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County of San Diego
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

PEDRO URBINA, CARLOS TORRES, and
REBECCA MEDRANO, as individuals and
on behalf of all other aggrieved employees,

Plaintiffs,

vs.

MOSSY AUTOMOTIVE GROUP, INC., a
California corporation; MOSSY
AUTOMOTIVE GROUP II, LLC, a
California limited liability company; MOSSY
NISSAN, INC., a California corporation;
MOSSY FORD, INC., a California
corporation; MOSSY AUTOMOTIVE
GROUP EL CAJON INC., a California
corporation; MOSSY AUTOMOTIVE
GROUP LEMON GROVE INC., a California
corporation; MOSSY NISSAN CHULA
VISTA, a California corporation; MOSSY
NISSAN EL CAJON, a California
corporation; MOSSY NISSAN
ESCONDIDO, a California corporation;
MOSSY NISSAN KEARNY MESA, a
California corporation; MOSSY NISSAN
NATIONAL CITY, a California corporation;

Case No. 37-2020-00022420-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 MOSSY NISSAN OCEANSIDE, a California
2 corporation; MOSSY NISSAN POWAY, a
3 California corporation; MAG WEST MOSSY
4 FORD II, LP, a California limited partnership;
5 MAG WEST MOSSY HONDA II, LP, a
6 California limited partnership; MAG WEST
7 MOSSY NISSAN II, LP, a California limited
8 partnership; MAG WEST MOSSY TOYOTA
9 II, LP, a California limited partnership; MAG
10 WEST MOSSY VOLKSWAGEN II, LP, a
11 California limited partnership; and DOES 1
12 through 100,

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Defendants.

1 Plaintiffs Pedro Urbina, Carlos Torres, and Rebecca Medrano (“Plaintiffs”), on behalf of
2 themselves and all other aggrieved employees, hereby bring this Representative Action
3 Complaint against Defendants Mossy Automotive Group, Inc., a California corporation; Mossy
4 Automotive Group II, LLC, a California limited liability company; Mossy Nissan, Inc., a
5 California corporation; Mossy Ford, Inc., a California corporation; Mossy Automotive Group El
6 Cajon Inc., a California corporation; Mossy Automotive Group Lemon Grove Inc., a California
7 corporation; Mossy Nissan Chula Vista, a California corporation; Mossy Nissan El Cajon, a
8 California corporation; Mossy Nissan Escondido, a California corporation; Mossy Nissan Kearny
9 Mesa, a California corporation; Mossy Nissan National City, a California corporation; Mossy
10 Nissan Oceanside, a California corporation; Mossy Nissan Poway, a California corporation; Mag
11 West Mossy Ford II, LP, a California limited partnership; Mag West Mossy Honda II, LP, a
12 California limited partnership; Mag West Mossy Nissan II, LP, a California limited partnership;
13 Mag West Mossy Toyota II, LP, a California limited partnership; Mag West Mossy Volkswagen
14 II, LP, a California limited partnership; and DOES 1 to 100, inclusive (collectively “Defendants”),
15 and on information and belief allege as follows:

16 **JURISDICTION**

17 1. Plaintiffs, on behalf of themselves and all other aggrieved employees, hereby bring
18 this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et*
19 *seq.*

20 2. This Court has jurisdiction over Defendants because, upon information and belief,
21 Defendants are citizens of California, Defendants have sufficient minimum contacts in California,
22 or otherwise intentionally avail themselves to the California market so as to render the exercise
23 of jurisdiction over them by the California courts consistent with the traditional notions of fair
24 play and substantial justice.

25 **VENUE**

26 3. Venue as to each Defendant is proper in this judicial district pursuant to California
27 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
28 complained of herein occurred in the County of San Diego. Further, at all times relevant herein

1 Plaintiffs were employed by Defendants within the County of San Diego.

2 **PARTIES**

3 4. Plaintiffs are individuals over the age of eighteen (18). At all relevant times herein,
4 Plaintiffs were, and currently are, California residents, residing in the County of San Diego.
5 During the one year immediately preceding Plaintiffs' giving of the required notice under the
6 PAGA, and within the statute of limitations periods applicable to the cause of action pled herein,
7 Plaintiffs were employed by Defendants as hourly non-exempt employees.

