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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JOSE MUNIZ, as an aggrieved employee
pursuant to the Private Attorneys General
Act (PAGA),

Plaintiff,

vs.

LLOYD A. WISE CORP., a California
Corporation; LLOYD A. WISE MOTORS
INC., a California Corporation; and DOES
1 to 20, inclusive,

Defendants

Case No.

COMPLAINT FOR DAMAGES:

**1. Civil Penalties Pursuant to Private
Attorney General Act, Labor Code §
2698 *et seq.***

1 Plaintiff JOSE MUNIZ (“Plaintiff”) hereby files this Complaint against Defendants
2 LLOYD A. WISE CORP., a California Corporation; LLOYD A. WISE MOTORS INC., a
3 California Corporation; and DOES 1 to 20, inclusive (hereinafter collectively referred to as
4 “Defendants”). Plaintiff alleges the following:

5 **PARTIES AND JURISDICTION**

6 1. This is an enforcement action under the Labor Code Private Attorneys General Act of
7 2004 (“PAGA”), California Labor Code section 2698, *et seq.* to recover civil penalties and any other
8 available relief on behalf of Plaintiff, the State of California, and other current and former employees
9 who worked for Defendants in California and who suffered at least one violation of the Labor Code
10 as set forth in this complaint, at any time between September 9, 2019 and judgement.

11 2. Plaintiff JOSE MUNIZ is an individual over the age of eighteen (18) and is now and/or at
12 all times mentioned in this Complaint was a resident of the State of California.

13 3. Plaintiff is informed and believes, and thereon alleges, that Defendant LLOYD A. WISE
14 CORP. is a California Corporation doing business in California.

15 4. Plaintiff is informed and believes, and thereon alleges, that Defendant LLOYD A. WISE
16 MOTORS INC. is a California Corporation doing business in California.

17 5. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
18 herein was, at all times relevant to this action, the agent, employee, or joint employer or joint
19 venturer of the remaining defendants and was acting within the course and scope of that relationship.
20 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein
21 gave consent to, ratified and authorized the acts alleged herein to each of the remaining defendants.
22 The true names and capacities of the defendants named herein Does 1 through 20, inclusive, whether
23 individual, corporate, associate, or otherwise are unknown to Plaintiff, who therefore sues such
24 defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff
25 will amend this complaint to show such true names and capacities of Does 1 through 20, inclusive,
26 when they have been determined.

1 6. The Sacramento County Superior Court has jurisdiction in this matter under the
2 California Constitution, Article VI, section 10. The statute under which this action is brought does
3 not specify any other basis for jurisdiction.

4 7. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
5 the wrongful acts and violations of law asserted herein occurred within Sacramento County.

6 8. On September 9, 2020, Plaintiff filed a Labor Code § 2699.3 Private Attorney General
7 Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”).
8 The LWDA did not respond to Plaintiff’s PAGA notice within 65 days, thus deputizing Plaintiff to
9 represent himself, other aggrieved employees, and the California Labor Commissioner for the
10 purpose of collecting civil penalties for violations of the California Labor Code committed by
11 Defendants.
12

13 **FACTS COMMON TO ALL CAUSES OF ACTION**

14 9. Plaintiff was a non-exempt employee of Defendants from approximately October 22,
15 2019 to August 5, 2020.

16 10. During the relevant period Defendants failed to provide compliant meal and rest breaks to
17 Plaintiff and similarly situated employees. Despite failing to provide approximately 95% of meal and
18 rest breaks, Defendants never paid a missed break premium to Plaintiff and similarly situated
19 employees. To the extent Defendants required Plaintiff and similarly situated employees to work
20 through or during unpaid meal periods, they also failed to pay for that off-the-clock work.
21 Defendants also promised bonus wages to Plaintiff and similarly situated employees but failed to pay
22 those bonuses on time.

23 11. Defendants also issued non-compliant wage statements to Plaintiff and similarly situated
24 employees. Among other things, the wage statements do not accurately list the number of hours
25 worked at each applicable hourly rate. The bonus paystubs also inaccurately reflect the beginning
26 and ending dates of the applicable pay period.

