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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

KEVIN GALVAN; DANIEL BARRON;
DANIEL CARRILLO; IRVING A.
ROMERO; OSCAR SINIBALDI;
SEBASTIAN TOVAR,

Plaintiffs,

v.

MCKENNA MOTOR COMPANY, INC.; and
DOES 1 through 100,
Defendants.

Case No. 20STCV11262

**PLAINTIFF’S FIRST AMENDED
COMPLAINT FOR DAMAGES**

- 1. Failure to Pay Minimum Wage (Lab. Code §§ 1182.12, 1194, 1197);**
- 2. Failure to Pay Overtime (Lab. Code §§ 558, 1194, 510);**
- 3. Failure to Allow and Pay for Meal and Rest Periods (Lab. Code §§ 226.7, 512,);**
- 4. Failure to Provide Proper Wage Statements (Lab. Code § 226);**
- 5. Failure to Keep Required Records (Lab. Code § 1174);**
- 6. Failure to Pay Compensation Upon Discharge (Lab. Code §§ 201-203);**
- 7. Violation of California Bus. & Prof. Code §§ 17200, et seq.**
- 8. Private Attorneys General Act Claim (Lab. Code § 2699)**

JURY TRIAL DEMANDED

1 Plaintiffs allege the following against defendants:

2 **INTRODUCTION**

3 1. Plaintiffs seek damages based on Defendants' (a) failure to pay minimum and overtime
4 compensation in violation of Labor Code §§ 510, 1194, 1197, and the orders and standards promulgated
5 by the California Division of Labor Standards Enforcement and the Industrial Welfare Commission,
6 including Wage Order 4-2001, section 3 as to overtime, and section 4 as to minimum wage (8 C.C.R.
7 section 11040); (b) failure to allow and pay for meal and rest breaks pursuant to Labor Code §§ 226.7
8 and 512, and Wage Order 4-2001, sections 11 and 12; (c) failure to furnish plaintiffs with accurate
9 itemized statements upon payment of wages as required by Labor Code § 226, (d) failure to keep required
10 employment and wage records (Labor Code § 1174); (e) failure to pay compensation due plaintiffs upon
11 discharge (Lab. Code §§ 201-203); and (g) violation of California's unfair competition laws (Business
12 & Professions Code § 17200).

13 2. Plaintiffs' claims are based on defendants' standard policy, practice and procedure of forcing
14 plaintiffs to work off the clock, as a result of which plaintiffs were uncompensated for vast amounts of
15 time worked—plaintiffs sometimes worked 12 hours a day, but were only paid for eight. Further, The
16 Defendant Employer (McKenna Motor Company, Inc.) failed to provide plaintiffs proper, statutorily
17 required meal and rest periods. The Defendant Employer further failed to provide proper pay statements,
18 and further failed to pay such wages due to plaintiffs at the time their employment terminated, and failed
19 to maintain adequate records of plaintiff's employment.

20 **JURISDICTION AND VENUE**

21 3. Venue is proper in this court because The Defendant Employer maintains offices and transacts
22 business within the jurisdiction of this Court, because at least some of the plaintiffs reside within the
23 jurisdiction of this Court, and because the conduct alleged herein which gives rise to the claims asserted
24 occurred within the jurisdiction of this Court. Specifically, each plaintiff worked for The Defendant
25 Employer within Los Angeles County, and the wages herein claimed were earned by them in Los
26 Angeles County.

27 **THE PARTIES**

28 4. At all times mentioned herein at least some of the plaintiffs are and were, at all times relevant

herein, residents of the county of Los Angeles, and citizens of the state of California, and defendant McKenna Motor Company, Inc. ("The Defendant Employer") was a corporation organized and existing under the laws of the state of California, with its principle place of business within California.

5. Plaintiffs are all former employees of The Defendant Employer, who, throughout the course of their employment with The Defendant Employer, were employed as Service Technicians at defendant's South Bay BMW facility in Torrance, California.

6. Plaintiffs are ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of the Defendants sued herein as Does 1 through 100, inclusive, but on information and belief alleges that said Defendants are in some manner legally responsible for the unlawful actions, policies, and practices alleged herein, and therefore sues such Defendants by such fictitious names. Plaintiffs are informed and believe, and thereon allege, that each Defendant named herein was the agent of the other, and the agent of all Defendants. Plaintiffs are further informed and believes, and thereon alleges, that each Defendant was acting within the course and scope of said agency at all relevant times herein, for the benefit of themselves, each other, and the other Defendants, and that each Defendant's actions as alleged herein was authorized and ratified by the other Defendants.