8 5. Plaintiffs are informed and believe, and based thereon allege, that during the one
9 year preceding Plaintiffs' giving of the required notice under the PAGA and continuing to the
10 present, Defendants did (and do) business by owning and operating several car dealerships, and
11 employed Plaintiffs and other similarly-situated hourly non-exempt employees within the County
12 of San Diego and, therefore, were (and are) doing business in the County of San Diego and the
13 State of California.

14 6. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
15 herein, Defendants were licensed to do business in California and the County of San Diego, and
16 were the employers of Plaintiffs and the Aggrieved Employees (as defined in Paragraph 19).

17 7. Plaintiffs do not know the true names or capacities, whether individual, partner, or
18 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
19 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
20 amend this Representative Action Complaint when such true names and capacities are discovered.
21 Plaintiffs are informed, and believe, and thereon allege, that each of said fictitious defendants,
22 whether individual, partners, or corporate, were responsible in some manner for the acts and
23 omissions alleged herein, and proximately caused Plaintiffs and the Aggrieved Employees (as
24 defined in Paragraph 19) to be subject to the unlawful employment practices, wrongs, injuries,
25 and damages complained of herein.

26 8. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned
27 herein, Defendants were and are the employers of Plaintiffs and the Aggrieved Employees (as
28 defined in Paragraph 19).

1 9. At all times herein mentioned, each of said Defendants participated in the doing
2 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
3 Defendants, and each of them, were the agents, servants, and employees of each and every one of
4 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
5 were acting within the course and scope of said agency and employment. Defendants, and each
6 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
7 omissions complained of herein.

8 10. At all times mentioned herein, Defendants, and each of them, were members of
9 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
10 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
11 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and the
12 Aggrieved Employees (as defined in Paragraph 19).

13 **REPRESENTATIVE ACTION ALLEGATIONS**

14 11. Defendants own and operate several car dealerships in Southern California
15 including, but not limited to, Mossy Honda Lemon Grove, Mossy Infiniti, Mossy Mitsubishi
16 Escondido, Mossy Nissan Chula Vista, Mossy Nissan El Cajon, Mossy Nissan Escondido, Mossy
17 Nissan Kearny Mesa, Mossy Nissan National City, Mossy Nissan Poway, Mossy Nissan
18 Oceanside, Mossy Toyota San Diego, Mossy Volkswagen Escondido, and Mossy Ford San
19 Diego. Plaintiff Carlos Torres (“Plaintiff Torres”) worked at Defendants’ Mossy Volkswagen car
20 dealership as a non-exempt Sales Consultant until approximately October 31, 2019. Plaintiff
21 Pedro Urbina (“Plaintiff Urbina”) worked as a non-exempt Lube Technician at Defendants’
22 Mossy Nissan Escondido car dealership from November 2016 until on or about January 22, 2020.
23 Defendants employed Plaintiff Rebecca Medrano (“Plaintiff Medrano”) as a non-exempt Sales
24 Representative at the Mossy Ford car dealership from approximately May 2019 to approximately
25 August 2019.

26 12. During Plaintiff Torres, Plaintiff Medrano, and other aggrieved employees’
27 employment with Defendants, Plaintiff Torres, Plaintiff Medrano, and other aggrieved employees
28 were paid pursuant to a commission payment plan whereby Plaintiff Torres, Plaintiff Medrano,

1 and other aggrieved employees were paid commissions per vehicle sold or leased. Plaintiff Torres,
2 Plaintiff Medrano, and other aggrieved employees recorded their actual hours worked; however,
3 they were only paid hourly base wages if their earned commissions did not exceed their base
4 wages in a pay period. While paid on a commission-only basis, Defendants failed to separately
5 compensate Plaintiff Torres, Plaintiff Medrano, and other aggrieved employees for all of the time
6 spent working on tasks which were not compensated on a commission-only basis, including, but
7 not limited to, hours spent waiting for customers, attending daily meetings, and cleaning the
8 dealership (i.e., non-productive time). As a result, Plaintiff Torres, Plaintiff Medrano, and other
9 aggrieved employees were not paid at least the minimum wage for all hours worked.

