

Kevin Mahoney (SBN: 235367)

kmahoney@mahoney-law.net

Laura Theriault (SBN: 330474)

ltheriault@mahoney-law.net

MAHONEY LAW GROUP, APC

249 East Ocean Boulevard, Suite 814

Long Beach, CA 90802

Telephone No.: (562) 590-5550

Facsimile No.: (562) 590-8400

Attorneys for Plaintiff OSCAR CONCUL, as an individual and on behalf of all similarly situated employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

OSCAR CONCUL,

Plaintiff,

vs.

S.B.L. AUTO INC. dba SOUTH BAY
LEXUS; and DOES 1-50, inclusive,

Defendants.

Case No.: **22STCV01450**

COMPLAINT FOR CIVIL PENALTIES

1. Violation of Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Provide Meal Periods;
2. Violation of Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Provide Rest Periods; and
3. Violation of Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Reimburse for Necessary Business Expenditures.

1
2 Plaintiff OSCAR CONCUL ("Plaintiff") complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a representative action brought pursuant to the Private Attorneys General
5 Act, Labor Code section 2698, et seq. ("PAGA") on behalf of Plaintiff and all similarly-aggrieved
6 employees who were subjected to one or more of the violations alleged herein ("Aggrieved
7 Employees") by Defendant S.B.L. Auto Inc. dba South Bay Lexus ("Defendant").

8 2. The term "PAGA Period" is defined as one (1) year and sixty-five (65) days prior
9 to the filing of this complaint. Plaintiff reserves the right to amend this complaint to reflect a
10 different "PAGA Period" as further discovery is conducted.

11 3. "Aggrieved Employees" is defined as non-exempt hourly-paid employees through
12 California employed by Defendant during the PAGA period.

13 4. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
14 against Defendant for violations of several Labor Code provisions, including, but not limited to,
15 sections 226.7, 512, and 2802 for: (1) failure to provide meal periods or premium compensation
16 in lieu thereof, (2) failure to provide rest periods or premium compensation in lieu thereof, and
17 (3) failure to reimburse for necessary business expenditures.

18 5. At all relevant times herein, Defendant has consistently maintained and enforced
19 the following unlawful policies and practices against Plaintiff:

- 20 a. Willfully refusing to permit off-duty meal periods or provide premium
21 compensation in lieu thereof;
22 b. Willfully refusing to permit rest periods or provide premium compensation in
23 lieu thereof; and
24 c. Willfully refusing to reimburse for necessary business expenditures.

25 6. This Court has subject matter jurisdiction over the causes of action alleged in this
26 complaint as a Court of general subject matter jurisdiction and is not otherwise excluded from
27 exercising subject matter jurisdiction over said causes of action. The penalties recoverable for
28

1 Plaintiff individually do not exceed seventy-five thousand dollars (\$75,000.00), and collectively
2 amongst all Aggrieved Employees do not exceed five million dollars (\$5,000,000.00).

3 **JURISDICTION AND VENUE**

4 7. Defendant, S.B.L. Auto Inc. dba South Bay Lexus, is a California corporation with
5 its principal place of business in Torrance, California, as provided in its California Secretary of
6 State, Statement of Information, Entity File Number C1465003. There is no federal question at
7 issue, as the issues herein are based solely on California statutes and law, including the Labor
8 Code, Industrial Welfare Commission ("IWC") Wage Orders, Code of Civil Procedure, Business
9 and Professions Code, and Rules of Court. By incorporating and doing business in the state of
10 California, Defendant has purposefully availed themselves of the state's jurisdiction.
11 Accordingly, as personal jurisdiction over Defendant would be constitutional, California's long-
12 arm statute provides that California courts may exercise personal jurisdiction over Defendant.
13 (Code Civ. Proc., § 410.10).

14 8. Venue is proper in the County of Los Angeles because Defendant has their
15 principal place of business in this County, and the acts or omissions giving rise to causes of action
16 in this complaint occurred in this County.