FACTUAL ALLEGATIONS

7. Plaintiffs were employed as Service Technicians during various periods of time by The Defendant Employer at its McKenna South Bay BMW dealership in Torrance, California. Plaintiffs performed service repairs on The Defendant Employer's clients' vehicles. Plaintiffs were only permitted to clock in for eight hours per day; however, plaintiffs were required by The Defendant Employer to routinely work off the clock both before and after they were clocked in, for which plaintiffs received no compensation, either at minimum wage, or overtime.

8. Further, during their employment with The Defendant Employer, plaintiffs were routinely denied meal and rest breaks as required by the California Labor Code, and the applicable regulations, including Wage Orders promulgated thereunder.

9. Plaintiffs were further routinely provided wage statements that did not truly and accurately reflect the number of hours worked by them, or the wages due to them, specifically including but not limited to, failing to reflect the actual and total hours worked, regular and overtime wages due, and compensation due for missed meal and rest breaks, in violation of California Labor Code § 226(a).

10. At the time the employment of plaintiffs with The Defendant Employer terminated, Plaintiffs were not paid, and still have not been paid all wages due to them, in violation of California Labor Code sections 201-203. Specifically, plaintiffs were not paid regular wages for time worked off the clock, or for overtime, nor were plaintiffs compensated for missed meal and rest breaks.

11. During plaintiffs' employment with The Defendant Employer, The Defendant Employer required plaintiffs to work overtime without lawful compensation, and without proper meal and rest breaks. The Defendant Employer, in violation of the above-described Wage Orders and statutes, willfully failed and refused to pay plaintiffs overtime compensation, failed to provide them, or to compensate them for missed meal and rest periods, failed to pay all wages due upon termination, and failed to provide plaintiff true and accurate wage statements. Said policies, procedures, and practices are in violation of the California Labor Code, including, but not limited to, Labor Code §§ 201-203.

FIRST CAUSE OF ACTION

(Failure to Pay Minimum Wage)

(By Plaintiffs Against The Defendant Employer and Does 1-100)

12. Plaintiffs incorporate herein by reference the allegations set forth above in paragraphs 1 through 11.

13. Pursuant to California Labor Code §§ 1194, 1197, and the applicable IWC wage orders, it is unlawful to employ persons without compensating them at the legal minimum wage rate, which rate in this case is specified by Wage Order 4-2001, section 4(A).

14. During the hours plaintiffs spent working off the clock, they received no compensation for their work, and thus were not paid at least minimum wage.

15. Plaintiffs are and were thus entitled to minimum wage compensation for all hours worked off the clock.

16. The Defendant Employer's conduct described herein violates the California Code of Regulations, Title 8, § 11040, and Labor Code §§ 200, 201-203, 226, 226.7, 512, and 1194. Plaintiffs are thus entitled to recover, in addition to the unpaid balance of minimum wages, interest as provided by Labor Code §218.6, penalties, attorneys' fees, expenses, costs of suit, and all other allowable damages, including liquated damages in the amount of the unpaid minimum wages, as provided by Labor Code section

1 1194.2. Plaintiffs assert a claim for all damages, compensation, and penalties allowed by and under the
2 California Labor Code, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 223, 225.5,
3 226, 226.3, 226.7, 510, 512, 1194, 1194.2, and 1197.1. Plaintiffs claim damages in an amount to be
4 determined by the trier of fact.

5 **SECOND CAUSE OF ACTION**

6 **(Failure to Pay Overtime Compensation)**

7 **(By Plaintiffs Against The Defendant Employer and Does 1-100)**

8 17. Plaintiffs incorporate herein by reference the allegations set forth above in paragraphs 1 through
9 16.

10 18. Pursuant to California Labor Code § 1194 and the applicable IWC wage orders, it is unlawful to
11 employ persons without compensating them at a rate of pay either time-and-one-half or two-times that
12 person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly
13 basis.

14 19. Pursuant to California Labor Code § 1194, the maximum hours of work and the standard
15 conditions of labor fixed by the IWC shall be the maximum hours of work and the standard conditions
16 of labor for employees. The employment of any employee for longer hours than those fixed by the
17 applicable wage orders or under conditions of labor prohibited by the order is unlawful.

