

MESSRELIAN LAW INC.

Harout Messrelian, Esq., SB# 272020
 500 N. Central Ave. Suite 840
 Glendale, California 91203
 Telephone: (818) 484-6531
 Facsimile: (818) 956-1983
 Email: hm@messrelianlaw.com

Attorneys for Plaintiff TREMAYNE GRANBERRY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TREMAYNE GRANBERRY,	)	CASE NO.: 21STCV16185
	)	
Plaintiff,	)	COMPLAINT FOR DAMAGES FOR:
	)	
vs.	)	1) PRIVATE ATTORNEYS GENERAL
	)	ACT ("PAGA");
	)	
MCKENNA MOTOR COMPANY, INC.	)	
DBA MCKENNA BMW and DOES 1 to 25,	)	
inclusive,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

COMES NOW Plaintiff, TREMAYNE GRANBERRY (hereinafter "Plaintiff"), and
 alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants MCKENNA MOTOR COMPANY, INC. DBA MCKENNA BMW and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants' obligations and liabilities arise therein, and

1 because the work that was performed by Plaintiff in the County of Los Angeles is the subject
2 of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

3 2. Plaintiff is a male resident of the County of Los Angeles, State of California.

4 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
5 MCKENNA MOTOR COMPANY, INC. dba MCKENNA BMW (hereinafter "MCKENNA")
6 is and was a California corporation, doing business in Los Angeles County, California, and
7 which employed Plaintiff as a car salesman.

8 4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
9 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
10 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
11 defendants, numbers 1 to 25, reside in the State of California and are in some manner
12 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
13 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
14 and capacities of these fictitiously named defendants.

15 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
16 that information and belief, alleges that at all times herein mentioned, each of the remaining
17 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
18 under the authority of their agency, employment, or representative capacity, with the consent
19 of his/her codefendants.

22 **GENERAL ALLEGATIONS**

23 6. Plaintiff started working for MCKENNA as a car salesman on or around December 19,
24 2019. Plaintiff's employment ended on or around January 20, 2021 with his last date worked
25 being October 24, 2020. Plaintiff was classified as an hourly employee and earned \$13 per
26 hour as well as a commission.

27 7. MCKENNA has committed the below labor code violations against Plaintiff and other
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hourly, non-exempt employees, including technicians. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves and others. The statute also states that an “aggrieved employee” is “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas’ motion.

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8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on behalf of all other hourly employees, including hourly non-exempt employees.

9. Pursuant to California Industrial Welfare Commission Order No. 4-2001/7-2001, Section

1 9(B), “When tools or equipment are required by the employer or are necessary to the
2 performance of a job, such tools and equipment shall be provided and maintained by the
3 employer, except that an employee whose wages are at least two (2) times the minimum wage
4 provided herein may be required to provide and maintain hand tools and equipment customarily
5 required by the trade or craft.” MCKENNA unequivocally required its employees, their service
6 technicians, and others, to provide their own tools. The latter was company policy. As such,
7 MCKENNA violated the aforementioned IWC Wage Order(s) in that MCKENNA required its
8 technicians and other employees to provide and maintain hand tools and equipment customarily
9 required by the trade but did NOT compensate these employees at least two (2) times the
10 minimum wage.

11 10. Further, MCKENNA did not provide Plaintiff and other aggrieved employees with
12 compensation for all hours worked and did not pay Plaintiff and others the minimum wages to
13 which they were entitled for work performed “off the clock” pursuant to California Labor Code
14 sections 1194, 1197 and 1197.1. Additionally, California Labor Code section 226.2, effective
15 January 1, 2016, provides that employees shall be compensated for rest and recovery periods and
16 other non-productive time separate from any piece-rate compensation. Section 226.2 further
17 requires that employees must be compensated for these time periods at a rate no less than the
18 highest federal, state, or local minimum wage that is applicable to the employment. MCKENNA
19 did not fully and accurately compensate Plaintiff and all similarly situated aggrieved employees
20
21 for rest and recovery periods and other non-productive time separate from any piece-rate
22 compensation. Moreover, Plaintiff would often work “off the clock” in that he always worked
23 from home in terms of conducting selling activities, including texting and sending emails to
24 prospective clients, answering their phone calls, and related job duties. Moreover, and towards
25 the end of his employment, MCKENNA had a company policy requiring employees to only
26 clock in for 5.5 hours per day, however, they encouraged employees to work longer hours and
27 to work “off the clock”. In fact, management made it clear that they expected and wanted
28 employees to work “off the clock” and after they clocked out for work. Furthermore,

1 MCKENNA had a policy of rounding down the hours worked by Plaintiff and other aggrieved
2 employees which translated to Plaintiff and others not being paid for all hours worked, including
3 minimum wages. In fact, there was a several month period in 2020 wherein there was no formal
4 clock in/clock out and the managers would end up clocking the employees in and out.