17 **THE PARTIES**

18 **Plaintiff**

19 9. Plaintiff was employed by Defendant from in or around December of 2005 until
20 on or about April 11, 2021, at Defendant's Torrance, California location. Throughout the PAGA
21 Period, Plaintiff was employed by Defendant in a non-exempt, hourly position. Plaintiff and
22 Aggrieved Employees consist of identifiable, current, and/or formerly similarly situated persons
23 who worked for Defendant as hourly-paid non-exempt employees during the PAGA Period.

24 **Defendant(s)**

25 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant owns
26 and operates a car dealership in Torrance, California, and was the employer of Plaintiff and
27 Aggrieved Employees during the PAGA Period.

1 11. Plaintiff is ignorant of the true names, capacities, relationships and extent of
2 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
3 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
4 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
5 capacities of the DOE Defendants when that information is ascertained.

6 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
7 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
8 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
9 are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint
10 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
11 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
12 the conduct described in this complaint.

13 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
14 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
15 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
16 below was acting, at least in part, within the course and scope of that authority as such agent,
17 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
18 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
19 are legally attributable to the other Defendants.

20 **PAGA ADMINISTRATIVE PREREQUISITE**

21 14. Plaintiff brings this case as a representative action seeking penalties for the State
22 of California in representative capacity, as provided for under PAGA, Labor Code section 2698
23 et seq., to the extent permitted by law, as an aggrieved employee who was employed by Defendant
24 and was not provided compliant meal or rest periods or premium compensation in lieu thereof,
25 and was not reimbursed for necessary business expenditures.

26 15. Pursuant to Labor Code section 2699.3, subdivision (a), a plaintiff may bring a
27 cause of action under the PAGA only after giving the Labor Workforce Development Agency
28 (LWDA) and the employer notice of the Labor Code sections alleged to have been violated, and

1 after receiving notice from the LWDA of its intention not to investigate, or after sixty-five (65)
2 days have passed without notice from the LWDA.

3 16. On November 1, 2021, prior to the filing of this complaint, Plaintiff gave written
4 notice of the specified provisions alleged to have been violated, including the facts and theories
5 to support the alleged violations, as required by Labor Code section 2699.3. This written notice
6 was given via certified mail to Defendant, and to the LWDA by electronically filing the notice
7 via the Department of Industrial Relations website. Plaintiff was given an LWDA case number
8 of LWDA-CM-850645-21. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff's
9 original letter sent to the LWDA on November 1, 2021.

10 17. More than sixty-five (65) days have elapsed since Plaintiff submitted his
11 November 1, 2021 notice to the LWDA and Defendant of the specific alleged Labor Code
12 violations, and the LWDA has not provided notice to Plaintiff of its intent to investigate such
13 alleged violations. Also, Plaintiff has not received notice of Defendant's intent to cure any of the
14 alleged violations. Accordingly, Plaintiff has satisfied the administrative prerequisites for filing
15 this action.

16 **FACTUAL ALLEGATIONS**

17 18. Plaintiff and Aggrieved Employees are, and at all times during the PAGA Period
18 were, non-exempt employees within the meaning of the California Labor Code, and California
19 Wage Order 4-2001 of the Industrial Welfare Commission ("IWC Wage Order"). Defendant is,
20 and at all times during the PAGA Period was, and "employer" within the meaning of state law
21 and IWC Wage Order 4-2001.

22 19. Defendant owns and/or operates a car dealership in Torrance, California. During
23 all, or a portion of the PAGA Period, Plaintiff and Aggrieved Employees were employed by
24 Defendant in the State of California.

25 20. During the PAGA Period, Defendant was required to permit Plaintiff and
26 Aggrieved Employees to take one (1) uninterrupted thirty (30) minute meal period prior to the
27 sixth (6th) hour of work. Defendant was also required to permit Plaintiff and Aggrieved
28 Employees to take one (1) ten (10) minute rest period for every four (4) hours, or major fraction

1 thereof worked. However, due to the nature of their work, combined with the requirements and
2 demands of Defendant, Plaintiff and Aggrieved Employees were unable to take the meal and rest
3 periods to which they were entitled.