10 13. While working on a commission-only basis, Plaintiff Torres, Plaintiff Medrano,
11 and aggrieved employees worked shifts in excess of 3.5 hours, and were not provided with a paid
12 rest period for every 4-hour period worked, or major fraction thereof, due to Defendants'
13 commission compensation plan, which failed to separately compensate Plaintiff Torres, Plaintiff
14 Medrano, and aggrieved employees for all required rest periods. *See Vaquero v. Stoneledge*
15 *Furniture LLC*, 9 Cal.App.5th 98 (2017); *Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013)
16 (“There is no dispute that Safeway’s activity-based compensation system did not separately
17 compensate drivers for their rest periods.”). Upon information and belief, for at least a portion of
18 the relevant time period, Defendants failed to properly pay Plaintiff Torres, Plaintiff Medrano,
19 and other aggrieved employees for rest periods at the correct rate of pay as required by Industrial
20 Welfare Commission Wage Order 4 § 12(A).

21 14. Defendants also failed to authorize and permit Plaintiff Urbina, Plaintiff Medrano,
22 and other aggrieved employees from taking all required rest periods due to work demands, and
23 by actively discouraging Plaintiff Urbina, Plaintiff Medrano, and other aggrieved employees from
24 taking all required off-duty rest periods. Defendants also failed to authorize and permit Plaintiff
25 Urbina, Plaintiff Medrano, and other aggrieved employees to take a third rest period on shifts
26 over 10.0 hours. On those occasions when Defendants failed to authorize and permit Plaintiff
27 Urbina, Plaintiff Medrano, and other aggrieved employees from taking all legally-compliant rest
28 periods to which they were entitled, Defendants failed to compensate employees with the required

1 rest period premium for each workday in which they experienced a rest period violation as
2 mandated by Labor Code § 226.7. Upon information and belief, for at least a portion of the
3 relevant time period, Defendants failed to maintain any pay code or other mechanism for the
4 payment of rest period premiums when they failed to authorize and permit Plaintiff Urbina,
5 Plaintiff Medrano, and other aggrieved employees with legally-compliant rest periods.

6 15. Furthermore, Defendants routinely failed to provide Plaintiffs and aggrieved
7 employees with timely, full 30-minute first meal periods commencing before the conclusion of
8 the fifth hour of work in violation of Labor Code § 512, and Wage Order 4, § 11(A). Specifically,
9 Plaintiffs and other aggrieved employees were unable to take their meal period before the
10 conclusion of the fifth hour of work due to work demands imposed by Defendants. For example,
11 Plaintiff Urbina's time records reveal that on December 28, 2019, he clocked in for his shift at
12 8:02 a.m. and clocked out for his meal period at 2:22 p.m., resulting in a late meal period.
13 Likewise, Plaintiff Medrano's timecard entry for July 16, 2019, shows that she clocked in for her
14 shift at 9:29 a.m. and clocked out for her meal period at 3:36 p.m., which is well after the fifth
15 hour of work. Additionally, Defendants failed to provide Plaintiffs and aggrieved employees with
16 all required meal periods due to Defendants' meal period policies/practices which failed to
17 provide a second meal period for shifts in excess of 10.0 hours. On those occasions when
18 Defendants failed to provide Plaintiffs and other aggrieved employees all legally-compliant meal
19 periods to which they were entitled, Defendants failed to compensate employees with the required
20 meal period premium for each workday in which they experienced a meal period violation as
21 mandated by Labor Code § 226.7.