18 20. Pursuant to California Labor Code § 510, and Wage Order 4-2001, Section 3, The Defendant
19 Employer is and was required to pay Plaintiff a premium overtime rate for all hours worked in excess of
20 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate specified in Wage Order
21 4-2001, Section 3(A).

22 21. During the relevant time period, plaintiffs regularly and/or consistently worked in excess of eight
23 (8) hours in a day, and/or in excess of forty (40) hours in a week.

24 22. Plaintiffs are and were thus entitled to, but were not paid overtime compensation for all hours
25 worked in excess of the hours and time specified in the Wage Orders, statutes and regulations identified
26 above.

27 23. The Defendant Employer's conduct described herein violates the California Code of Regulations,
28 Title 8, § 11040, and Labor Code §§ 200, 201-203, 226, 226.7, 512, 558 and 1194. Plaintiffs are thus

entitled to recover, in addition to the unpaid balance of overtime compensation The Defendant Employer owes them unpaid wages, plus interest as provided by *Labor Code* §218.6, penalties, attorneys' fees, expenses and costs of suit. Plaintiffs assert a claim for all penalties allowed by and under the California Labor Code, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 223, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1194, and 1194.2. Plaintiffs claim damages in an amount to be determined by the trier of fact.

THIRD CAUSE OF ACTION

(Failure to Allow and Pay for Meal Periods and Rest Breaks)

(By Plaintiffs Against The Defendant Employer and Does 1-100)

24. Plaintiffs incorporate herein by reference the allegations set forth above in paragraphs 1 through 23.

25. At all times herein mentioned, the IWC's Wage Order 4-2001, Section 11, and California Labor Code §§ 226.7 and 512(a) were applicable to plaintiffs, and their employment by The Defendant Employer. Pursuant to Wage Order 4-2001, Section 11, and California Labor Code § 512(a), an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. IWC Wage Order 7-2001, Section 12, mandates ten-minute rest breaks every four hours of work, or major fraction thereof.

26. Labor Code § 226.7(a) provides, "no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

27. As alleged herein, The Defendant Employer routinely interrupted and/or failed to permit, authorize and/or provide plaintiffs with statutorily mandated meal periods and rest breaks. By these actions, The Defendant Employer violated California Labor Code § 226.7(a) and § 512(a), in the number, length and manner of the breaks mandated by statute and regulation. At no time did plaintiff expressly or impliedly waive their right to meal periods and rest breaks.

28. As a result of the unlawful acts of The Defendant Employer, plaintiffs were, during their employment with The Defendant Employer, deprived of meal periods and rest breaks, and are thus

entitled to recovery under Labor Code § 226.7(a) of wages in an amount of one additional hour of pay at the employee's regular rate of compensation for each work day that a meal period and/or rest break was not provided. Additionally, plaintiffs are entitled to interest and penalties under the Labor Code sections identified above. Plaintiffs claim damages in an amount to be determined by the trier of fact.

FOURTH CAUSE OF ACTION

(Failure to Provide Proper Wage Statements)

(By Plaintiffs Against The Defendant Employer and Does 1-100)

29. Plaintiffs incorporate herein by reference the allegations set forth above in paragraphs 1 through 28.

30. Labor Code §226(a) sets forth reporting requirements for employers when they pay wages, as follows: "Every employer shall . . . at the time of each payment of wages, furnish his or her employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked by the employee . . . (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece rate basis. . . ." Section (e) provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees."

31. The Defendant Employer failed to provide plaintiff with pay statements that accurately recorded the hours worked by plaintiffs, and further failed to accurately record wages earned for missed meal periods and rest breaks.

32. Plaintiffs were damaged by these failures because, among other things, the failure to accurately record the hours worked overtime, the breaks missed, and the wages due therefore hindered plaintiffs from determining the amounts of wages actually owed to them.

33. Plaintiffs seek recovery of Labor Code § 226(e) penalties according to proof, as well as interest, attorney's fees and costs pursuant to Labor Code §226(e), in a sum as provided by the Labor Code and/or other statutes.

1 **FIFTH CAUSE OF ACTION**

2 **(Failure to Keep Required Records; Lab. C. § 1174.)**

3 **(By Plaintiffs Against The Defendant Employer and Does 1-100)**

4 34. Plaintiffs incorporate herein by reference the allegations set forth above in paragraphs 1 through
5 33.

