib was employed at Defendant, Open Road Honda from February 2019 until on or about August 4, 2020.
3. Plaintiff, Hussam Ramadan was employed at Defendant, Open Road Honda from 2014 until 2017. In 2017, he was employed at Defendant, Open Road Chevrolet until November 2017 when he transferred back to Defendant, Open Road Honda. He remained employed at Defendant, Open Road Honda until on or about May 25, 2020.
4. Plaintiff, Matthew Tatalikas was employed at Defendant, Open Road Mini of Morristown from October 2017 until July 2020.
5. Defendant, Open Road Auto Group, hereinafter "Open Road," is a corporation licensed to do business in the State of New Jersey with its headquarters at 40 US Highway 22, Bridgewater, New Jersey.
6. Open Road is a substantial seller of new and used vehicles in the State of New Jersey and does business in all counties of the State of New Jersey. For example, in 2018, Open Road sold 35,979 vehicles, and had gross revenues of *\$1.6 billion*.

7. According to Dealer.com, Open Road is the 41st largest dealer group in the United States.
8. Defendant, Open Road Mercedes is located at 1250 US-22, Bridgewater, New Jersey.
9. Defendant, Open Road Honda is located at 50 US Highway 1 North, Edison, New Jersey.
10. Defendant, Open Road Subaru of Union is located at 2685 Route 22 W., Union, New Jersey.
11. Defendant, Open Road Mini of Morristown is located at 198 Madison Ave, Morristown, New Jersey.
12. Defendant, BMW Morristown is located at 111 Ridgedale Ave, Morristown, New Jersey.
13. Defendant, Open Road Mini of Edison is located at 300 Route 1, Edison, New Jersey.
14. Defendant, Open Road Cadillac is located at 334 Columbia Turnpike, Florham Park, New Jersey.
15. Defendant, Newton BMW is located at 119 Hampton House Road, Newton, New Jersey.
16. Defendant, Open Road BMW of Edison is located at 731 US-1, Edison, New Jersey 08817.
17. Defendant, BMW of Roxbury is located at 840 U.S. 46, Kenil, New Jersey 07847.
18. Defendant, Open Road Volkswagen of Bridgewater is located at 1051 U.S. 22, Bridgewater, New Jersey 08807.

19. Defendant, Open Road Acura of Wayne is located at 1425 Route 23 South is located at Wayne, New Jersey 07470.
20. Defendant, Open Road Acura of East Brunswick is located at 1041 Route 18 is located at East Brunswick, New Jersey 08816.
21. Defendant, Open Road Mazda of Morristown is located at 108 Ridgedale Ave, Morristown, New Jersey 07960.
22. Defendant, Open Road Chevrolet is located at 2675 US-22, Union, New Jersey 07083.
23. Defendant, Open Road Volvo Cars Edison is located at 842 Route 1 North, Edison, New Jersey 08817.
24. Defendant, Open Road Mazda of East Brunswick is located at 1352 NJ-18, East Brunswick, New Jersey 08816
25. Defendants, Open Road Mercedes, Open Road Honda, Open Road Subaru of Union, BMW of Morristown, Open Road Mini of Morristown, Open Road Mini Edison, Newton BMW, Open Road Cadillac, BMW of Newton, Open Road BMW of Edison, BMW of Roxbury, Open Road Volkswagen of Bridgewater, Open Road Acura of Wayne, Open Road Acura of East Brunswick, Open Road Mazda of Morristown, Open Road Chevrolet, Open Road Volvo Cars of Edison and Open Road Mazda of East Brunswick, are controlled by and captive dealerships of Defendant, Open Road. As such, Defendants, Open Road Subaru of Union, BMW of Morristown, Open Road Mini of Morristown, Open Road Mini Edison, Newton BMW, Open Road Cadillac, BMW of Newton, Open Road BMW of Edison, BMW of Roxbury, Open Road Volkswagen of Bridgewater, Open Road Acura of Wayne,

Open Road Acura of East Brunswick, Open Road Mazda of Morristown, Open Road Chevrolet, Open Road Volvo Cars of Edison and Open Road Mazda of East Brunswick, are collectively described as “Captive Dealerships.”