27 12. Defendants also failed to pay Plaintiff and similarly situated employees all overtime
28 wages due based on the fact that they did not include all non-discretionary remuneration in the

1 regular rate of pay when calculating and paying overtime wages. Instead, Defendants paid only 1.5
2 the “base rate of pay,” not the “regular rate of pay.”

3 13. Defendants also required Plaintiff and similarly situated employees to use their personal
4 cell phones for work purposes, but never reimbursed Plaintiff and similarly situated employees for
5 any of those business expenses. Defendants also failed to reimburse Plaintiff and similarly situated
6 employees for mileage expenses. For example, Plaintiff was required to travel to Vacaville, but was
7 not paid for his mileage expenses.

8 14. Plaintiff was also unlawfully terminated after he took sick days off work. Plaintiff was
9 terminated on the very day he returned from sick leave.

10 15. Plaintiff are informed and believe that Defendants committed numerous other violations
11 of the California Labor Code, including but not limited to those identified in this letter. Pursuant to
12 *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018), Plaintiff intend to seek civil
13 penalties for all violations of the California Labor Code, whether they experienced them personally
14 or not.

15 16. Upon information and belief, all transactions regarding hiring, terminations, promotions,
16 pay increases, etc. relating to Defendants’ California employees were submitted to and processed by
17 Defendants’ HR department in its corporate headquarters. Additionally, on information and belief,
18 Defendants’ corporate records, in particular HR and pay records pertaining to Defendants’ California
19 employees, are also maintained at Defendants’ corporate headquarters.

20 17. Upon information and belief, Defendants maintain a central Payroll department at its
21 corporate headquarters which processes payroll for all Defendants’ employees, including Plaintiff
22 and similarly situated, aggrieved employees.

23 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
24 have known that its aggrieved employees were entitled to timely payment of all wages earned upon
25 termination of employment. In violation of the California Labor Code, Defendants’ aggrieved
26 employees did not receive payment of all wages due upon termination.
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1 19. At all times herein set forth, PAGA provides that any provision of law under the Labor
2 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected
3 by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as
4 an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
5 themselves and other current or former employees pursuant to procedures outlined in California
6 Labor Code section 2699.3.

7 20. PAGA defines an aggrieved employee in Labor Code section 2699(c) as “any person who
8 was employed by the alleged violator and against whom one or more of the alleged violations was
9 committed.”

10 21. Plaintiff and other current and former employees of Defendants are aggrieved employees
11 as defined by the Labor Code in that they are all Defendants’ current or former employees and one
12 or more of the alleged violations was committed against them.

13
14 **FIRST CAUSE OF ACTION**
15 **CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.**
16 **(As to All Defendants)**

17 22. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 21 as though fully
18 set forth herein.

19 23. Plaintiff brings this cause of action as a proxy for the State of California and in this
20 capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants’ violations of the
21 California Labor Code, including but not necessarily limited to, those Labor Code and Wage Order
22 violations identified above.

23 24. On or about September 9, 2020, Plaintiff, through counsel, sent written notice to the
24 LWDA regarding Defendant’s violations of the California Labor Code, pursuant to Labor Code
25 section 2698, *et seq.*, PAGA. As of the date of the filing of this Complaint, the LWDA has not
26 informed Plaintiff whether the LWDA intends to investigate Plaintiff’s PAGA claims. As such,
27 Plaintiff has exhausted his administrative remedies under PAGA and may proceed in this Court.
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1 25. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and
2 all aggrieved employees for all violations of the Labor Code from September 9, 2019, through trial
3 on this matter.

4 26. Defendants' conduct, as alleged herein, violated various sections of the California Labor
5 Code, including but not limited to, the following:

6 27. Labor Code sections 201–203 require that all wages, including minimum wages and
7 meal and rest period premiums, be paid to employees upon separation and/or termination of
8 employment. Here, for the reasons stated above, Defendants' employees did not receive all final
9 wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as
10 required by Labor Code sections 201–203. This is in violation of the Labor Code.