4 21. Defendant scheduled Plaintiff and Aggrieved Employees in such a manner that
5 they were precluded from taking one (1) duty-free uninterrupted meal period before the sixth (6th)
6 hour of work and at least one (1) ten (10) minute rest period for every four (4) hours or major
7 fraction thereof worked. Defendant prioritized work responsibilities over providing meal and rest
8 breaks, and failed to schedule enough employees to provide relief for Plaintiff and Aggrieved
9 Employees to take their requisite meal and rest periods.

10 22. Plaintiff and Aggrieved Employees were not permitted to take their meal period
11 until instructed to do so by Defendant. At times, Defendant assigned Plaintiff and Aggrieved
12 Employees to leave the work site and make deliveries and instructed them that they were not
13 permitted to take their meal period until they returned to the work premises. On these occasions,
14 Plaintiff and Aggrieved Employees did not return from making their assigned deliveries until
15 within the first five (5) hours of work and therefore were not permitted to take their meal period
16 until after the commencement of their sixth (6th) hour of work.

17 23. Further, Plaintiff and Aggrieved Employees were frequently precluded from
18 taking rest breaks due to the workload and demands of the Defendant. When Plaintiff and
19 Aggrieved Employees did attempt to take rest breaks, they were reprimanded by Defendant and
20 told it was not the right time to take a rest break, regardless of when Plaintiff and Aggrieved
21 Employees attempted to take one.

22 24. When Plaintiff and Aggrieved Employees were prevented from taking the required
23 meal and rest periods, Defendant failed to compensate with a premium pay for every missed meal
24 period and failed to compensate with a premium pay on all workdays on which a rest period was
25 missed.

26 25. As a result of Defendant's policies and practices of failing to provide Plaintiff and
27 Aggrieved Employees with meal or rest breaks, or premium pay in lieu thereof, Defendant
28

1 violated Labor Code sections 226.7 and 512 and the applicable IWC Wage Order, and is subject
2 to penalties under PAGA.

3 26. During the PAGA Period, Defendant was required to reimburse Plaintiff and
4 Aggrieved Employees for any and all necessary business expenditures.

5 27. Plaintiff and Aggrieved Employees were required to utilize their personal cellular
6 devices for work purposes every day. In order to carry out their work duties, Plaintiff and
7 Aggrieved Employees were required to use their personal cellular devices to receive calls from
8 Defendant's managers, make calls to Defendant's customers, and for GPS navigation. Plaintiff
9 and Aggrieved Employees were specifically instructed by Defendant's General Manager that no
10 cell phones would be provided to them and that they were to use their own. Further, Defendant
11 failed or refused to reimburse Plaintiff and Aggrieved Employees for the cost thereof.

12 28. Defendant's failure to provide full and complete reimbursement for all necessary
13 business expenditures incurred by Plaintiff and Aggrieved Employees is in violation of Labor
14 Code section 2802, and is subject to penalties under PAGA.

15 29. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee
16 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve
17 as a representative of the general public to enforce California's labor laws, and the penalty
18 provisions identified in Labor Code section 2699.5.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR**

21 **PREMIUM COMPENSATION IN LIEU THEREOF**

22 **(Labor Code §§ 226.7 and 512)**

23 **(Plaintiff Against All Defendants)**

24 30. Plaintiff realleges and incorporates by reference all preceding paragraphs as
25 though fully set forth herein.

26 31. Labor Code sections 226.7 and 512 and Industrial Welfare Commission (IWC)
27 Wage Order No. 4-2001, section 11, provide that no employer shall employ any person for a
28

1 work period of more than five (5) hours without providing an uninterrupted meal period of at least
2 thirty (30) minutes.

3 32. Labor Code section 226.7 provides that if an employer fails to provide an
4 employee a meal period in accordance with this section, the employer shall pay the employee one
5 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
6 period is not provided in accordance with this section.

7 33. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
8 than five (5) hours in a workday.

9 34. Plaintiff alleges that Defendant failed or refused to provide legally compliant meal
10 periods by failing to relieve Plaintiff and Aggrieved Employees from all work duties to allow for
11 timely meal periods. Defendant's intentional conduct precluded Plaintiff and Aggrieved
12 Employees from taking their lawfully required meal periods on time. Moreover, Defendant did
13 not compensate Plaintiff and Aggrieved Employees for their late meal periods with one hour of
14 regular pay as required by law.

