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**FILED**  
Superior Court of California  
County of Riverside

**8/4/2020**  
**D. Brown**  
Electronically Filed

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF RIVERSIDE**

RABIH MUSTAPHA, as an individual and on  
behalf of all other aggrieved employees,

Plaintiff,

vs.

PALM SPRINGS MOTORS, INC., a  
California Corporation; and DOES 1 through  
100,

Defendants.

Case No. RIC2003035

**REPRESENTATIVE ACTION  
COMPLAINT:**

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

**UNLIMITED CIVIL CASE**

1 Plaintiff Rabih Mustapha ("Plaintiff"), on behalf of himself and all other aggrieved  
2 employees, hereby brings this Representative Action Complaint against Defendants Palm Springs  
3 Motors, Inc., a California Corporation; and DOES 1 to 100, inclusive (collectively "Defendants"),  
4 and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings  
7 this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et*  
8 *seq.*

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

14 **VENUE**

15 3. Venue as to each Defendant is proper in this judicial district pursuant to California  
16 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions  
17 complained of herein occurred in the County of Riverside. Further, at all times relevant herein  
18 Plaintiff was employed by Defendants within the County of Riverside.

19 **PARTIES**

20 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,  
21 Plaintiff was, and currently is, a California resident, residing in the County of Riverside. During  
22 the one year immediately preceding Plaintiff's giving of the required notice under the PAGA, and  
23 within the statute of limitations periods applicable to the cause of action pled herein, Plaintiff was  
24 employed by Defendants as an hourly non-exempt employee.

25 5. Plaintiff is informed and believes, and based thereon alleges, that during the one  
26 year preceding Plaintiff's giving of the required notice under the PAGA and continuing to the  
27 present, Defendants did (and do) business by owning and operating automotive retailers in  
28 California, and employed Plaintiff and other similarly-situated hourly non-exempt employees

1 within the County of Riverside and, therefore, were (and are) doing business in the County of  
2 Riverside and the State of California.

3 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned  
4 herein, Defendants were licensed to do business in California and the County of Riverside, and  
5 were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 18).

6 7. Plaintiff does not know the true names or capacities, whether individual, partner,  
7 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said  
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to  
9 amend this Representative Action Complaint when such true names and capacities are discovered.  
10 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,  
11 whether individual, partners, or corporate, were responsible in some manner for the acts and  
12 omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as  
13 defined in Paragraph 18) to be subject to the unlawful employment practices, wrongs, injuries,  
14 and damages complained of herein.

15 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned  
16 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as  
17 defined in Paragraph 18).

18 9. At all times herein mentioned, each of said Defendants participated in the doing  
19 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the  
20 Defendants, and each of them, were the agents, servants, and employees of each and every one of  
21 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned  
22 were acting within the course and scope of said agency and employment. Defendants, and each  
23 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or  
24 omissions complained of herein.

25 10. At all times mentioned herein, Defendants, and each of them, were members of  
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course  
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,  
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the

Aggrieved Employees (as defined in Paragraph 18).

**REPRESENTATIVE ACTION ALLEGATIONS**

11. Defendants own and operate automotive retailers in California including Palm Springs Ford, Palm Springs Lincoln, and Palm Springs Mazda. Plaintiff worked for Defendants as a non-exempt “salesman” from on or about October 19, 2018, until approximately December 16, 2019. During Plaintiff’s employment with Defendants, Plaintiff and aggrieved employees were paid on a commission basis, whereby they were paid a commission per vehicle sold or leased. While paid on a commission basis, Plaintiff and aggrieved employees were not separately compensated for time spent working on tasks which were not compensated on a commission basis, including for example, hours spent waiting for customers and attending sales meetings (i.e., non-productive time). As a result, Plaintiff and aggrieved employees were not paid at least the minimum wage for all hours worked.

12. Further, while working on a commission-only basis, Plaintiff and aggrieved employees worked shifts in excess of 3.5 hours, and were not provided with a paid rest period for every 4-hour period worked, or major fraction thereof, because Defendants’ commission compensation plan failed to separately compensate Plaintiff and aggrieved employees for required rest periods at the correct rate of pay. See *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017); *Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013) (“There is no dispute that Safeway’s activity-based compensation system did not separately compensate drivers for their rest periods.”). As a result, Plaintiff and aggrieved employees were not provided with compensated rest periods or rest periods compensated at the correct rate of pay as required by Industrial Welfare Commission Wage Order 4, § 12(A).

13. Plaintiff and aggrieved employees also worked in excess of 8 hours per workday and/or 40 hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours, due to Defendants’ policies/practices which failed to compensate its non-exempt employees for all overtime hours worked. Furthermore, upon information and belief, Defendants had a policy/practice of adjusting Plaintiff and aggrieved employees’ timekeeping records to reduce and/or eliminate overtime

1 hours worked from Plaintiff and aggrieved employees' timekeeping records. As a result, Plaintiff  
2 and aggrieved employees were not compensated for all overtime hours worked.

