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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Veronica Navarro, Deputy Clerk

Attorneys for Plaintiff ANDREW YOUSIF, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former, similarly aggrieved employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ANDREW YOUSIF, on behalf of himself and
all other similarly aggrieved employees,

Plaintiff,

v.

EL CAJON MOTORS dba EL CAJON FORD,
a California Corporation; DEALER
OPERATING CONTROL SERVICE, INC., a
Tennessee Corporation Doing Business in
California; HOP, LLC dba HONDA OF
PASADENA, a California Limited Liability
Company; FRONTIER AUTO SALES, INC.
dba FRONTIER TOYOTA, a California
Corporation; and DOES 1- 50, Inclusive,

Defendant,

Case No. 37-2021-00033363-CU-OE-NC

COMPLAINT

**1. Civil Penalties under the Private
Attorneys General Act (PAGA)**

Plaintiff, ANDREW YOUSIF (“Plaintiff” or “Yousif”), as a representative of the State of California and the Labor and Workforce Development Agency (LWDA), and on behalf of Plaintiff and other current and former, similarly aggrieved, employees, complains and alleges as follows:

1 **INTRODUCTION**

2 1. This is a representative action brought by Plaintiff, as a representative of the State
3 of California and the LWDA, and on behalf of Plaintiff and other similarly aggrieved employees,
4 to collect civil penalties for Defendants' Labor Code violations.

5 2. Defendants and Employers, EL CAJON MOTORS dba EL CAJON FORD,
6 DEALER OPERATING CONTROL SERVICE, INC., HOP, LLC dba HONDA OF
7 PASADENA, and FRONTIER AUTO SALES, INC. dba FRONTIER TOYOTA (collectively
8 referred to as "Defendants") violated numerous wage and hour laws with respect to Plaintiff and
9 other aggrieved employees by failing to provide, for example: accurate and itemized wages
10 statements, payment for all hours worked (including regular wages and overtime), failure to
11 provide statutory uninterrupted meal periods, statutory interrupted rest periods, timely payment
12 of wages during employment, and timely payment upon separation of employment.

13 **PARTIES**

14 **The Plaintiff**

15 3. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
16 Diego. Similarly aggrieved, former and/or current employees are those non-exempt employees
17 employed by Defendants during the relevant time period who were subject to the same wage and
18 hour policies/practices as Plaintiff, and thereby suffered similar or substantially similar violations.

19 **The Defendants**

20 4. Defendant EL CAJON MOTORS dba EL CAJON FORD is a California
21 corporation which, at all times relevant herein, existing, doing business and employing
22 individuals in the County of San Diego, State of California.

23 5. Defendant DEALER OPERATING CONTROL SERVICE, INC. is a Tennessee
24 corporation which, at all times relevant herein, existing, doing business and employing
25 individuals in the County of Los Angeles, State of California, with its principal place of business
26 located at 2120 Wilshire Blvd., Suite 400, Santa Monica, California 90403.

27 6. Defendant HOP, LLC dba HONDA OF PASADENA is a California Limited
28 Liability Company which, at all times relevant herein, existing, doing business and employment

1 individuals in the County of Los Angeles, State of California.

2 7. Defendant FRONTIER AUTO SALES, INC. dba FRONTIER TOYOTA is a
3 California corporation which, at all times relevant herein, existing, doing business and employing
4 individuals in the County of Los Angeles, State of California.

5 8. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each
6 of them, exercised control over Plaintiff and Aggrieved Employees' wages, hours, and working
7 conditions.

8 9. The true names and capacities, whether individual, corporate, associate, or
9 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
10 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
11 amend this Complaint to insert the true names and capacities of said Defendants when the same
12 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
13 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
14 therefore liable to Plaintiff as alleged hereinafter.

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

22 11. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
23 and each of them, including those Defendants named DOES 1-50, acted in concert with one
24 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
25 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
26 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
27 each of them, including those Defendants named as DOES 1-50, formed and executed a
28

1 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
2 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
3 to and actually causing Plaintiff harm.