26. Moreover, because the Captive Dealerships are controlled by Defendant, Open Road, Defendant, Open Road and the Captive Dealerships are collectively described as “Open Road Defendants.”
27. Defendant, W. Rodman Ryan is an owner and officer of one or more of the Open Road Defendants.
28. Defendant, Michael Morais is an owner and officer of one or more of the Open Road Defendants.
29. Defendant, Vanguard Dealer Services (“Vanguard”) is a New Jersey Corporation located at 30 Two Bridges Road, Suite 240, Fairfield, New Jersey.
30. Defendant, Vanguard is a substantial seller and/or supplier of finance and insurance products and services in the automobile sales in the State of New Jersey and does business in all counties of the State of New Jersey
31. Defendants, John Does (1-100) are the fictitious names of one or more persons, including but not limited to, owners, officers, principals, supervisors, managers, general managers, and/or any persons in any way connected with the compensation of the Plaintiffs and absent Class members, the identities and/or participation and/or culpability and/or responsibility of whom are presently unknown to Plaintiffs who, either independently, and/or as a director, officer, partner, general partner, agent, servant and/or employee of the Defendants and/or John Does (1-100), either directly and/or indirectly and/or in concert participated and/or were responsible, by

their conduct, acts and/or omissions, with respect to one or more of the causes of action and/or one or more of items of damages set forth herein. Defendants, John Does (1-100) are incorporated into this Complaint through reference to any other defendant, and as though fully identified in any such paragraph or clause such that reference to the individual defendants is also a reference to John Does (1-100).

32. Defendants, ABC Corporations (1-100) are the fictitious names of one or more corporations, companies, limited liability companies, partnerships, and/or any other entity in any way connected with the compensation of the Plaintiffs and absent Class members, the identities and/or participation and/or culpability and/or responsibility of whom are presently unknown to Plaintiffs who, either independently, and/or as a director, officer, partner, general partner, agent, servant and/or employee of the Defendants and/or John Does (1-100), either directly and/or indirectly and/or in concert participated and/or were responsible, by their conduct, acts and/or omissions, with respect to one or more of the causes of action and/or one or more of items of damages set forth herein. Defendants, ABC Corporations (1-100) are incorporated into this Complaint through reference to any other defendant, and as though fully identified in any such paragraph or clause such that reference to Open Road, the Captive Dealerships, the Open Road Defendants and/or Vanguard is also a reference to ABC Corporations (1-100).

UNDERLYING FACTS

- I. DEFENDANTS' FAILURES TO PAY FULL COMPENSATION TO PLAINTIFFS AND THE CLASS**
33. Defendants, Open Road, W. Rodman Ryan and/or Michael Morais operate and control the Captive Dealerships.

34. Defendants, Open Road, W. Rodman Ryan and/or Michael Morais are responsible for the employment and compensation practices, policies and agreements for the employees employed at the Captive Dealerships.
35. Open Road also is responsible for establishing and enforcing guidelines and controls for receiving and expending all funds, ensuring that expenditures do not exceed budgeted resources, or budget parameters, and developing necessary programs for protection of the assets of the Captive Dealerships.
36. Open Road establishes the procedure and the practice for hiring and implementing a Pay Plan for employees at the Captive Dealerships, including, but not limited to, Plaintiffs and the absent Class members, who were Finance Managers during the Class Period.
37. Upon information and belief and at all times mentioned in this Complaint, there were forty or more Finance Managers at the Captive Dealerships during the Class Period.
38. The Pay Plan for the Plaintiffs and the Class was identical the Class Period.
39. The Pay Plan was a written compensation agreement with the Open Road Defendants that expressly defined how the Plaintiffs and absent Class members were to be compensated by the Open Road Defendants.
40. The Pay Plan provided compensation based upon an agreed-upon percentage of the back-end profits for each vehicle sold and the sale of aftermarket products and services by third-party companies, including but not limited to, Defendant, Vanguard.

