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Attorneys for Plaintiff Jesus Guardiola, on behalf of himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

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

Plaintiff,

v.

PERRY AUTOMOTIVE GROUP, INC., a
California corporation, PERRY FORD OF
NATIONAL CITY, LLC, a California limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 37-2020-00013167-CU-OE-CTL

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 510, 512, 1194,
1197 AND 2802 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

Complaint Filed: March 10, 2020

1 Plaintiffs JESUS GUARDIOLA and PATRICIA GALEANA (“ Plaintiffs”), on behalf of
2 themselves and others as an “aggrieved employee” under the Labor Code Private Attorneys General
3 Act of 2004, complains of PERRY AUTOMOTIVE GROUP, INC., a California corporation, PERRY
4 FORD OF NATIONAL CITY, LLC, a California limited liability company, and/or any subsidiaries
5 or affiliated companies (hereinafter referred to as “Defendants”), as follows:

6 I.

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
9 Plaintiffs and other California employees who currently work or formerly worked for Defendants
10 (“Aggrieved Employees”).

11 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
12 to the date Plaintiffs began the process of exhausting the administrative requirements, pursuant to
13 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
14 consistent policies of:

15 a. Misclassifying Plaintiffs and certain employees as overtime exempt managers;
16 however, based on their job duties, they do not fall within any exemptions. Mr. Guardiola and certain
17 other managers paid a salary plus commission were not paid a salary of at least twice the minimum
18 wage; their primary job duties did not consist of administrative, executive, or professional tasks; and,
19 they did not exercise independent judgement while at work. Ms. Galeana and certain other managers
20 paid a draw on commissions were paid a set draw during the first pay period of the month which
21 applied to the entire month. Ms. Galeana and other managers paid in this manner were not
22 compensated for all hours worked during the second pay period of the month when their commission
23 wages did not reach or exceed the required minimum or overtime wages. Plaintiffs and other
24 misclassified managers were not properly compensated for all minimum wages as well as overtime
25 wages for work performed in excess of eight (8) hours in a workday and work performed in excess
26 of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of
27 pay. Plaintiffs also allege that Defendants required them to work an additional 30-60 minutes off-
28

1 the-clock each shift. These failures to pay all minimum and overtime wages constitute violations of
2 Labor Code §§ 510, 558 and 1194. Plaintiffs Plaintiffs

3 b. Failing to pay premium wages to Plaintiffs and non-exempt and exempt-
4 classified Aggrieved Employees who were denied rest periods, in violation of Labor Code §§ 226.7,
5 558 and IWC Wage Order 4-2001. Plaintiffs and all other non-exempt and exempt-classified
6 Aggrieved Employees were routinely not authorized and unable to take a 10-minute rest period for
7 every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
8 hour's pay for each missed rest period. Due to the busy nature of their jobs, they were unable to take
9 rest periods and were not authorized to take them. When they were able to take their rest periods,
10 they were not permitted to leave their work premises. Furthermore, because Defendants failed to
11 provide paid, off-duty rest periods, Plaintiffs and exempt-classified Aggrieved Employees were not
12 paid all minimum wages due for each unpaid rest period, in violation of Labor Code §§ 510, 558 and
13 1194;

14 c. Failing to pay Plaintiffs and all other non-exempt and exempt-classified
15 Aggrieved Employees premium wages for missed meal periods, in violation of Labor Code §§ 226.7,
16 512, 558 and IWC Wage Order 4-2001. Plaintiffs and other non-exempt and exempt-classified
17 Aggrieved Employees were routinely denied, and not authorized to take, an uninterrupted, 30-minute
18 meal period for every shift worked over five hours in duration, and a second 30-minute meal period
19 for every shift worked over ten hours in duration, but were not paid premium wages of one hour's
20 pay for each missed meal period. When they were able to take a meal period, they were not permitted
21 to leave the work premises. This violates Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-
22 2001. Moreover, Defendant fails to maintain proper meal period records as it does not require or
23 permit its employees to record their meal periods. This further violates Labor Code § 1197 and IWC
24 Wage Order 4-2001;

25 d. Failing to provide Plaintiffs and non-exempt and exempt-classified Aggrieved
26 Employees with wage statements that fully and accurately itemized the requirements set forth in
27 Labor Code § 226(a). Plaintiffs and other non-exempt and exempt-classified Aggrieved Employees
28 were not paid all wages due, as stated above. As such, the wage statements provided by Defendants