15 35. During the PAGA Period, Defendant failed to schedule Plaintiff and Aggrieved
16 Employees in such a manner as to ensure that they could take timely meal periods as required by
17 law. By failing to implement a work schedule that would allow Plaintiff and Aggrieved
18 Employees to take their meal periods on time, Defendant prioritized work tasks over meal period
19 compliance.

20 36. Defendant denied Plaintiff and Aggrieved Employees timely meal periods
21 resulting in Plaintiff and Aggrieved Employees being forced to work in excess of five (5) hours
22 before being permitted to take a meal period. Further, Defendant failed to provide premium
23 compensation to Plaintiff and Aggrieved Employees in lieu of their meal periods. As such,
24 Defendant intentionally and improperly denied meal periods to Plaintiff and Aggrieved
25 Employees in violation of Labor Code sections 226.7 and 512 and IWC Wage Order No. 4-2001,
26 and is subject to penalties under PAGA.

27 37. By virtue of Defendant's violation of the provisions of Labor Code sections 226.7
28 and 512, Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing

1 violations incurring civil penalties, the amount of which are presently unknown, but will be
2 ascertained according to proof at trial.

3 38. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved
4 Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the
5 first initial violations and two hundred dollars (\$200.00) per pay period for each subsequent
6 violation.

7 39. More than sixty-five (65) days have elapsed since Plaintiff provided notice to the
8 LWDA, and the LWDA has indicated no intention to investigate. Further, Defendant has
9 provided no cure notice, and has not taken any steps of corrective action to remedy the allegations
10 set forth above. Accordingly, pursuant to Labor Code sections 2699 and 2699.3, Plaintiff,
11 individually and on behalf of the Aggrieved Employees and the State of California, seeks penalties
12 for violations of Labor Code sections 226.7 and 512 during the PAGA Period, in an amount
13 according to proof, that would otherwise only be collected through public agency enforcement
14 actions by the Labor Commission, the LWDA and/or the DLSE.

15 40. Plaintiff, as a personal representative of the general public, will and does seek to
16 recover any and all penalties for each and every violation shown to exist or to have occurred
17 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
18 only available to public agency enforcement actions. Funds recovered will be distributed in
19 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
20 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all
21 Aggrieved Employees.

22 41. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
23 costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

24 **SECOND CAUSE OF ACTION**

25 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR PREMIUM**
26 **COMPENSATION IN LIEU THEREOF**

27 **(Labor Code § 226.7)**

28 **(Plaintiff Against All Defendants)**

1 42. Plaintiff realleges and incorporates by reference all preceding paragraphs as
2 though fully set forth herein.

3 43. Labor Code section 226.7 and IWC Wage Order No. 4–2001, section 12, require
4 that employers permit all employees to take a ten (10) minute rest period for every four (4) hours
5 or major fraction thereof worked. Further, when an employer fails to provide an employee with
6 required rest periods, the employer must pay the employee one (1) hour of pay at the employee’s
7 regular rate of pay for each workday that at a required rest period is not provided.

8 44. Plaintiff alleges that Defendant failed or refused to provide legally compliant rest
9 periods by failing to relieve Plaintiff and Aggrieved Employees from all work duties to allow for
10 timely and uninterrupted rest periods. Defendant’s intentional conduct denied Plaintiff and
11 Aggrieved Employees their lawfully required rest periods. Moreover, Defendant did not
12 compensate Plaintiff and Aggrieved Employees for their missed rest periods with one hour of
13 regular pay as required by law.

14 45. During the PAGA Period, Plaintiff and Aggrieved Employees worked more than
15 four (4) hours in a workday and Defendant failed to schedule Plaintiff and Aggrieved Employees
16 in such a manner as to ensure that they could take proper rest periods as required by law.

17 46. When Plaintiff and Aggrieved Employees did attempt to take rest periods,
18 Defendant reprimanded them and told them it was not the right time for them to take a rest break.