41. The Open Road Defendants agreed in the Pay Plan to directly compensate the Plaintiffs and the absent Class members for the back-end profits for each vehicle sold and the sale of aftermarket products and services by third-party companies, including but not limited to, Defendant, Vanguard.
42. The Open Road Defendants' agreement to pay such compensation to the Plaintiffs and the absent Class members for the back-end profits for each vehicle sold and the sale of aftermarket products and services by third-party companies was not dependent upon any agreement with or payment by any third-party companies, including but not limited to, Defendant, Vanguard.
43. Upon information and belief, pursuant to a separate agreement or understanding between the Open Road Defendants and Defendant, Vanguard, Defendant, Vanguard forwarded payment for the sale of its aftermarket products and services by the Plaintiffs and the absent Class members to Open Road.
44. Immediately prior to the Class Period, the Open Road Defendants then physically distributed the checks issued by Defendant, Vanguard directly to the Plaintiffs and the absent Class members.
45. Upon information and belief, the ongoing relationship between Defendant, Vanguard and the Open Road Defendants resulted in the sale millions of dollars of Defendant, Vanguard's products and services and substantial profits for Open Road and the Captive Dealerships.
46. At all times mentioned in this Complaint, a Vanguard representative frequently communicated with the Plaintiffs regarding the sale of Vanguard's products and services and the resulting compensation.

47. Upon information and belief and through the year 2019, Vanguard issued a Form 1099 to the Plaintiffs and the Class for sale of these products and services.
48. At all times mentioned in this Complaint, the Pay Plan, which existed prior to the Class Period, remained in effect and unmodified during the Class, which entitled Plaintiffs and the Class to the compensation from the Open Road Defendants for the back-end profits for each vehicle sold and the sale of aftermarket products and services by third-party companies, including but not limited to, Defendant, Vanguard.
49. Upon information and belief, and as discussed *infra*, the Open Road Defendants have not paid Plaintiffs and the absent Class members their full compensation under the Pay Plan for the back-end profits for each vehicle sold and the sale of aftermarket products and services by third-party companies, including but not limited to, Defendant, Vanguard.
50. On or about March 14, 2020, due to the Covid-19 Pandemic, the Open Road Defendants furloughed and/or laid off one or more of the Plaintiffs and absent Class members.
51. The furloughs and/or lay-offs were based upon the State of New Jersey's emergency executive orders requiring the closure of non-essential businesses, which included the vehicle sales departments of the Captive Defendants.
52. Despite these orders, the Open Road Defendants at the express direction of Defendant, Morais, ordered the Plaintiffs and the absent Class members to continue to work during the government-ordered shut down, hereinafter described as "Covid-19 Shut Down."

53. During this time, the Open Road Defendants, again at the express direction of Defendant Morais, directed its employees, including the Plaintiffs and absent Class members, to report to work under the threat of job loss.
54. During this time, the Open Road Defendants, again at the express direction of Defendant Morais, also directed its employees, including the Plaintiffs and absent Class members, to not document their attendance at the Captive Dealerships.
55. Upon information and belief, the Plaintiffs and absent Class members, except Plaintiff, Matthew Tatalikas, under such threat of job loss, continued to work at the Captive Dealerships during the Covid-19 Shut Down and conduct sales operations.
56. At all times mentioned in this Complaint, including during the Covid-19 Shut Down and afterwards, Plaintiffs and the Class worked under the Pay Plan that existed prior to the Covid 19 Shut Down and did not agree to any modifications or amendments.
57. As such, the Open Road Defendants were obligated to pay to the Plaintiffs and the absent Class members for the back-end profits for each vehicle sold and the sale of aftermarket products and services by third-party companies, including but not limited to, Defendant, Vanguard.
58. During the Covid-19 Shut Down and afterwards, the Open Road Defendants did not compensate the Plaintiffs or the absent Class members for their work performed under the Pay Plan.
59. Upon information and belief, in or about April or May 2020, the Open Road Defendants received Payroll Protection Plan (“PPP”) funds from the Federal Government.

60. On and after the Open Road Defendants received these PPP funds, the Plaintiffs and the absent Class Members continued to work under the Pay Plan that existed prior to the Covid-19 Shut Down.
61. Despite continuing to work under the Pay Plan, the Open Road Defendants did not fully compensate the Plaintiffs and the absent Class members under the Pay Plan.
62. The Open Road Defendants continue to possess such compensation earned under the Pay Plan and have refused to issue such compensation to Plaintiffs and the Class.
63. Instead, the Open Road Defendants and, in particular, Defendant, Morais, have used the Covid-19 Pandemic and Shut Down as an unjustified excuse for not paying Plaintiffs and the Class the rightfully earned compensation pursuant to the Pay Plan.
64. Additionally, the Open Road Defendants and, in particular, Defendant, Morais have claimed that Plaintiffs and the Class *retroactively* forfeited compensation already earned under the Pay Plan, which was due and owing prior to the Covid-19 Shut Down.
65. Upon information and belief, this compensation includes, but is not limited to, one or more payments forwarded by Defendant, Vanguard to the Open Road Defendants for Plaintiffs' and the absent Class Members' sale of Defendant, Vanguard's after-market products.
66. Moreover, upon information and belief, on or after February, 2020, Defendant, Vanguard failed to make one or more payments to Defendants, Open Road Defendants for Plaintiffs' and the absent Class Members' sale of Defendant, Vanguard's after-market products.