3 14. In addition, Defendants routinely failed to provide Plaintiff and aggrieved  
4 employees with timely, full 30-minute first meal periods commencing before the conclusion of  
5 the fifth hour of work in violation of Labor Code § 512, and Wage Order 4, § 11(A). Specifically,  
6 due to work demands imposed by Defendants, Plaintiff and other aggrieved employees were  
7 regularly not provided with any first meal period. Further, on other occasions, Plaintiff and  
8 aggrieved employees were provided with a first meal period that was less than 30 minutes due to  
9 work demands imposed by Defendants. Plaintiff and aggrieved employees were also not provided  
10 with a second meal period during shifts in excess of 10.0 hours due to Defendants' meal period  
11 policies/practices which fail to provide a second meal period for shifts over 10.0 hours.  
12 Furthermore, upon information and belief, Defendants had a policy/practice of adjusting Plaintiff  
13 and aggrieved employees' timekeeping records to make it appear as though a legally-compliant  
14 meal period was provided on certain shifts despite the fact that a legally compliant meal period  
15 was not provided.

16 15. Defendants also failed to reimburse Plaintiff and aggrieved employees for use of  
17 their personal cellular phones for a variety of work activities. Specifically, Defendants required  
18 Plaintiff and aggrieved employees to download the CRM application to their personal cellular  
19 phones in order to make outbound calls to customers. Further, Plaintiff and aggrieved employees  
20 were required to use their personal cellular phones to communicate with coworkers and/or  
21 supervisors. Plaintiff and aggrieved employees were required to use their personal cellular phones  
22 for such work activities; however, Plaintiff and aggrieved employees were never reimbursed for  
23 their cellular phone expenses.

24 16. As a result of Defendants' failure to pay all minimum wages, rest period premium  
25 wages, overtime wages, and meal period premium wages, Defendants maintained inaccurate  
26 payroll records and issued inaccurate wage statements to Plaintiff and aggrieved employees.  
27 Further, for a portion of the liability period, Defendants issued facially non-compliant wage  
28 statements to Plaintiff and aggrieved employees that failed to list all hourly rates and

1 corresponding hours worked at each rate in violation of Labor Code § 226(a)(9). Specifically, the  
2 wage statements issued by Defendants to Plaintiff and aggrieved employees fail to list the hourly  
3 rate for their respective “Base” rates of pay. Furthermore, the wage statements issued by  
4 Defendants to Plaintiff and other aggrieved employees fail to list the hourly rate for  
5 “Rest/Recovery” and the corresponding number of “hours” associated with “Rest/Recovery” pay  
6 during the pay period.

7 17. As a further result of Defendants’ failure to pay all minimum and overtime wages,  
8 rest period premium wages, and meal period premium wages, Defendants failed to pay all wages  
9 owed to Plaintiff and aggrieved employees upon their separation of employment with Defendants.

10 18. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved  
11 employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code  
12 violations discussed herein.

13 **FIRST CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **(AGAINST ALL DEFENDANTS)**

16 19. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though  
17 fully set forth herein.

18 20. Defendants have committed several Labor Code violations against Plaintiff and  
19 other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor  
20 Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this  
21 representative action against Defendants to recover the civil penalties due to Plaintiff, other  
22 aggrieved employees, and the State of California according to proof, including, but not limited  
23 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for  
24 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for  
25 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for  
26 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per  
27 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent  
28 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each

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

- 5 a. Failing to pay minimum wages for all hours worked to Plaintiff and other  
6 aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2,  
7 1197, and 1198;
- 8 b. Failing to authorize and permit all legally required rest periods, and/or failing to  
9 separately compensate Plaintiff and other aggrieved employees for required rest  
10 periods at the correct rate of pay, in violation of Labor Code §§ 226.7, 516, 558,  
11 and 1198;
- 12 c. Failing to pay Plaintiff and other aggrieved employees all earned overtime and/or  
13 double-time compensation in violation of Labor Code §§ 204, 510, 558, 1194,  
14 and 1198;
- 15 d. Failing to provide all legally required meal periods, or to pay premium pay in lieu  
16 thereof, to Plaintiff and other aggrieved employees at the regular rate of pay in  
17 violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 18 e. Failing to reimburse Plaintiff and other aggrieved employees for all necessary  
19 business expenses incurred in violation of Labor Code §§ 2802 and 2804;
- 20 f. Failing to furnish Plaintiff and other aggrieved employees with complete,  
21 accurate, itemized wage statements in violation of Labor Code § 226;
- 22 g. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees  
23 in violation of Labor Code §§ 201, 202, and 203;
- 24 h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least  
25 twice during each calendar month in violation of Labor Code § 204; and
- 26 i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved  
27 employees in violation of Labor Code § 1174.

21. On or about May 27, 2020, Plaintiff notified Defendants Palm Springs Motors, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s 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 20 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

22. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

## PRA YER

WHEREFORE, Plaintiff prays for judgment for himself 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 Plaintiff, 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 each initial violation and \$200 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 Labor Code violations identified in Paragraph 20 (a)-(i);

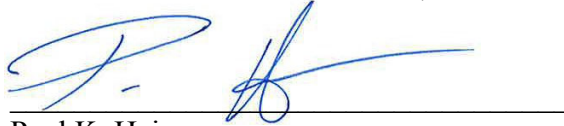
1           2.       On all causes of action, for attorneys' fees and costs as provided by Labor Code §  
2 2699(g) and Code of Civil Procedure § 1021.5; and

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

4  
5 Dated: August 4, 2020

Respectfully submitted,  
HAINES LAW GROUP, APC

6  
7 By:



Paul K. Haines  
Sean M. Blakely  
Attorneys for Plaintiff