4 12. Plaintiff is further informed and believes, and thereon alleges, that at all times
5 mentioned herein, Defendants EL CAJON MOTORS dba EL CAJON FORD, DEALER
6 OPERATING CONTROL SERVICE, INC., HOP, LLC dba HONDA OF PASADENA, and
7 FRONTIER AUTO SALES, INC. dba FRONTIER TOYOTA were and are the alter ego of each
8 other, that there exists a unity of interest and ownership between each of them, such that any
9 individuality and separateness between them have ceased. Plaintiff is informed and believe, and
10 thereon allege, that at all times mentioned herein, each Defendant exercised control and
11 dominion over each other with a disregard for the separate legal status of each entity in an attempt
12 to commit the violations set forth herein. Adherence to the separate existence of each Defendant
13 would permit an abuse of the corporate privilege and would sanction fraud and promote injustice.
14 Plaintiff is further informed and believes, and thereon alleges, that at all times mentioned herein,
15 Defendants operated a single integrated enterprise with joint ownership and/or management,
16 shared or common business operations, and shared or common control over Plaintiff and
17 Aggrieved Employees' employment.
18

19 13. Whenever and wherever reference is made in this Complaint to any act or failure
20 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
21 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.
22

23 **JURISDICTION AND VENUE**

24 14. Venue is proper in San Diego County, because Defendants maintain its locations
25 and transacts business in this county, the obligations and liability primarily arise in this county,
26 and work was primarily performed by Plaintiff and other aggrieved employees in this county.

27 15. The California Superior Court has jurisdiction over this matter. The individual
28 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for
federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional

1 amount required for diversity removal. Further, there is no federal question at issue as the issues
2 herein are based solely on California statutes and law, including, but not limited to, the California
3 Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure,
4 and California Rules of Court.

5 **GENERAL ALLEGATIONS**

6 16. Defendants employed Plaintiff as a “finance manager” from approximately
7 September 1, 2005 to approximately March 25, 2021. Plaintiff’s job duties consisted primarily
8 of producing financial reports, developing long-term financial goals for the company, and
9 monitoring accounts. Plaintiff did not have the authority to hire or fire employees. Plaintiff did
10 not supervise or manage any other employees. For more than half of their working time, Plaintiff
11 and Aggrieved Employee’s job duties did not involve independent judgment or discretion.

12 17. On many occasions, Plaintiff and aggrieved employees would work more than 8
13 hours per day or 40 hours per week without overtime pay. Plaintiff and similarly aggrieved
14 employees would not receive all compensable work time or their work time was illegally
15 rounded. Similarly aggrieved employees would be paid overtime at an illegally calculated rate.

16 18. In an effort to curtail labor costs, Defendants regularly and consistently did not
17 staff enough employees to provide sufficient coverage to both maintain their business operations
18 and provide legally mandated meal and rest periods, despite reasonably foreseeable work load,
19 so Plaintiff and similarly aggrieved employees could not take complete, timely and uninterrupted
20 meal and rest breaks because Defendants prioritized completion of daily duties ahead of meal
21 and rest period compliance.

22 19. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
23 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
24 departments, divisions, commissions, boards, agencies or employees for violation of the code
25 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
26 behalf of himself or herself and other current or former employees pursuant to the procedures
27 specified in Labor Code section 2699.3.
28

1 20. For all provisions of the Labor Code except those for which a civil penalty is
2 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendant a
3 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
4 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
5 for each subsequent pay period in which Defendant violated these provisions of the Labor Code.

6 21. Defendants' conduct during the PAGA period with respect to Plaintiff and the
7 aggrieved employees violates numerous Labor Code sections as detailed herein.

8 22. Plaintiff alleges that Defendants have engaged in a systematic pattern of wage
9 and hour violations under the California Labor Code and IWC Wage Orders.

10 23. At all relevant times herein, Defendants employed Plaintiff and other aggrieved
11 employees as non-exempt employees holding various positions and who experienced the
12 violations set forth in this Complaint.

