

FILED
Superior Court of California
County of Riverside

5/26/2021

J. Bishop

Electronically Filed

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Attorneys for Plaintiffs, Robert Lopez Hernandez, Jr. and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE, CENTRAL DISTRICT**

ROBERT LOPEZ HERNANDEZ, JR., an
individual and on behalf of Aggrieved
Employees,

Plaintiffs,

v.

KARHAY, LLC, a California Limited Liability
Company, and DOES 1 through 20, inclusive,

Defendants.

Case No. **CVRI2102600**

COMPLAINT FOR:

**1. CIVIL PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEY GENERAL
ACT (LABOR CODE §§ 2698 *ET SEQ.*);**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COME NOW PLAINTIFF, ROBERT LOPEZ HERNANDEZ, JR., for causes of action against
Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Riverside County,
because Defendant's obligations and liability arise therein, because Defendant maintains offices and
transacts business within Riverside County, and because the work that is the subject of this action was
performed by Plaintiff and Aggrieved Employees in Riverside County.

1 **THE PARTIES**

2 **PLAINTIFF AND AGGRIEVED EMPLOYEES**

3 2. Plaintiff, ROBERT LOPEZ HERNANDEZ, JR. (hereinafter referred to as "Plaintiff"),
4 is and at all times relevant hereto was a resident of the County of Riverside, State of California.

5 3. Plaintiff brings this action on behalf of himself and other Aggrieved Employees pursuant
6 to *Lab. Code* section 2698 for the recovery of civil penalties based on wage and hour violations.
7 Specifically, with respect to Plaintiff and Aggrieved Employees, each:

8 A. was a resident of the State of California;

9 B. was employed by Defendant as maintenance, technicians, maintenance
10 salespersons, office and administrative staff, auto salespersons, and/or non-exempt Lake
11 Elsinore Ford representatives within the headquarters and regional location of
12 Defendant;

13 C. was not compensated the minimum wage for all hours worked and was forced to
14 work hours off the clock;

15 D. was not provided with accurate itemized wage and hour statements pursuant to
16 applicable *Labor Code* requirements,

17 E. was not compensated all wages earned and owed in a timely manner as required
18 by the *Labor Code*;

19 F. worked more than eight (8) hours in any given day and/or more than forty (40)
20 hours in any given week, but was not paid overtime compensation pursuant to applicable
21 *Labor Code* requirements;

22 G. was retaliated against in violation of *Labor Code* § 1102.5; and

23 H. was not paid all wages earned and owed at the time of his or her termination or
24 within seventy-two (72) hours of his or her resignation.

25 **DEFENDANT**

26 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
27 hereto, Defendant KARHAY, LLC (hereinafter referred to as "Defendant") was and is a California
28

1 Limited Liability Company doing business at 31500 Auto Center Dr., Lake Elsinore, in the County of
2 Riverside, State of California.

3 5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
4 hereto, Defendant owned and/or operated a car dealership and availed itself of the rights and privileges
5 of the State of California.

6 6. Defendant was Plaintiff and Aggrieved Employee's employer within the meaning of
7 Government Code §§12926, subdivision (d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and
8 12950, and regularly employs five (5) or more persons and is therefore subject to the jurisdiction of
9 this Court.

10 7. The true names and capacities, whether individual, corporate, associate, or otherwise, of
11 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
12 therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
13 complaint to insert the true names and capacities of said Defendants when the same become known to
14 Plaintiff. Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously
15 named Defendants are responsible for the wrongful acts alleged herein, and are therefore liable to
16 Plaintiff as alleged hereinafter.

17 8. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
18 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
19 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
20 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
21 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
22 successor status and/or joint venture and with the permission and consent of each of the other
23 Defendants.

24 9. Plaintiff is informed and believes, and based thereupon allege, that Defendants, and each
25 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
26 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in
27 the wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
28 §12940(i). Plaintiff is further informed and believes, and based thereupon allege, that Defendants, and

1 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
2 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
3 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
4 actually causing Plaintiff's harm.

5 10. Whenever and wherever reference is made in this complaint to any act or failure to act
6 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
7 and/or failures to act by each Defendant acting individually, jointly and severally.

8 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

9 11. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
10 unity of interest and ownership between Defendant and DOES 1-20 that the individuality and
11 separateness of Defendant has ceased to exist.

12 12. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
13 of purported corporate existence, Defendant and DOES 1-20 are, in reality, one and the same as
14 Defendant, including, but not limited to because:

15 a. Defendant is completely dominated and controlled by DOES 1-20, who
16 personally committed the frauds and violated the laws as set forth in this complaint, and who have
17 hidden and currently hide behind Defendant to perpetrate frauds, circumvent statutes, or accomplish
18 some other wrongful or inequitable purpose.