19 47. Defendant therefore denied Plaintiff and Aggrieved Employees rest periods
20 resulting in Plaintiff and Aggrieved Employees being forced to work during rest periods or forego
21 them altogether. Further, Defendant failed to provide premium compensation to Plaintiff and
22 Aggrieved Employees in lieu of their rest periods. As such, Defendant intentionally and
23 improperly denied rest periods to Plaintiff and Aggrieved Employees in violation of Labor Code
24 section 226.7 and IWC Wage Order No. 4–2001, and is subject to penalties under PAGA.

25 48. By virtue of Defendant’s violation of the provisions of Labor Code section 226.7,
26 Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing violations
27 incurring civil penalties, the amount of which are presently unknown, but will be ascertained
28 according to proof at trial.

1 49. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved
2 Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the
3 initial violations and two hundred dollars (\$200.00) per pay period for each subsequent violation.

4 50. More than sixty-five (65) days have elapsed since Plaintiff provided notice to the
5 LWDA, and the LWDA has indicated no intention to investigate. Further, Defendant has
6 provided no cure notice, and has not taken any steps of corrective action to remedy the allegations
7 set forth above. Accordingly, pursuant to Labor Code sections 2699 and 2699.3, Plaintiff,
8 individually and on behalf of the Aggrieved Employees and the State of California, seeks penalties
9 for violations of Labor Code section 226.7. Plaintiff, individually and on behalf of the Aggrieved
10 Employees and the State of California, seeks penalties for violations of Labor Code section 226.7
11 during the PAGA Period, in an amount according to proof, that would otherwise only be collected
12 through public agency enforcement actions by the Labor Commission, the LWDA and/or the
13 DLSE.

14 51. Plaintiff, as a personal representative of the general public, will and does seek to
15 recover any and all penalties for each and every violation shown to exist or to have occurred
16 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
17 only available to public agency enforcement actions. Funds recovered will be distributed in
18 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
19 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all
20 Aggrieved Employees.

21 52. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
22 costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

23 **THIRD CAUSE OF ACTION**

24 **VIOLATION OF PAGA FOR FAILURE TO REIMBURSE FOR NECESSARY**

25 **BUSINESS EXPENDITURES**

26 **(Labor Code § 2802)**

27 **(Plaintiff Against All Defendants)**

1 53. Plaintiff realleges and incorporates by reference all preceding paragraphs as
2 though fully set forth herein.

3 54. Labor Code section 2802, subdivision (a), provides that “[a]n employer shall
4 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
5 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
6 directions of the employer.”

7 55. Defendant required Plaintiff and Aggrieved Employees to use their own personal
8 cellular phones for work purposes every day. Plaintiff and Aggrieved Employees used their
9 cellular devices to receive incoming calls from their managers, make outgoing calls to customers,
10 and for GPS navigation. Defendant’s failure to reimburse Plaintiff and Aggrieved Employees for
11 the use of their personal cellular devices in the execution of their work duties is in violation of
12 Labor Code section 2802, and is subject to penalties under PAGA.

13 56. By virtue of Defendant’s violation of the provisions of Labor Code section 2802,
14 Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing violations
15 incurring civil penalties, the amount of which are presently unknown, but will be ascertained
16 according to proof at trial.

17 57. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved
18 Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the
19 initial violation and two hundred dollars (\$200.00) per pay period for each subsequent violation.

20 58. More than sixty-five (65) days have elapsed since Plaintiff provided notice to the
21 LWDA, and the LWDA has indicated no intention to investigate. Further, Defendant has
22 provided no cure notice, and has not taken any steps of corrective action to remedy the allegations
23 set forth above. Accordingly, pursuant to Labor Code sections 2699 and 2699.3, Plaintiff,
24 individually and on behalf of the Aggrieved Employees and the State of California, seeks penalties
25 for violations of Labor Code section 2802 during the PAGA Period, in an amount according to
26 proof, that would otherwise only be collected through public agency enforcement actions by the
27 Labor Commission, the LWDA and/or the DLSE.
28

59. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all Aggrieved Employees.

PRAYER FOR RELIEF

1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including, but not limited to, those civil penalties provided by statute and provided by PAGA;
2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis; and
4. For all such other and further relief as the Court may deem just and proper.

MAHONEY LAW GROUP, APC