13 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and aggrieved employees were entitled to receive
15 wages for all hours worked, including the applicable minimum, regular, and overtime wages,
16 and that they were not receiving all wages earned for work that was required to be performed. In
17 violation of the Labor Code and IWC Wage Orders, Defendants failed to pay Plaintiff and
18 aggrieved employees for all hours worked. Accordingly, Defendants failed to pay Plaintiff and
19 aggrieved employees all earned minimum, regular, and/or overtime compensation.

20 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knew or should have known that Plaintiff and aggrieved employees were entitled to receive all
22 required meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved
23 employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal
24 period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice,
25 and policy of not providing timely meal periods. Defendants failed to pay an additional hour of
26 pay to Plaintiff and aggrieved employees for late meal periods. As a result of Defendants'
27 unlawful policy and practice, Plaintiff and aggrieved employees did not receive all meal periods
28

1 or payment of one (1) additional hour of pay at Plaintiff's and aggrieved employees' regular rate
2 of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

3 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 knew or should have known that Plaintiff and aggrieved employees were entitled to receive all
5 required rest periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved
6 employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest
7 period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice,
8 and policy of not providing timely rest periods. Defendants failed to pay an additional hour of
9 pay to Plaintiff and aggrieved employees for each rest periods was not provided or was
10 interrupted. As a result of Defendants' unlawful policy and practice, Plaintiff and aggrieved
11 employees did not receive all required rest periods or payment of one (1) additional hour of pay
12 at Plaintiff's and aggrieved employees' regular rate of pay when they did not receive a timely,
13 uninterrupted 10 minute off-duty rest period.

14 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that Plaintiff and certain aggrieved employees were entitled to
16 timely payment of wages due upon separation of employment. In violation of the Labor Code,
17 Plaintiff and certain aggrieved employees did not receive payment of all wages due, within
18 permissible time periods, upon separation of employment.

19 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Plaintiff and aggrieved employees were entitled to receive
21 itemized wage statements that accurately showed their actual hours worked, total hours worked,
22 number of hours worked at each hourly rate, gross and net wages earned, and correct employer
23 information in accordance with California law. In violation of the Labor Code, Plaintiff and
24 aggrieved employees were not provided with accurate itemized wage statements that accurately
25 reported their gross and net wages earned, total hours worked, each applicable rate of pay in
26 effect during the pay period with the corresponding number of hours worked, and the address of
27 the legal entity that is the employer, among other things.
28

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Defendant was required to maintain accurate records of the hours worked by Plaintiff and aggrieved employees. In violation of the Labor Code, Defendants failed to maintain accurate records of hours worked by Plaintiff and aggrieved employees due to its unfair rounding practices, among other things.

FIRST CAUSE OF ACTION

**(Civil Penalties Under the Private Attorneys General Act,
Labor Code § 2699 et seq., For Violations of the Labor Code)**

30. By this complaint, Plaintiff brings this case as a representative action seeking penalties for himself, the aggrieved employees, and the State of California in a representative capacity, as provided by the PAGA, Labor Code sections 2698 *et seq.* Plaintiff is an aggrieved employee who was employed by Defendants and subject to at least one of the Labor Code violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in his notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198.

31. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice from the LWDA.

32. Prior to filing this complaint, on April 14, 2021, Plaintiff gave written notice of the specific provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. The written notice was given via certified mail to Defendants, and the LWDA by electronically filing the notice via the Department of Industrial Relations website. Plaintiff was given an LWDA case number of LWDA-CM-829348-21. A true and correct copy of Plaintiff's notice to the LWDA and Defendant(s), dated April 14, 2021, is attached hereto as **Exhibit A**.

33. The LWDA has not provided Plaintiff with any notice that it intends to investigate

1 the violations as alleged in Plaintiff's April 14, 2021, notice, and more than 65 calendar days
2 have elapsed since the postmark date on the notice.