67. The failures of the Defendants, Open Road Defendants and/or Vanguard to fully compensate the Plaintiffs and absent Class members violate the statutory and common law of the State of New Jersey.

II. THE OPEN ROAD DEFENDANTS' FAILURE TO PAY VACATION PAY TO PLAINTIFFS AND THE CLASS

68. In addition to compensation under the Pay Plan, Plaintiffs and the absent Class members were entitled to vacation pay based on their total earned compensation.

69. The Open Road Defendants, however, failed to pay vacation pay based upon total earned compensation.

70. Instead, the Open Road Defendants paid Plaintiffs and the absent Class members only \$500, far less than the amount due and owing to the Plaintiffs and the Class.

71. The failures of the Defendants, Open Road Defendants to fully compensate the Plaintiffs and absent Class members violate the statutory and common law of the State of New Jersey.

CLASS CERTIFICATION ALLEGATIONS

72. This action is brought and may properly proceed as a class action, pursuant to the provisions of R. 4:32 of the New Jersey Court Rules. Plaintiffs seek certification of two classes as defined:

Class A:

All persons who were Finance Managers for the Defendant, Open Road Auto Group and its Captive Dealerships, defined below, from January 1, 2020 to September 1, 2020.

Class B:

All persons who were Finance Managers for the Defendant, Open Road Auto Group and its Captive Dealerships, defined below, from January 1, 2015 to September 1, 2020.

For Class A and Class B, Captive Dealerships are defined as and include Defendants, Open Road Mercedes, Open Road Honda, Open Road Subaru of Union, BMW of Morristown, Open Road Mini of Morristown, Open Road Mini Edison, Newton BMW, Open Road Cadillac, BMW of Newton, Open Road BMW of Edison, BMW of Roxbury, Open Road Volkswagen of Bridgewater, Open Road Acura of Wayne, Open Road Acura of East Brunswick, Open Road Mazda of Morristown, Open Road Chevrolet, Open Road Volvo Cars of Edison and Open Road Mazda of East Brunswick, are controlled by and captive dealerships of Defendant, Open Road.

73. The members of the Classes for whose benefit this action is brought are so numerous that joinder of all members is impracticable.
74. There are numerous questions of law and fact common to the members of the Classes that predominate over questions affecting only individuals.
75. These numerous common questions of law and fact include, but are not limited to:
 - a. Does New Jersey's Wage Payment Law apply to the payment of compensation and lack thereof to the Plaintiffs and absent Class members under the Pay Plan?
 - b. Did the Open Road Defendants and/or individual defendants violate New Jersey's Wage Payment Law by failing to pay Plaintiffs and the absent Class members under the Pay Plan?
 - c. Did the Open Road Defendants and/or the individual defendants wrongfully convert the compensation earned by Plaintiffs and the absent Class members under the Pay Plan?
 - d. Did Vanguard wrongfully convert the compensation for the Plaintiffs' and absent Class members' sale of Vanguard products and services?

- e. Did the Open Road Defendants and/or the individual defendants breach the Pay Plan or otherwise commit a breach of contract with the Plaintiffs and the absent Class members by failing to pay the compensation earned under the Pay Plan by Plaintiffs and absent Class members?
- f. Did Defendant, Vanguard commit a breach of contract by failing to pay the compensation due to Plaintiffs and the absent Class members for the Plaintiffs' and absent Class members' sale of Defendant, Vanguard's products and services?
- g. Did the Open Road Defendants and/or the individual defendants commit a breach of contract for the failure to compensate Plaintiffs and the absent Class members for vacation pay based on total earned income?
- h. Did the Open Road Defendants and/or the individual defendants commit a breach of the covenant of good faith and fair dealing for the failure to compensate Plaintiffs and the absent Class members under the Pay Plan?
- i. Did the Open Road Defendants and/or the individual defendants commit a breach of the covenant of good faith and fair dealing for the failure to compensate Plaintiffs and the absent Class members by failing to pay for vacation pay based on total earned income?
- j. Did Vanguard commit a breach of the covenant of good faith and fair dealing by failing to pay the compensation due to Plaintiffs and the absent Class members for the Plaintiffs' and absent Class members' sale of Defendant, Vanguard products and services?