5 MCKENNA's overall business practices and policies made it so that employees such as Plaintiff
6 and others were not compensated for all hours worked. Additionally, it is important to note that
7 management unequivocally knew that Plaintiff and others would work "off the clock", especially
8 as it related to working from home.

9 11. Based on the above "off the clock" work and rounding issues, MCKENNA violated
10 Labor Code Section 510 in failing to pay the correct amount of overtime to Plaintiff and other
11 similarly situated aggrieved. In addition, and to the extent MCKENNA argues that the
12 salespeople were exempt from overtime because of their commission pay, it is Plaintiff's position
13 that MCKENNA did not do a pay period by pay period analysis to see if the overtime exemption
14 applied to all salespeople across the board for every single pay period. As such, for the
15 commissioned employees such as Plaintiff, MCKENNA failed to pay overtime during pay
16 periods during which Plaintiff and other salespersons did not meet the inside salesperson
17 exemption in that they did not earn one-and-a-half times the minimum wage during a particular
18 pay period and more than half of their wages for that particular pay period were not from
19 commission/sales. Moreover, during those particular pay periods wherein the inside salesperson
20 exemption did not apply, MCKENNA did not factor in the commission payments and any
21 bonuses in deciphering Plaintiff's regular rate of pay for purposes of figuring out the overtime
22 rate of pay. Furthermore, MCKENNA also violated Labor Code §510 because it failed to pay
23 the technicians the correct amount of overtime (based on a base pay rate of twice the minimum
24 wage), even though they worked more than 8 hours per day, more than 12 hours per day, and/or
25 over 40 hours per week throughout their employment.

26 12. MCKENNA violated Labor Code §§ 512 and 226.7 as well as the applicable Industrial
27 Welfare Commission (IWC) Wage Order (no. 4 or 7) because it failed to provide Plaintiff and
28 other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods

1 for every five (5) hours of work throughout their employment, and Plaintiff did not validly waive
2 said meal periods. MCKENNA did not completely relieve Plaintiffs of all duties during said
3 meal periods. MCKENNA did not pay to Plaintiff one additional hour of pay at Plaintiff's
4 regular rate of compensation for each workday that one or more statutory meal periods was not
5 provided. There were many occasions wherein Plaintiff's and others' meal periods would be
6 interrupted when customers would come to the store asking for their help.

7 13. MCKENNA violated Labor Code § 226.7 as well as the applicable IWC Wage Order
8 (no. 4 or 7) because it failed to provide Plaintiff and other similarly situated aggrieved employees
9 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their
10 employment. MCKENNA did not completely relieve Plaintiff of all duty during said rest
11 periods. MCKENNA did not pay to Plaintiff one additional hour of pay at Plaintiff's regular
12 rate of compensation for each workday that one or more statutory rest periods was not provided.
13 It was not company policy and not part of the company culture for employees such as Plaintiff
14 and others to take consistent rest breaks. As such, the culture at MCKENNA did not lend itself
15 to the employees receiving statutory breaks wherein they were relieved of all work duties. It was
16 the normal practice and custom of MCKENNA not to authorize, permit, and enforce statutory
17 rest periods. As such, the environment and culture at MCKENNA was not conducive to receiving
18 statutory rest breaks under California law.

19 14. Furthermore, during the relevant time period, MCKENNA failed to pay Plaintiff and
20 other similarly situated aggrieved employees all wages due to them within any time period
21 specified by California Labor Code section 204 due to the above-mentioned violations.

22 15. MCKENNA was also in violation of California Labor Code section 226(a) by failing to
23 include pertinent information on the wage statements, including but not limited to, the correct
24 hourly rate, all hours worked, overtime hours worked, correct overtime pay, correct amount of
25 pay for non-productive time, gross wages earned, premium pay for missed meal and rest breaks,
26 all deductions, net wages earned, and reimbursement for business expenses, among others. This
27 is so partly because MCKENNA did not compensate a certain number of its employees at least
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1 two (2) times the minimum wage despite requiring its technician employees to provide and
2 maintain hand tools and equipment. In addition, MCKENNA failed to list the available sick
3 hours on its pay statements. As such, MCKENNA did not provide Plaintiff and other similarly
4 situated aggrieved employees with complete, accurate itemized wage statements.