6 35. The Labor Code and applicable Wage Orders require employers to keep certain accurate business
7 records, including each employee's daily hours worked, when they started and ended working, the start
8 and end of meal periods, total daily hours worked, total hours worked in the pay period, and amount of
9 wages earned. In addition, the employer is required to accurately record the information required to be
10 provided with each paycheck, pursuant to Labor Code § 226.

11 36. Any employer who fails to maintain such records or to accurately maintain such records is subject
12 to a civil penalty pursuant to Labor Code § 1174.5 and under the applicable Wage Orders.

13 37. The Defendant Employers and Does 1-100, failed to keep and maintain accurate payroll records,
14 including accurate records of the hours worked by plaintiffs, and of meal periods taken by plaintiffs, and
15 wages earned by plaintiffs. Plaintiff is therefore entitled to recover civil penalties and damages as allowed
16 by the Labor Code and applicable Wage Orders.

17 **SIXTH CAUSE OF ACTION**

18 **(Failure to Pay Compensation at the Time of Termination)**

19 **(By Plaintiffs Against The Defendant Employer and Does 1-100)**

20 38. Plaintiffs incorporate herein by reference the allegations set forth above in paragraphs 1 through
21 37.

22 39. California Labor Code § 201 requires an employer who discharges an employee to pay
23 compensation due and owing to said employee immediately upon discharge. California Labor Code §
24 202 requires an employer to promptly pay compensation due and owing to an employee within no more
25 than 72 hours of that employee's termination of employment by resignation, and at the time of termination
26 if an employee is involuntarily terminated. California Labor Code § 203 provides that if an employer
27 willfully fails to pay compensation promptly upon discharge or resignation in a prompt and timely
28

manner as required by Labor Code §§ 201 and 202, respectively, said employer is liable to said employee for waiting time wage continuation as described therein.

40. The Defendant Employer has failed and refused to pay to plaintiffs all wages due to them upon termination in compliance with the Labor Code, including all regular wages, and overtime wages due, and wages due for missed breaks.

41. The Defendant Employer's willful failure to pay plaintiffs all the wages due to them upon termination is in violation of Labor Code §§ 201 and 202. Labor Code § 203 provides that an employee's wages continue accruing up to thirty days from the time said wages became due. Therefore, plaintiffs are entitled to a waiting time wage continuation penalty pursuant to Labor Code § 203. Plaintiffs claim damages in an amount to be determined by the trier of fact. Additionally, plaintiffs seeks costs, interest, disbursements, and attorneys' fees, as provided by statute.

SEVENTH CAUSE OF ACTION

(Unfair Competition: California Business and Professions Code § 17200, *et seq.*)

(By Plaintiffs Against The Defendant Employer and Does 1-100)

42. Plaintiffs incorporate herein by reference the allegations set forth above in paragraphs 1 through 41.

43. Section 17200 of the California Business & Professions Code prohibits any unlawful, unfair or fraudulent business act or practice. A violation of California Business & Professions Code §§ 17200, *et seq.*, may be predicated on the violation of any state or federal law. As described herein, The Defendant Employer violated various provisions of the California Labor Code, as well as the wage orders and regulations promulgated thereunder.

44. Plaintiffs bring this cause of action in a representative capacity on behalf of the general public and the persons affected by the unlawful and unfair conduct described herein. Plaintiffs have suffered and continues to suffer injury in fact and monetary damages as a result of The Defendant Employer's actions.

45. The actions of The Defendant Employer, including, but not limited to, the continuing failure to pay minim and overtime wages, failure to provide meal periods and rest periods, failure to provide proper itemized wage statements, failure to pay wages due upon termination, failure to maintain adequate

records, and failure to reimburse business expenses, amount to conduct which is unlawful and a violation of law as alleged herein. As such, said conduct amounts to unfair business practices in violation of Business and Professions Code § 17200, *et seq.*

46. The Defendant Employer's conduct as herein alleged has damaged plaintiffs by denying them wages due and payable, and failing to provide proper wage statements. The Defendant Employer's actions are thus substantially injurious to plaintiffs, causing them injury in fact and loss of money.

47. As a result of such conduct, The Defendant Employer has unlawfully and unfairly obtained monies due to plaintiffs.

48. The amount of wages due plaintiffs can be readily determined from The Defendant Employer's records. Plaintiffs are entitled to restitution of monies due and obtained by The Defendant Employer as a result of The Defendant Employer's unlawful and unfair conduct.

