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on behalf of himself and other current and former aggrieved employees.

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

JUAN BALDERAS, on behalf of himself and
other current and former aggrieved employees,

Plaintiff,

vs.

RELENTLESS PURSUIT ENTERPRISES,
INC.; and PENSKE AUTOMOTIVE GROUP,
INC.; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 37-2022-00003968-CU-OE-CTL

PAGA ACTION

**PLAINTIFF JUAN BALDERAS'S
COMPLAINT FOR:**

- 1. CIVIL PENALTIES
PURSUANT TO THE
PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
§2698, et seq.**

COME NOW Plaintiff JUAN BALDERAS ("Plaintiff"), who alleges and complains
against Defendants RELENTLESS PURSUIT ENTERPRISES, INC.; and PENSKE
AUTOMOTIVE GROUP, INC.; and DOES 1 to 100, inclusive (collectively, "Defendants") as
follows:

I. INTRODUCTION

1 1. This is a Private Attorneys' General Act of 2004, Labor Code § 2698, et seq.
2 ("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
3 and other current and former aggrieved employees of Defendants who worked as hourly, non-
4 exempt employees, in California during the relevant time period seeking civil penalties associated
5 with Defendants' violations of the Labor Code based on Defendants' failure to provide all legally
6 required and legally compliant meal and rest periods, failure to timely pay earned wages during
7 employment, failure to provide complete and accurate wage statements, and failure to timely pay
8 all unpaid wages following separation of employment. Plaintiff seeks on a representative basis
9 following notice to the Labor and Workforce Development Agency, civil penalties, reasonable
10 attorney's fees pursuant to Labor Code §2699(g)(1) and costs brought on behalf of Plaintiff, the
11 State of California, and others aggrieved.

12 **II. JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over Plaintiff and other current and former aggrieved
14 California-based hourly non-exempt employees' claims because Plaintiff's lawsuit seeks damages
15 in excess of \$25,000 and Defendants employed other current and former aggrieved California-
16 based hourly non-exempt employees and injuries occurred in locations in California including but
17 not limited to San Diego County at 4970 Kearny Mesa Road, San Diego, California 92111.

18 **III. PARTIES**

19 3. Plaintiff brings this action as a representative of the Labor and Workforce
20 Development Agency on behalf of himself and other aggrieved employees who were subject to
21 Defendants' violations of the Labor Code. The named Plaintiff and the persons on whose behalf
22 this action is filed include current, former and/or future employees of Defendants who worked,
23 work, or will work for Defendants as non-exempt hourly employees in California. At all times
24 mentioned herein, the currently named Plaintiff is and was domiciled and a resident and citizen of
25 California and was employed by Defendants in an hourly position at Defendants' 4970 Kearny
26 Mesa Road, San Diego, California 92111 from approximately September of 1997 until on or about
27 March 10, 2021.

28 4. Plaintiff is informed and believes and thereon alleges that Defendant

1 RELENTLESS PURSUIT ENTERPRISES, INC. is authorized to do business within the State of
2 California and is doing business in the State of California and/or that Defendants DOES 1-50 are,
3 and at all times relevant hereto were persons acting on behalf of Defendant RELENTLESS
4 PURSUIT ENTERPRISES, INC. in the establishment of, or ratification of, the aforementioned
5 illegal wage and hour practices or policies. Defendant RELENTLESS PURSUIT ENTERPRISES,
6 INC. operates in San Diego County and employed Plaintiff and other current and former aggrieved
7 California-based hourly non-exempt employees in, including but not limited to, 4970 Kearny
8 Mesa Road, San Diego, California 92111.

9 5. Plaintiff is informed and believes and thereon alleges that Defendant PENSKE
10 AUTOMOTIVE GROUP, INC. is authorized to do business within the State of California and is
11 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times
12 relevant hereto were persons acting on behalf of Defendant PENSKE AUTOMOTIVE GROUP,
13 INC.. in the establishment of, or ratification of, the aforementioned illegal wage and hour practices
14 or policies. Defendant PENSKE AUTOMOTIVE GROUP, INC. operates in San Diego County
15 and employed Plaintiff and other current and former aggrieved California-based hourly non-
16 exempt employees in, including but not limited to, 4970 Kearny Mesa Road, San Diego,
17 California 92111.

18 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
19 through 50 are corporations or are other business entities or organizations of a nature unknown to
20 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
21 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
22 working conditions of employment of Plaintiff and aggrieved employees.

23 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
24 through 100 are individuals unknown to Plaintiff. Each of the individual Defendants is sued
25 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
26 supervisor, independent contractor and/or employee of each Defendant who violated or caused to
27 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
28 the Industrial Welfare Commission's wage orders regulating hours and days of work.