5 16. MCKENNA violated Labor Code § 203 because it willfully failed to pay Plaintiff and
6 other similarly situated aggrieved employees earned and due wages upon separation of
7 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
8 After Plaintiff and others stopped working at MCKENNA and after their employment with
9 MCKENNA ended, MCKENNA failed and refused to pay all wages earned and due immediately
10 upon separation. These earned but unpaid wages include the unpaid minimum
11 wages/compensation for all hours worked including non-productive time, overtime, premium
12 pay for missed meal and rest breaks, and business expense reimbursement, among others.

13 17. During the relevant time period, MCKENNA also failed to keep accurate and complete
14 payroll records showing the correct wages paid (for instance, twice the minimum wage and the
15 correct overtime compensation) to Plaintiff and other aggrieved employees, including
16 technicians, pursuant to California Labor Code sections 1174(d).

17 18. Alternatively, during the relevant time period, Plaintiff and other aggrieved employees
18 incurred necessary, business-related expenses and costs that were not reimbursed by
19 MCKENNA. These costs include, but are not limited to, the purchase of tools to use in carrying
20 out their duties as technicians. Additionally, Plaintiff and other similarly situated aggrieved
21 employees had to use their personal cell phones for work purposes in effectuating sales activities
22 and in dealing with current and prospective customers. In addition, Plaintiff ended up buying
23 bottled water for the customers for the entire dealership and was not reimbursed for that expense.
24 Accordingly, MCKENNA was in violation of California Labor Code sections 2800 and 2802.

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1 **FIRST CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **Individual and Representative Claim for PAGA penalties under California Labor Code**
4 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174,**
5 **1174.5, 1194, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage**
6 **Order Nos. 4-2001 or 7-2001**

7 **(Against All Named Defendants and all DOE Defendants)**

8 19. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

10 20. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
11 Defendants of the specific violations of the California Labor Code that Defendants
12 and DOE defendants have violated and continue to violate.

13 21. Pursuant to California Labor code section 2699.3, no response was received from the
14 LWDA within 65 days of the postmark date of the above-alleged letter.

15 22. Plaintiff therefore has exhausted all administrative remedies required of him under
16 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
17 cause of action and pursue penalties in a representative action for Defendants' violations of the
18 Labor Code.

19 23. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
20 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
21 departments, divisions, commissions, boards, agencies, or employees for violation of the code
22 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
23 on behalf of himself or herself and other current or former employees pursuant to the
24 procedures specified in California Labor Code section 2699.3.

25 24. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
26 violator and had one or more of the alleged violations committed against him, and therefore is
27 properly suited to represent the interests of other current and former hourly, non-exempt
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1 employees who worked for MCKENNA in the State of California at any and all locations
2 during the PAGA period.

3 25. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
4 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
5 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

6 26. Plaintiff therefore has exhausted all administrative remedies required of him under
7 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
8 cause of action and pursue penalties in a representative action for Defendants' violations of the
9 Labor Code.

10 27. California Labor Code section 2699 et seq. imposes penalties upon culpable
11 Defendants for violating the Labor Code.

12 28. California Labor Code section 558 establishes a civil penalty as follows: Any
13 employer or other person action on behalf of an employer who violates, or causes to be
14 violated, a section of this chapter or any provision regulating hours and days of work in any
15 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
16 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
17 dollars (\$50) for each underpaid employee for each pay period for which the employee was
18 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
19 employee for each pay period for which the employee was underpaid ...;

20 29. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
21 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
22 seeking individual/victim specific relief or underpaid wages under this particular cause of
23 action.

24 30. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
25 the following:

26 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,
27 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802,
28 via 2698 and 2699 any other Labor Codes and Wage Orders (including no. 4 or 7) violated

1 on the facts alleged in this Complaint.

2 31. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
3 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
4 employees as alleged herein in an amount to be shown according to proof at trial and within the
5 jurisdictional limits of this Court.

6 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
7 follows:

- 8 1. For the imposition of civil penalties;
- 9 2. For maximum civil penalties available under Labor Code Section 2699
10 against Defendants in a manner and amount authorized by that statute, as described
11 more particularly in the Complaint and representative PAGA claims;
- 12 3. For all costs and disbursements incurred in this suit;
- 13 4. Reasonable attorney's fees where available by law, including but not limited to,
14 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
15 and/or other applicable laws; and
16
- 17 5. For such other and further relief as this Court may deem proper.

18
19 DATED: April 29, 2021

MESSRELIAN LAW INC.

20
21 By  _____
22 Harout Messrelian, Esq.
23 Attorneys for Plaintiff Tremayne Granberry
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