11 28. Labor Code section 1174(d) requires employers to keep “payroll records showing the
12 hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in
13 accordance with rules established for this purpose by the commission, but in any case shall be kept
14 on file for not less than three years.” Defendants did not keep accurate information regarding all
15 hours worked by Plaintiff and similarly situated employees, largely by failing to accurately record all
16 time worked on their time records. This is in violation of the Labor Code.

17 29. Labor Code section 226 requires employers to furnish to employees with “an accurate
18 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
19 employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the
20 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
21 written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6)
22 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
23 only the last four digits of his or his social security number or an employee identification number
24 other than a social security number, (8) the name and address of the legal entity that is the employer .
25 . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number
26 of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendants
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1 failed to comply with these requirements with respect to Plaintiff and similarly situated employees in
2 violation of the Labor Code.

3 30. Labor Code sections 510 and 1194 require employers to pay employees overtime for any
4 work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any
5 one workweek. Employers must also pay overtime for the first eight (8) hours worked on the
6 seventh day of work in any one workweek. Finally, employers must pay double time for all hours
7 worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8)
8 hours on the seventh day of work in any one workweek. As stated above, Plaintiff and similarly
9 situated employees worked over eight (8) hours per day and forty (40) hours per week and were not
10 paid overtime wages. This is in violation of the Labor Code.

11 31. During the period Plaintiff and similarly situated employees were employed by
12 Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that
13 they worked. *See, e.g.*, IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 5-2001,
14 section (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay
15 Plaintiff and similarly situated employees at least minimum wage for all hours worked. Thus,
16 Plaintiff and similarly situated employees were not paid at least the applicable state minimum wage
17 for all hours worked in violation of the Labor Code. This is in violation of the Labor Code.

18 32. Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 11(A) require
19 employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked. For
20 the reasons stated above, Plaintiff and similarly situated employees were not authorized and
21 permitted to take legally compliant meal periods pursuant to California law. Defendants also failed
22 to pay any meal period premiums for its failure to provide meal periods. This is in violation of the
23 Labor Code.

24 33. Labor Code section 226.7 and IWC Wage Order No. 5-2001, section 12(A) require
25 employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or
26 major fraction thereof worked. For the reasons stated above, Plaintiff and similarly situated
27 employees were not authorized and permitted to take legally compliant rest periods pursuant to
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1 California law in violation of the Labor Code. Defendants also failed to pay any rest period
2 premiums for their failure to provide rest periods. This is in violation of the Labor Code.

3 34. Labor Code section 2810.5 requires employers “[a]t the time of hiring” to “provide to
4 each employee a written notice . . . containing the following information: (A) The rate or rates of pay
5 and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or
6 otherwise, including any rates for overtime, as applicable. (B) Allowances, if any, claimed as part of
7 the minimum wage, including meal or lodging allowances. (C) The regular payday designated by the
8 employer in accordance with the requirements of this code. (D) The name of the employer, including
9 any “doing business as” names used by the employer. (E) The physical address of the employer’s
10 main office or principal place of business, and a mailing address, if different. (F) The telephone
11 number of the employer. (G) The name, address, and telephone number of the employer’s workers’
12 compensation insurance carrier. (H) That an employee: may accrue and use sick leave; has a right to
13 request and use accrued paid sick leave; may not be terminated or retaliated against for using or
14 requesting the use of accrued paid sick leave; and has the right to file a complaint against an
15 employer who retaliates. . . . (3) If the employer is a temporary services employer, as defined in
16 Section 201.3, the notice described in paragraph (1) must also include the name, the physical address
17 of the main office, the mailing address if different from the physical address of the main office, and
18 the telephone number of the legal entity for whom the employee will perform work, and any other
19 information the Labor Commissioner deems material and necessary.” Defendants did not provide
20 this notice with all the required information to Plaintiff and similarly situated employees upon hire.

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DAMAGES

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For civil penalties under the California Labor Code according to proof allowed by law;
2. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's fees;
3. For an award of prejudgment and post-judgment interest; and
4. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: November 23, 2020

Castle Law: California Employment Counsel, PC

By: _____



Timothy B. Del Castillo

Kent L. Bradbury

Attorneys for Plaintiff JOSE MUNIZ