19 b. DOES 1-20 derive actual and significant monetary benefits by and through
20 Defendant's unlawful conduct, and by using Defendant as the funding source for their own personal
21 expenditures.

22 c. Plaintiff is informed and believes that Defendant and DOES 1-20, while really
23 one and the same, were segregated to appear as though separate and distinct for purposes of perpetrating
24 a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose.

25 d. Plaintiff is informed and believes that Defendant does not comply with all
26 requisite corporate formalities to maintain a legal and separate corporate existence.

27 e. Plaintiff is informed and believes, and based thereon alleges, that the business
28 affairs of Defendant and DOES 1-20 are, and at all times relevant were, so mixed and intermingled that

1 the same cannot reasonably be segregated, and the same are in inextricable confusion. Defendant is, and
2 at all times relevant hereto was, used by DOES 1-20 as a mere shell and conduit for the conduct of certain
3 of Defendant's affairs, and is, and was, the alter ego of DOES 1-20. The recognition of the separate
4 existence of Defendant would not promote justice, in that it would permit Defendant to insulate itself from
5 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
6 existence of Defendant and DOES 1-20 should be disregarded in equity and for the ends of justice because
7 such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

8 13. Accordingly, Defendant constitutes the alter ego of DOES 1-20, and the fiction of their
9 separate corporate existence must be disregarded.

10 14. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
11 thereon alleges that Defendant and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
12 enterprise, and that Plaintiff was an employee of Defendant, and DOES 1-20. Plaintiff performed
13 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
14 Defendants shared control of Plaintiff as employees, either directly or indirectly, and the manner in
15 which Defendants' business was and is conducted.

16 15. Alternatively, Plaintiff is informed and believes and, based thereupon allege, that as and
17 between DOES 1-20 and Defendant, (1) there is an express or implied agreement of assumption
18 pursuant to which DOES 1-20 agreed to be liable for the debts of Defendant, (2) the transaction
19 between DOES 1-20 and Defendant amounts to a consolidation or merger of the two corporations, (3)
20 DOES 1-20 are a mere continuation of Defendant, or (4) the transfer of assets to DOES 1-20 is for the
21 fraudulent purpose of escaping liability for Defendant's debts. Accordingly, DOES 1-20 are the
22 successors of Defendant, and are liable on that basis.

23 **FACTUAL ALLEGATIONS**

24 16. Plaintiff began working at Defendant on or about June of 2018 as a Service Advisor.
25 Plaintiff's starting base rate of pay was \$13.00 per hour. Plaintiff performed all of his job duties
26 satisfactorily throughout his employment.

1 17. Throughout Plaintiff's employment, Plaintiff consistently worked more than 8 hours per
2 day and 40 hours per week, yet Defendant failed to pay Plaintiff and other Aggrieved Employees at
3 their overtime rate of compensation for any hours worked overtime.

4 18. Further, Plaintiff typically worked off the clock, before his shift started or after his shift
5 was finished, for which he received no compensation.

6 19. Indeed, Defendant would often require Plaintiff, and other employees, to answer phone
7 calls from Defendant or clients, or to answer emails, even when Plaintiff or the other employees were
8 clocked out for the day or had not yet clocked in.

9 20. Defendant did not compensate its employees, including Plaintiff, for this time worked
10 before or after their shifts.

11 21. Moreover, Plaintiff and other employees were routinely unable to take uninterrupted
12 meal breaks and rest periods, even when they worked a sufficient number of hours entitling them to
13 such breaks.

14 22. Given that Plaintiff typically worked more than 10 hours per day, he was generally
15 entitled to a second meal break as well.

16 23. Nevertheless, even when Plaintiff or other employees worked the requisite number of
17 hours to earn a second meal break, Defendant still required its employees to work through the break.

18 24. Concurrently, Defendant did not compensate Plaintiff and its other employees for their
19 missed meal breaks and rest periods.

20 25. After months of enduring Defendant's *Labor Code* violations, Plaintiff began to make
21 complaints to his managers regarding Defendant's treatment of its employees. Specifically, Plaintiff
22 told Defendant that he, and other employees, were entitled to meal and rest periods, as well as overtime
23 compensation.

24 26. Thereafter, Defendant continued to deny Plaintiff any meal breaks or rest periods in spite
25 of Plaintiff's complaints, and it was made clear to Plaintiff that after so many complaints from himself
26 and multiple employees, Defendant had no intention to rectify its illegal business practices.

27 27. It was unreasonable for Plaintiff to continue employment under such circumstances,
28 without being able to take proper meal breaks or rest periods or receiving adequate compensation for

1 his missed breaks, overtime hours, or off the clock work, and with Defendant disregarding his
2 complaints.

3 28. Plaintiff was placed in an impossible situation where he had to choose whether to work
4 and continue permitting his employer to commit various *Labor Code* violations against him or sacrifice
5 his job with Defendant to find other employment. No reasonable person would continue working at
6 Defendant given these circumstances.