49. By the conduct alleged herein, The Defendant Employer committed, and continues to commit, acts of unfair competition as defined by § 17200, *et seq.*, of the Business and Professions Code, by and among other things, engaging in the acts and practices described above.

50. The Defendant Employer's course of conduct, acts, and practices in violation of the California law as mentioned in each paragraph above constitutes a separate and independent violation of §17200, *et seq.*, of the Business and Professions Code.

51. The harm to plaintiffs of being wrongfully denied lawfully earned and unpaid wages outweighs the utility, if any, of The Defendant Employer's policies and practices and, therefore, The Defendant Employer's actions described herein constitute an unfair business practice or act within the meaning of Business and Professions Code § 17200.

52. The Defendant Employer's conduct described herein threatens an incipient violation of California's wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly threatens or harms competition.

53. The Defendant Employer's course of conduct described herein further violates Business and Professions Code §17200, *et seq.*, in that it is fraudulent, illegal, improper, and unfair.

54. The unlawful, unfair, and fraudulent business practices and acts of The Defendant Employer, as described herein above, have injured plaintiffs in that they were wrongfully denied the timely and full

1 payment of wages due to them.

2 **EIGHTH CAUSE OF ACTION**

3 **(Private Attorneys General Act Claim by Plaintiffs, on Behalf of Themselves, and All**
4 **Other Similarly Situated Employees, Against The Defendant Employer, and Does 1-100)**

5 55. Plaintiffs incorporate herein by reference the allegations set forth above in paragraphs 1 through
6 54.

7 56. Plaintiff are aggrieved employees as defined in Labor Code Section 2699(a).

8 57. Plaintiffs claim herein all penalties permitted by the California Labor Code Private Attorneys
9 General Act of 2004 ("PAGA," Labor Code § 2698, *et seq.*), on behalf of themselves, and on behalf of
10 all similarly situated employees, for the alleged Labor Code violations described and set forth above.

11 58. Plaintiffs have complied with the procedures for bringing suit specified by Labor Code § 2699.3.
12 By letter dated March 17, 2020, plaintiffs gave written notice by certified mail to The Defendant
13 Employer of the Labor Code violations alleged herein, including the facts and theories to support the
14 alleged violation, and on that same date submitted said PAGA notice to the Labor and Workforce
15 Development Agency/Department of Industrial Relations ("LWDA") via its on-line notice submittal
16 procedure. More than 60 days have passed from the date of plaintiffs' notice. The LWDA has not
17 notified plaintiffs within such time that it intends to investigate plaintiffs' claims.

18 **PRAYER FOR RELIEF**

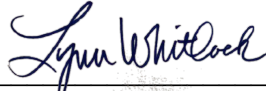
19 WHEREFORE, plaintiffs pray for judgment against The Defendant Employer as follows:

- 20 1. For nominal damages;
- 21 2. For compensatory damages;
- 22 3. For equitable relief in the nature of restitution of all monies due to plaintiff, disgorgement
23 of profits from the unlawful business practices of Defendants, an accounting, and injunctive relief under
24 Labor Code §226(c);
- 25 4. For all penalties permitted by the Labor Code;
- 26 5. For interest accrued to date;
- 27 6. For costs of suit and expenses incurred herein pursuant to Labor Code §§ 226 and 1194;
- 28

- 1 7. For reasonable attorney's fees pursuant to Labor Code §§ 226 and 1194;
- 2 8. For all penalties permitted under California's PAGA statute (Labor Code §§ 2698, *et*
- 3 *seq.*); and
- 4 9. For all such other and further relief that the Court may deem just and proper.
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6 Dated: May 26, 2020

RIZIO LIPINSKY LAW FIRM PC

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8 By: Lynn P. Whitlock
9 Attorney for Plaintiffs

10 Dated: May 26, 2020

RAY & SEYB LLP

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12 By: Charles M. Ray
13 Attorney for Plaintiffs

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs request a trial by jury on all applicable claims.

3 Dated: May 26, 2020

4 **RIZIO LIPINSKY LAW FIRM PC**

5 

6 By: Lynn P. Whitlock
Attorney for Plaintiff

7 Dated: May 26, 2020

8 **RAY & SEYB LLP**

9 

10 By: Charles M. Ray
Attorney for Plaintiffs