- k. Whether Plaintiffs and the absent Class members are entitled to compensatory, statutory, contractual, equitable or punitive damages or relief against the Open Road Defendants, individual defendants and/or Defendant, Vanguard for Defendants' wrongful and illegal conduct.
76. Plaintiffs' claims are typical of the claims of the absent Class members because their claims are based on the same legal and remedial theories and arise out of the same benefits and Pay Plan, and wrongful conduct of the Defendants.
77. The Classes, of which Plaintiffs are members, are readily identifiable from the Defendants' records.
78. Plaintiffs will fairly and adequately protect the interests of the Classes and has retained competent counsel experienced in the prosecution of employee wage loss litigation and class actions in the auto industry.
79. A class action is superior to other available methods for the fair and efficient adjudication of these controversies since joinder of all members of both Classes is impracticable.
80. A class action will cause an orderly and expeditious administration of the claims of the Classes and will foster economies of time, effort, and expense.
81. The questions of law or fact common to the members of both Classes predominate over any questions affecting only individual members.
82. The Defendants have acted, or refused to act, on grounds generally applicable to Plaintiffs and all Class members, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to both classes.

CLASS CLAIMS

COUNT ONE

**(Violations of the New Jersey Wage Payment Law
as to Open Road Defendants and Individual Defendants)**

83. Plaintiffs repeat and re-allege the allegations set forth in all previous paragraphs of this Complaint as if they were set forth in full herein.
84. The Open Road Defendants and individual defendants are considered employers as defined by the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1 et seq. (“NJWPL”).
85. Plaintiffs and the absent Class members were employees of the Open Road Defendants and/or individual defendants as defined by the NJWPL.
86. Plaintiffs and the absent Class members performed services for the Open Road Defendants and/or individual defendants.
87. The NJWPL required the Open Road Defendants and individual defendants to pay Plaintiffs and the absent Class members the agreed upon compensation.
88. The Open Road Defendants and individual defendants failures to pay Plaintiffs’ and the absent Class members’ compensation constituted numerous violations of the NJWPL.
89. As a result of the Open Road Defendants’ and individual defendants’ violations of the NJWPL, Plaintiffs and the absent Class members have suffered significant damages.
90. In accordance with the NJWPL, the Open Road Defendant and individual defendants are liable to Plaintiffs and the absent Class members as “employers” in this action.

91. The Open Road Defendants are also liable to Plaintiffs and the absent Class members for said breaches under theories of apparent authority, *respondeat superior*, vicarious liability, and agency principles.
92. Further, Defendants' acts or omissions were actuated by actual malice, and/or a willful and wanton disregard to the consequences suffered by Plaintiffs and the absent Class members, and/or a with knowledge of a high degree of probability of harm to the Plaintiffs and the absent Class members and reckless indifference to the consequences of such act or omission, necessitating that punitive damages be awarded to Plaintiffs and the absent Class members.
93. The Open Road Defendants and individual defendants are subject to joint and several liability for statutory, common law, contractual, equitable and punitive damages, including any particular damages identified and/or permitted under the NJWPL.

COUNT TWO

(Breach of Contract as to Open Road Defendants)

94. Plaintiffs repeat and re-allege the allegations set forth in all other paragraphs of this Complaint as if they were set forth in full herein.
95. Plaintiffs and the absent Class members entered into a common Pay Plan with the Open Road Defendants.
96. In furtherance of that agreement, Plaintiffs conferred benefits under the Pay Plan upon the Open Road Defendants and expected remuneration for such benefits.
97. Additionally, Plaintiffs were entitled to vacation pay pursuant to the Open Road Defendants' benefit plan.