7 29. Accordingly, on or about February of 2021, after another fruitless complaint to
8 Defendant that it start compensating Plaintiff properly and allowing him to take appropriate breaks,
9 Plaintiff had no other reasonable choice but to find other employment that would properly compensate
10 him.

11 30. Thus, at that time Plaintiff sought new employment and suffered a constructive
12 termination from employment with Defendant.

13 **PAGA ALLEGATIONS**

14 31. For the entirety of the year preceding March 15, 2021 (the “Relevant Time Period”),
15 Plaintiff and Aggrieved Employees are and/or have been non-exempt employees within the meaning
16 of the *Labor Code*, and the implementing regulations of the IWC Wage Orders.

17 32. Defendant is or was the employer of Plaintiff and all Aggrieved Employees during the
18 Relevant Time Period. Defendants “employ(ed)” Plaintiff and Aggrieved Employees pursuant to the
19 definition of “employ” within IWC Wage Order 5.

20 33. During the Relevant Time Period, Defendant exercised control over the wages, hours,
21 and working conditions of Plaintiff and Aggrieved Employees; suffered or permitted Plaintiff and
22 Aggrieved Employees to work; and created a common law employment relationship with Plaintiff and
23 Aggrieved Employees.

24 34. During the Relevant Time Period, Defendant has failed and refused to pay Plaintiff and
25 Aggrieved Employees the total amount of wages that Plaintiff and Aggrieved Employees, through their
26 employment and labor, had earned working for Defendant.

27 35. During the Relevant Time Period, Defendant has consistently failed to provide Plaintiff
28 and Aggrieved Employees with timely, accurate, and itemized wage and hour statements, in writing,

1 showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and
2 address of the legal entity employing him, all applicable hourly rates in effect during each pay period,
3 and the corresponding number of hours worked by him at each hourly rate in and among other
4 information, as required by California wage-and-hour laws.

5 36. During the Relevant Time Period, Defendant's meal period policies/practices failed to
6 provide Plaintiff and Aggrieved Employees with all legally compliant meal periods because Defendant
7 failed to provide Plaintiff and Aggrieved Employees with timely, duty-free, and uninterrupted 30-
8 minute meal periods commencing before the end of the fifth hour of work. Specifically, Plaintiff and
9 Aggrieved Employees were required to work through their meal periods because Defendant's work
10 demands prevented Plaintiff and Aggrieved Employees from taking off-duty meal periods.

11 37. During the Relevant Time Period, Plaintiff and Aggrieved Employees were not
12 authorized and permitted to take all required and legally-compliant rest periods due to Defendants' rest
13 period policies/practices, which failed to authorize and permit a net 10-minute off-duty rest period for
14 every four hours worked. On those occasions when Plaintiff and Aggrieved Employees were not
15 authorized and permitted to take all legally-required and compliant rest periods to which they were
16 entitled, Defendant further failed to compensate Plaintiff and Aggrieved Employees with the required
17 rest period premium for each workday in which they were experienced a rest period violation as
18 mandated by Labor Code § 226.7.

19 38. Further, Defendant has failed to pay all earned wages owed to Plaintiff and Aggrieved
20 Employees for the noncompliant and/or missed meal and rest periods under *Labor Code* section
21 226.7(b) and Wage Order 5. Plaintiff and Aggrieved Employees were and are entitled to an hour of
22 pay at their regular rate for each day with a meal period violation and an additional hour of pay for
23 each day with a rest period violation. Plaintiff and Aggrieved Employees have not received that
24 payment.

25 39. During the Relevant Time Period, Defendant routinely required Plaintiff and other
26 Aggrieved Employees to work more than eight hours per day and 40 hours per week. Plaintiff and other
27 Aggrieved Employees did not receive accurate compensation for straight, regular time pay, and
28 overtime pay.

1 40. Defendant failed to pay all wages due and owed to Plaintiff and Aggrieved Employees
2 at the time of their termination or within seventy-two (72) hours of their resignation, as required by
3 California wage-and-hour laws in violation of *Labor Code* sections 201-203. Plaintiff and Aggrieved
4 Employees who are no longer employed by Defendant are entitled to penalties pursuant to *Labor Code*
5 section 203, in the amount of each person's daily wage multiplied by the number of days since the
6 termination, up to thirty days.

7 41. As set forth above, and throughout this complaint, Defendant engaged in various acts of
8 unfair competition and unlawful and unfair business practices as defined in the *Unfair Competition Law*,
9 Business and Professions Code § 17200, et seq.

10 42. Pursuant to the Labor Code, California law and applicable Wage Orders, Plaintiff and
11 Aggrieved Employees are entitled to all damages, unpaid wages, statutory penalties, waiting time
12 penalties, interest and attorney's fees and costs for the illegal and wrongful acts and omissions of
13 Defendant, all as alleged throughout this complaint.