3 34. California Labor Code §§2698-2699.5, in relevant part provides, "any provision
4 of this code that provides for a civil penalty to be assessed and collected by the Labor and
5 Workforce Development Agency...for a violation of this code, may, as an alternative, be
6 recovered through a civil action brought by an aggrieved employee on behalf of himself or
7 herself and other current or former employees pursuant to the procedures specified in Section
8 2699.3."

9 35. As an aggrieved employee, Plaintiff brings this civil action to recover civil
10 penalties for Defendant's Labor Code violations.

11 **FIRST VIOLATION**

12 **(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)**

13 36. Under California Labor Code §512(a), "An employer may not employ an
14 employee for a work period of more than five hours per day without providing the employee
15 with a meal period of not less than 30 minutes, except that if the total work period per day of the
16 employee is no more than six hours, the meal period may be waived by mutual consent of both
17 the employer and employee."

18 37. Defendants violated Labor Code § 512 by failing to provide Plaintiff, and other
19 qualifying employees who worked shifts of greater than five hours, meal periods within the first
20 five hours of the shifts worked. Defendants failed to pay Plaintiff one hour's pay at Plaintiff's
21 regular rate of pay for each day Defendant failed to provide a meal period in compliance with
22 section 512.

23 **SECOND VIOLATION**

24 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

25 38. Under California Labor Code §226.7(b), "An employer shall not require an
26 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
27 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"
28

39. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

40. Defendants failed to authorize and permit Plaintiff and other employee to take rest periods and mandated by the Wage Order.

41. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

42. Defendants failed to pay Plaintiff and other employees who were not provided rest periods one hour of pay at their regular rate of pay.

THIRD VIOLATION

**(Failure to Provide Complete and Accurate Wage Statements,
in Violation of Labor Code Section 226)**

43. Under California Labor Code §226(a), an employer is legally obligated to provide its employees, semi-monthly or at the time of payment of wages, “an accurate itemized statement in writing...”

44. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

FOURTH VIOLATION

(Failure to Pay Overtime Wages)

45. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an employer is required to compensate employees for all overtime, which is calculated at one and one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday

1 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
2 any workweek.

3 46. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
4 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
5 Labor Code § 2699.

6 **FIFTH VIOLATION**

7 **(Failure to Pay Minimum Wages)**

8 47. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders,
9 payment to an employee of less than the applicable minimum wage for all hours worked in a
10 payroll period is unlawful.

11 48. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
12 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
13 Labor Code § 2699.

14 **SIXTH VIOLATION**

15 **(Failure to Timely Pay Wages During Employment)**

16 49. Pursuant to California Labor Code § 204, for all labor performed between the 1st
17 and 15th days of any calendar month, an employer is required to pay its employees between the
18 16th and 26th day of the month during which the labor was performed. California Labor Code §
19 204 also provides that for all labor performed between the 16th and 26th days of any calendar
20 month, Defendants are required to pay their employees between the 1st and 15th day of the
21 following calendar month. In addition, California Labor Code § 204 provides that all wages
22 earned for labor in excess of the normal work period shall be paid no later than the payday of the
23 next regular payroll period.

24 50. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
25 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
26 Labor Code § 2699.

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28 ///

1 **SEVENTH VIOLATION**

2 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

3 51. Pursuant to California Labor Code § 201, 202, and 203, Defendants are required
4 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
5 201 mandates that if an employer discharges an employee, the employee's wages accrued and
6 unpaid at the time of discharge are due and payable immediately.

7 52. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
8 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
9 Labor Code § 2699.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff prays for the following relief:

- 12 1. For penalties in an amount according to proof;
13 2. For reasonable attorney's fees and costs pursuant to the PAGA; and
14 3. For such other and further relief as this Court may deem just and proper.
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17
18 Dated: July 19, 2021

Respectfully Submitted,

WORK LAWYERS, PC

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21 By:



Justin Lo, Esq.

May To, Esq.

22 Attorneys for Plaintiff ANDREW YOUSIF, on
23 behalf of himself and all others aggrieved
24 employees
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