98. The Open Road Defendants breached the previously-described benefits and Pay Plans by failing to pay Plaintiffs and the absent Class members the earned compensation.
99. The Open Road Defendants are also liable to Plaintiffs and the absent Class members for said breaches under theories of apparent authority, *respondeat superior*, vicarious liability, and agency principles.
100. Plaintiffs and the absent Class Members have suffered damages due to Defendants' acts, omissions, and/or contractual breaches.

COUNT THREE

(Breach of Contract, Quasi-Contract and/or Implied Contract as to Vanguard)

101. Plaintiffs repeat and reallege the allegations set forth in the previous paragraphs of this Complaint as if they were set forth in full herein.
102. Plaintiffs and the absent Class members agreed to sell Vanguard products and services while employed by the Open Road Defendants and expected remuneration from Vanguard for such benefits.
103. Vanguard agreed, based upon Plaintiffs' and absent Class members' sale of such Vanguard products and services, to compensate Plaintiffs and the absent Class members.

104. By sale of Vanguard's products and services, Plaintiffs and the absent Class members conferred benefits, which were knowingly and intentionally accepted by Vanguard.
105. The agreement and conduct of Plaintiffs, the absent Class members and Vanguard amounted to a contract, quasi-contract and/or implied contract.
106. Vanguard breached the contract, quasi-contract and/or implied contract by failing to pay Plaintiffs and the absent Class members the earned compensation.
107. Plaintiffs and the absent Class Members have suffered damages due to Defendants' acts, omissions, and/or contractual breaches.

COUNT FOUR

(Conversion)

108. Plaintiffs repeat and reallege the allegations set forth in the previous paragraphs of this Complaint as if they were set forth in full herein.
109. Plaintiffs and the absent Class members are the rightful owners of the compensation earned under the Pay Plan, which included an agreed-upon percentage of the back-end profits for each vehicle sold and the sale of aftermarket products and services by third-party companies, including but not limited to, Defendant, Vanguard.
110. The Open Road Defendants', the individual Defendants' and/or Vanguard's failures to pay such compensation and/or commissions was without the Plaintiffs' and/or absent Class members' authority or consent.

111. Such conduct amounted to interferences over the Plaintiffs' and absent Class members' rights and control of their property and has deprived the Plaintiffs and absent Class members over their use and enjoyment of such compensation.
112. The Open Road Defendants', the individual Defendants' and/or Vanguard's failures to pay such compensation amounted to conversion.
113. As a direct and proximate result of the acts previously described, Plaintiffs and the absent Class members have been damaged and have suffered substantial economic losses.

COUNT FIVE

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

114. Plaintiffs repeat and reallege the allegations set forth in the previous paragraphs of this Complaint as if they were set forth in full herein.
- 115.. Implied in all contractual relationships between the Plaintiffs and the absent Class members and the Open Road Defendants and/or Vanguard is a covenant of good faith and fair dealing.
116. The Open Road Defendants and/or Vanguard breached the covenant of good faith and fair dealing through the previously described acts and omissions, which were wrongful and without justification.
117. As a result of the Open Road Defendants' and/or Vanguard's wrongful actions, the Plaintiffs and the absent Class members have been damaged.

WHEREFORE, pursuant to the previously pled allegations and Counts, Plaintiffs request that the Court issue an Order and grant Judgment to the Plaintiffs as follows:

- a. Certifying this action as a Class Action;
- b. Naming the Plaintiffs as representatives of the absent Class members;
- c. Appointing the Law Office of Jonathan Rudnick and the Keefe Law Firm as Class Counsel for all purposes in this action;
- d. Granting Plaintiffs and Class members statutory, common law, contractual, equitable and punitive damages, and applicable pre- and post-judgment interest, in full recompense for their damages;
- e. Entering judgment according to the declaratory and/or injunctive relief sought;
- f. Granting Plaintiffs and Class members such other and further relief, including, without limitation, injunctive and equitable relief, as the Court deems just in all the circumstances;
- g. Granting the Plaintiffs an Incentive Award for their dedication and work in this Action; and
- h. Granting Class Counsel an award of their attorneys' fees and costs of suit, reflective of the work done in prosecuting this action, the time spent, the effort and hard costs invested, and results obtained, in light of the Court's judgment informed by awards in other similar cases of comparable difficulty and complexity.

JURY DEMAND

Plaintiffs demand a trial by a jury as to all issues raised in these pleadings.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, Jonathan Rudnick and John E. Keefe, Jr. are designated as trial counsel.