14 **FIRST CAUSE OF ACTION**
15 **RECOVERY FOR CIVIL PENALTIES UNDER THE LABOR CODE**
16 **PRIVATE ATTORNEY GENERAL ACT**
17 **(LABOR CODE §§ 2698, 2699 ET SEQ.)**
18 **AGAINST DEFENDANT AND ALL DOE DEFENDANTS**

19 42. Plaintiff incorporates by reference and realleges the preceding paragraphs, inclusive, as
20 though set forth fully herein.

21 43. As alleged herein, Defendant has repeatedly committed several types of *Labor Code*
22 violations against Plaintiff.

23 44. Plaintiff, an "aggrieved employee" within the meaning of California Labor Code Section
24 2699(c), acting on behalf of himself and the State of California's Labor and Workforce Development
25 Agency, bring this action to recover the civil penalties provided for under the California Labor Code
26 Private Attorney General Act of 2004 ("PAGA"), including, but not limited to, the penalties provided
27 under California Labor Code Sections 210, 225.5, 226.3, 558, 1197.1, and 2699, subdivisions (a) and
28 (f), for the following knowing and intentional *Labor Code* violations:

1 A. Failing and/or refusing to pay all wages earned by Plaintiff and Aggrieved
2 Employees within the time limits prescribed by California Labor Code section 204, (*see*
3 *Cal. Lab. Code §§ 210 & 2699(a)*);

4 B. Unlawfully withholding accrued wages owed to Plaintiff and Aggrieved
5 Employees in violation of California Labor Code section 216, (*see Cal. Lab. Code §§*
6 *225.5 & 2699(a)*);

7 C. Failing and/or refusing to properly maintain records of, and furnish to Plaintiff
8 and Aggrieved Employees, accurate, itemized wage statements, in violation of California
9 Labor Code section 226, (*see Cal. Lab. Code §§ 226.3 & 2699(a)*);

10 E. Retaliating against Plaintiff, and Aggrieved Employees, in violation of Labor
11 Code section 1102.5;

12 G. Failing and/or refusing to pay Plaintiff and Aggrieved Employees all earned
13 overtime compensation for work beyond 8 hours in a day and/or 40 hours in a week, in
14 violation of California Labor Code Section 1197 and IWC Wage Order 15 (*see Cal. Lab.*
15 *Code §§ 558 & 2699(a)*);

16 H. Failing and/or refusing to pay Plaintiff and Aggrieved Employees the legally-
17 mandated minimum wage for each hour worked beyond 8 hours in a day and/or 40 hours
18 in a week, in violation of California Labor Code section 1197 and Wage Order 15, (*see*
19 *Cal. Lab. Code §§ 1197.1 & 2699(a)*);

20 H. Other violations of the Labor Code as may be disclosed in discovery.

21 45. On March 15, 2021, a letter was sent by certified mail to Defendant, and to the California
22 Labor and Workforce Development Agency, (hereafter, "LWDA"), giving notice of Defendant's
23 violations of the California Labor Code, and of Plaintiff's intent to bring a civil claim for civil penalties
24 under PAGA. The LWDA did not respond to Plaintiff's letter within 65 days.

25 46. Plaintiff was compelled to retain the services of counsel to file this court action to protect
26 his interest, and to assess and collect the civil penalties owed by Defendant. Plaintiff has thereby
27 incurred attorneys' fees and costs, which he is entitled to recover under *Labor Code § 2699*.

28 /

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff hereby prays that the Court enter judgment in his favor and against
3 Defendants, and each of them, as follows:

- 4 1. For payment of civil penalties (defined below) related earned wages, meal and rest period
5 compensation, waiting time compensation, and other damages according to proof in an
6 amount to be ascertained at trial, and in excess of the jurisdictional limit of this court; for
7 other special damages;
- 8 2. For payment of all statutory obligations and penalties as required by law;
- 9 3. For “civil penalties” to the extent permitted by law and Labor Code §§ 2698 and Section
10 2699 et seq.;
- 11 4. A declaration of the rights and interests of the parties;
- 12 5. For prejudgment interest on each of the foregoing at the legal rate from the date the
13 obligation became due through the date of judgment in this matter;
- 14 6. For costs of suit, attorneys’ fees, and expert witness fees;
- 15 7. For post-judgment interest; and
- 16 8. For any other relief that is just and proper.

17 DATED: May 26, 2021

EMPLOYEES FIRST LABOR LAW

18
19 By:



Jonathan P. LaCour, Esq.
Lisa Noveck, Esq.
Attorneys for Plaintiff
ROBERT LOPEZ HERNANDEZ, JR.

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DATED: May 26, 2021

By:

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ROBERT LOPEZ HERNANDEZ, JR.