1 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
2 sues said Defendants by said fictitious names and will amend this complaint when the true names
3 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
4 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
5 named Defendants is in some manner responsible for the events and allegations set forth in this
6 complaint.

7 9. Plaintiff makes the allegations in this complaint without any admission that, as to
8 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
9 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

10 **FIRST CAUSE OF ACTION**

11 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

12 **GENERAL ACT OF 2004, LABOR CODE §2698, et seq.**

13 **(Against all Defendants and DOE Defendants)**

14 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

15 11. During the period beginning one-year period preceding the sending of the initial
16 notice to the LWDA to the present (“the Civil Penalty Period”), Defendants violated Labor Code
17 Sections 201, 202, 203, 204, 226, 226.7, and 512 of the applicable Wage Orders.

18 12. Specifically, Defendants have committed the following violations of California
19 Labor Code:

20 13. **Failure to pay wages to hourly non-exempt employees for workdays that**
21 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
22 current and former aggrieved California-based hourly non-exempt employees regularly worked
23 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

24 14. California law requires an employer to authorize or permit an employee an
25 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
26 all duties and the employer relinquishes control over the employee’s activities prior to the
27 employee’s sixth hour of work. Labor Code § 226.7, 512; Wage Order 4 at §11; *Brinker Rest.*
28 *Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an

1 employee for a work period of more than ten (10) hours per day without providing the employee
2 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
3 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
4 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
5 period is only permitted when: (1) the nature of the work prevents an employee from being
6 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

7 15. If an employer fails to provide an employee a meal period in accordance with the
8 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay
9 for each workday that a legally required and compliant meal period was not provided. Labor Code
10 §226.7; Wage Order 4 at §11.

11 16. In this case, Defendants failed to authorize or permit legally required and compliant
12 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
13 exempt employees due to Defendants’ policies, practices, and/or procedures, including but not
14 limited to:

15 (a) Failing to authorize or permit Plaintiff and other current and former
16 aggrieved California-based hourly non-exempt employees to take timely meal periods prior to the
17 sixth hour of work; and

18 (b) Failing to authorize or permit Plaintiff and other current and former
19 aggrieved California-based hourly non-exempt employees to take a meal period for every five (5)
20 hours of work.

21 17. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
22 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
23 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
24 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
25 employees did not receive legally required and compliant meal periods, in violation of Labor Code
26 §226.7.

27 18. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
28 and other current and former aggrieved California-based hourly non-exempt employees not

1 receiving wages to compensate them for workdays during which Defendants did not provide them
2 with meal periods in compliance with California law.

3 19. **Failure to pay wages to hourly non-exempt employees for workdays that**
4 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
5 current and former aggrieved California-based hourly non-exempt employees regularly worked
6 shifts of more than three-and-a-half (3.5) hours.

7 20. California law requires every employer to authorize and permit an employee a rest
8 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
9 Code §226.7; Wage Order 4 at §12. Under California law, “[e]mployees are entitled to 10
10 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
11 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
12 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
13 §226.7; Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of each
14 work period. Wage Order 4 at §12. Additionally, the rest period requirement “obligates employers
15 to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security*
16 *Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve
17 employees of all duties and relinquish control over how employees spend their time. *Id.*

18 21. If the employer fails to authorize or permit a required rest period, the employer
19 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
20 the employer did not authorize or permit a legally required rest period. Labor Code §226.7; Wage
21 Order 4 at § 12.

22 22. In this case, Defendants failed to authorize or permit all legally required and
23 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
24 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
25 limited to:

26 (a) Failing to authorize or permit Plaintiff and other current and former
27 aggrieved California-based hourly non-exempt employees to take a ten-minute rest period time for
28 every four (4) hours of work or major fraction thereof.

1 23. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
2 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
3 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
4 workday they did not receive legally required and compliant rest periods, in violation of Labor
5 Code §226.7.

6 24. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
7 and other current and former aggrieved California-based hourly non-exempt employees not
8 receiving wages to compensate them for workdays in which Defendants did not provide them with
9 rest periods in compliance with California law.

10 25. **Failure to timely pay earned wages during employment:** In California, wages
11 must be paid at least twice during each calendar month on days designated in advance by the
12 employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned
13 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th
14 and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of
15 any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other
16 payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within
17 seven (7) calendar days following the close of the payroll period in which wages were earned.
18 Labor Code §204(d).

19 26. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
20 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
21 exempt employees' earned wages (including meal period premium wages and/or rest period
22 premium wages), in violation of Labor Code §204. Defendants' aforementioned policies,
23 practices, and/or procedures resulted in their failure to pay Plaintiff's and other current and former
24 aggrieved California-based hourly non-exempt employees' their earned wages within the
25 applicable time frames outlined in Labor Code §204.