22 16. Defendants also failed to adequately reimburse Plaintiffs and other aggrieved
23 employees for use of their personal cellular phone for a variety of work-related purposes,
24 including communicating with their coworkers, supervisors, and clients. Plaintiff and other
25 aggrieved employees were required to use their personal cellular phones for work-related
26 purposes; however, Defendants often failed to pay any reimbursements to Plaintiff Urbina,
27 Plaintiff Medrano, and other aggrieved employees for cellular phone expenses. On some
28 occasions, Defendants inadequately reimbursed Plaintiff Torres and other aggrieved employees

only \$10.00 per pay period for use of their personal cellular phone, which is denoted as “Cell Allowance” on the employee’s wage statement. Although Defendants required Plaintiffs and aggrieved employees to use their personal cellular phones for work-related activities, Defendants failed to adequately reimburse Plaintiffs and other aggrieved employees for all cellular phone expenses.

17. As a result of Defendants’ failure to pay all minimum wages, rest period premium wages, and meal period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiffs and other aggrieved employees.

18. As a further result of Defendants’ failure to pay all minimum wages, rest period premium wages, and meal period premium wages, Defendants failed to pay all wages owed to Plaintiffs and other aggrieved employees upon their separation of employment.

19. Based on the foregoing, Plaintiffs seek to represent themselves and other aggrieved employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code violations discussed herein.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

20. Plaintiffs re-allege and incorporate by reference all prior paragraphs as though fully set forth herein.

21. Defendants have committed several Labor Code violations against Plaintiffs and other aggrieved employees. Plaintiffs, “aggrieved employees” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of themselves and other aggrieved employees, bring this representative action against Defendants to recover the civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per

employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation; and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to Plaintiff Torres, Plaintiff Medrano, and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197;
- b. Failing to authorize and permit all legally required rest periods, and/or failing to separately compensate Plaintiff Torres, Plaintiff Medrano, and other aggrieved employees for required rest periods at the correct rate of pay, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- c. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to Plaintiffs and other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to reimburse Plaintiffs and other aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;
- e. Failing to furnish Plaintiffs and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages due to Plaintiffs and other aggrieved employees in violation of Labor Code §§ 201, 202, and 203;
- g. Failing to pay Plaintiffs and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiffs and other aggrieved employees in violation of Labor Code § 1174.

22. On or about April 22, 2020, Plaintiffs notified Defendants Mossy Automotive Group, Inc.; Mossy Automotive Group II, LLC; Mossy Nissan, Inc.; Mossy Ford, Inc.; Mossy

Automotive Group El Cajon Inc.; Mossy Automotive Group Lemon Grove Inc.; Mossy Nissan Chula Vista; Mossy Nissan El Cajon; Mossy Nissan Escondido; Mossy Nissan Kearny Mesa; Mossy Nissan National City; Mossy Nissan Oceanside; Mossy Nissan Poway; Mag West Mossy Ford II, LP; Mag West Mossy Honda II, LP; Mag West Mossy Nissan II, LP; Mag West Mossy Toyota II, LP; and Mag West Mossy Volkswagen II, LP; via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiffs’ intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 21 (a)-(h). Now that sixty-five days have passed from Plaintiffs notifying Defendants of these violations, Plaintiffs have exhausted their administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

23. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys’ fees and costs, which they are entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for

1 each initial violation and \$200 for each subsequent violation per employee per pay period for
2 those violations of the Labor Code for which no civil penalty is specifically provided, based on
3 the Labor Code violations identified in Paragraph 21 (a)-(h);

4 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
5 2699(g) and Code of Civil Procedure § 1021.5; and

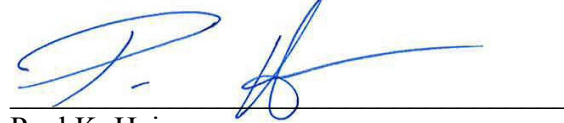
6 3. For such other and further relief the Court may deem just and proper.

7 Respectfully submitted,

8 Dated: June 29, 2020

HAINES LAW GROUP, APC

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10 By:



11 Paul K. Haines
12 Sean M. Blakely
13 Attorneys for Plaintiffs
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