1 to those employees failed to accurately state all gross wages earned, in violation of Labor Code §
2 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation
3 of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each rate, in violation of Labor Code § 226(a)(9).
5 Moreover, and independent of the above allegations, the wage statements issued to all Aggrieved
6 Employees fail to set forth the name and complete address of the employer, in violation of Labor
7 Code § 226(a)(8). The wage statements also fail to list the pay period start date, in violation of Labor
8 Code § 226(a)(6). These violations subject Defendant to penalties as authorized by Labor Code §
9 226.3;

10 e. Failing to reimburse all business-related expenses to Plaintiffs and other
11 Aggrieved Employees, in violation of Labor Code § 2802. Plaintiffs and Aggrieved Employees were
12 required to use their personal cellular phones to perform their work tasks for Defendants, but were
13 not fully reimbursed by Defendants for these expenses. This practice violates Labor Code § 2802;
14 and

15 f Failing to timely pay Plaintiffs and non-exempt and exempt-classified
16 Aggrieved Employees all wages due at the separation of their employment based on the time frames
17 required by Labor Code §§ 201 and 202. As stated above, Plaintiffs and non-exempt and exempt-
18 classified Aggrieved Employees of Defendants were not paid all wages due and, as a result of this
19 failure, they were not timely paid all wages due at the separation of their employment. Furthermore,
20 when Plaintiffs did receive his final wages, it was more than 10 days following his termination date.
21 This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiffs and other non-exempt and
22 exempt-classified Aggrieved Employees who have ended their employment with Defendant.

23 3. Plaintiffs, on behalf of themselves and all Aggrieved Employees pursuant to Labor
24 Code § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

25 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
26 The Labor Code violations alleged against Defendants herein arose in San Diego County, California.

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II.

PARTIES

A. Plaintiffs

5. Plaintiff JESUS GUARDIOLA was employed by Defendants from September 2017 through September 2019 as an exempt-classified employee in San Diego County, California.

6. Plaintiffs PATRICIA GALEANA was employed by Defendants from August 2018 through April 2019 as an exempt-classified employee in San Diego County, California.

B. Defendant

7. Defendant PERRY AUTOMOTIVE GROUP, INC., is a California corporation. Defendant PERRY AUTOMOTIVE GROUP, INC., employed Plaintiffs and Aggrieved Employees throughout the State of California, including San Diego County, California.

8. Defendant PERRY FORD OF NATIONAL CITY, LLC, is a California limited liability company. Defendant PERRY FORD OF NATIONAL CITY, LLC, employed Plaintiffs and Aggrieved Employees throughout the State of California, including San Diego County, California.

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

10. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

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

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III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1194, 1197 AND 2802 AND PURSUANT TO
LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

12. Plaintiffs incorporate paragraphs 1 through 11 of this Complaint as though fully set forth herein.

13. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiffs seek civil penalties pursuant to Labor Code §§ 2698 *et seq.*

14. For each such violation, Plaintiffs and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, 1194, 1197 and 2802; and

b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

15. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

16. On December 30, 2019, Plaintiff Guardiola sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* On March 23, 2020, Plaintiff Guardiola sent a second letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants to include Plaintiff Galeana as a second plaintiff. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA within sixty-five (65) calendar days of December 30, 2019 and March 23, 2020. Plaintiffs may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

1 Wherefore, Plaintiffs and the Aggrieved Employees they seek to represent request relief as
2 described below.

3 IV.

4 **RELIEF REQUESTED**

5 WHEREFORE, Plaintiffs pray for the following relief:

- 6 1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other
7 Aggrieved Employees;
- 8 2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
9 and other applicable law;
- 10 3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable
11 law; and
- 12 4. Such other and further relief as this Court may deem just and proper.

13 Dated: June 3, 2020

14 Respectfully submitted,

15 GAINES & GAINES
16 A Professional Law Corporation

17 By: 
18 DANIEL F. GAINES
19 SEPIDEH ARDESTANI
20 Attorneys for Plaintiffs
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1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to
3 the within action. My business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301.

4 _____ (For messenger) my business address is:

5 On June 3, 2020, I served the foregoing document described as **FIRST AMENDED REPRESENTATIVE**
6 **ACTION COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed
7 envelopes addressed as follows:

8 **Annette Colleen Clark, Esq.**
9 **CALLAHAN THOMPSON SHERMAN & CAUDILL**
10 **1230 Columbia St, Ste 930**
11 **San Diego, CA 92101-8539**

12 ✓ On the above date:

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

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

21 _____ (BY FACSIMILE TRANSMISSION) On June 3, 2020, at _____ a.m./p.m., at Calabasas, California, I served
22 the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the
23 California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the
24 telephone number(s) of the receiving facsimile machine was () - . A transmission report was properly
25 issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of
26 the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

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

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

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

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

23 Executed on June 3, 2020, at Calabasas, California.

24 
25 BEATRIZ FRANCO
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