26 27. **Failure to provide complete and accurate wage statements:** Labor Code §226,
27 subdivision (a). Labor Code §226(a) provides, *inter alia*, that, upon paying an employee his or her
28 wages, the employer must "furnish each of his or her employees ... an itemized statement in

1 writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any
2 employee whose compensation is solely based on a salary and who is exempt from payment of
3 overtime under subdivision (a) of §515 or any applicable order of the Industrial Welfare
4 Commission, (3) the number of piece-rate units earned and any applicable piece rate if the
5 employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on
6 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
7 (6) the inclusive dates of the pay period for which the employee is paid, (7) the name of the
8 employee and his or her social security number, (8) the name and address of the legal entity that is
9 the employer, and (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee.”

11 28. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
12 and other current and former aggrieved California-based hourly non-exempt employees all wages
13 earned (including meal period premium wages, and/or rest period premium wages) rendered
14 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’
15 wage statements inaccurate, in violation of Labor Code §226.

16 29. **Failure to pay employees all wages due at time of termination/resignation:** An
17 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
18 wages are due immediately upon termination (Labor Code §201) or within seventy-two (72) hours
19 of resignation (Labor Code §202).

20 30. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
21 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
22 all their earned wages (including meal period premium wages, and/or rest period premium wages),
23 Defendants failed to pay those employees timely after each employee’s termination and/or
24 resignation, in violation of Labor Code § 201, 202, and 203.

25 31. Defendants’ violations of Wage Order 4 constituted violations of Labor Code
26 §1198, which prohibits employment under conditions of labor that violate the Wage Orders.

27 32. Labor Code § 2699, subdivisions (a) and (g) authorize an aggrieved employee, on
28 behalf of himself or herself and other current or former employees, to bring a civil action to

1 recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code
2 §2699.3.

3 33. Plaintiff has complied with the procedures for bringing suit specified in Labor
4 Code §2699.3. On November 24, 2021, Plaintiff filed notice with LWDA and provided notice to
5 Defendants by certified mail which provided notice of the specific provisions of the Labor Code
6 alleged to have been violated, including the facts and theories to support the violations alleged.

7 34. Pursuant to Labor Code §2699.3, the LWDA must give written notice by certified
8 mail to the parties that it intends to investigate the alleged violations of the Labor Code within 60
9 days of the date of the complainant's written notice. The LWDA failed to provide the parties
10 notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate
11 Plaintiff's claims.

12 35. Pursuant to Labor Code § 2699(a) and (f), Plaintiff is entitled to recover civil
13 penalties for Defendants' violations of Labor Code Sections 201, 202, 203, 204 226, 226.7, and
14 512 during the Civil Penalty Period in the following amounts:

15 a. For violations of Labor Code Sections 201, 202, 203, 204, 226.7, 2802, and
16 512; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
17 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
18 subsequent violation [penalty amounts established by Labor Code §2699(f)(2)].

19 b. For violations of Labor Code §226, two hundred fifty dollars (\$250) for
20 each employee for each pay period for the initial violation, and for each subsequent violation, one
21 thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
22 established by Labor Code §226.3].

23 36. Pursuant to Labor Code §2699(g), Plaintiff is entitled to an award of reasonable
24 attorney's fees and costs in connection with his claims for civil penalties.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE, PLAINTIFF, ON HIS OWN BEHALF, ON BEHALF OF THE**
27 **STATE OF CALIFORNIA, AND ON BEHALF OF OTHER FORMER AGGRIEVED**
28 **CALIFORNIA-BASED HOURLY NON-EXEMPT EMPLOYEES PRAYS AS FOLLOWS:**

1 **ON THE FIRST CAUSE OF ACTION:**

2 1. That the Defendants be found to have violated the provisions of the Labor Code
3 and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

4 2. For any and all legally applicable penalties during the relevant statute of limitations
5 subject to any permissible tolling, including but not limited to that recoverable under California
6 Labor Code, including but not limited to § 2699(f).

7 3. For attorneys' fees and costs of suit, including but not limited to that recoverable
8 under California Labor Code §2699(g); and

9 4. For such and other further relief, in law and/or equity, as the Court deems just or
10 appropriate.

11
12 Dated: January 31, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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14 By: /s/ Tara Yousif
15 Joseph Lavi, Esq.
16 Vincent C. Granberry, Esq.
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20 JUAN BALDERAS,
21 on behalf of himself and other current and
22 former aggrieved employees.
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