

ARTHUR R. BOTHAM, JR. (#203072)
LAW OFFICES OF ARTHUR R. BOTHAM, JR., A Law Corporation
2169 First Avenue
San Diego, California 92101
Phone: (619) 358-9738 Fax: (619) 393-0103

ZACHARY T. TYSON (#211185)
LAW OFFICE OF ZACHARY T. TYSON ALC
2169 First Avenue
San Diego, California 92101
Phone (619) 237-9292

Attorneys for CHRISTOPHER HAO-KEPPEL and
the Aggrieved Employees under PAGA, on behalf of themselves, all others similarly
situated, and on behalf of the general public

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

CHRISTOPHER HAO-KEPPEL, on behalf
of the State of California, as a private
attorney general,

Plaintiff,

v.

DESERT AUTO GROUP V, LLC; a
business entity form unknown, and DOES
1 through 25, Inclusive,

Defendants

Case No. 37-2022-00044671-CU-OE-CTL

COMPLAINT FOR PAGA REMEDIES

1. Civil Penalties Pursuant to Labor
Code §2699 et seq. for violations of
Labor Code §§201, 202, 203, 204 et
Seq., 210, 226 (a) 226.7, 351, 510, 512,
558 (A)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations
Title 8 § 11040, Subdiv 5(A)-(B)

Jury Trial Demanded
Attorneys' Fees Demanded

This is an employment action brought by a former worker at Defendant's auto dealership
for recovery of civil penalties. Plaintiff CHRISTOPHER HAO-KEPPEL [PLAINTIFF] on
behalf of the people of the State of California and as an aggrieved employee acting as a
private attorney general under Labor Code §2699 et seq. [PAGA] only, alleges on
information and belief all of the following facts as set forth below.

I.

INTRODUCTION

1. At all times mentioned herein, Plaintiff Christopher Hao-Keppel is and was
domiciled and residing in the County of San Diego, State of California. PLAINTIFF brings

1 this action against Defendant DESERT AUTO GROUP V, LLC; a business entity form
2 unknown [DEFENDANTS] seeking only to recover PAGA civil penalties for himself, and
3 on behalf of all current and former aggrieved employees that worked for DEFENDANT
4 for one year plus 65 days prior to the inception of this Action. To the extent that statutory
5 violations are mentioned for wage violations, PLAINTIFF does not seek underlying
6 economic and/or non-economic damages beyond those recoverable as civil penalties
7 authorized by California Labor Code § 2699.

8 II.

9 THE PARTIES

10 2. At all times mentioned herein, Plaintiff Christopher Hao-Keppel is and was
11 domiciled and residing in the County of San Diego, State of California. Plaintiff was an
12 employee of Defendant from approximately January 1, 2022 to sometime in July of 2022.

13 3. Defendant DESERT AUTO GROUP V, LLC; is a business entity form unknown,
14 doing business as Chula Vista Ford and Chula Vista Kia at all times mentioned herein, has
15 conducted business in San Diego County and elsewhere within California.

16 4. At all times mentioned herein, Defendants and/or DOES, within the State of
17 California, have, among other things, employed current and former workers, including
18 Plaintiff Hao-Keppel, clerical workers, lot porters, salespeople, mechanics and service
19 writers at its auto dealership in San Diego County.

20 5. PLAINTIFF brings this Representative Action on behalf of the State of California
21 pursuant to PAGA, for himself and for all current and former employees of
22 DEFENDANTS in California during the time period of June 6, 2021 until a date as
23 determined by the Court (the "PAGA PERIOD").

24 6. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or
25 formerly employed by DEFENDANT during the PAGA PERIOD, brings this
26 representative action pursuant to Labor Code § 2699, et seq. seeking civil penalties from
27 DEFENDANTS for their violation of California Labor Code §§ 201, 202, 203, 204 et seq.,
28 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802.

1 7. At all times mentioned herein, the common policies and practices of Defendants
2 and/or DOES were a direct cause of Defendants' and/or DOES' failure to comply with
3 California's wage and hours laws, Wage Orders, and/or the California Labor Code, as set
4 forth more fully within. The true names and capacities, whether individual, corporate,
5 subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 10,
6 inclusive, are presently unknown to PLAINTIFF who therefore sues DEFENDANT by
7 such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to
8 amend this Complaint to allege the true names and capacities of Does 1 through 10,
9 inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based
10 upon that information and belief alleges, that the DEFENDANT named in this Complaint,
11 including DOES 1 through 10, inclusive, are responsible in some manner for one or more
12 of the events and happenings that proximately caused the injuries and damages
13 hereinafter alleged.

14 8. On information and belief, at all relevant times each of the Defendants, including
15 DOE defendants [collectively, DEFENDANTS], was the agent or employee of each of the
16 other Defendants, and at all times each Defendant was acting within the scope and
17 authority of said agency or employment, and were joint employers of Plaintiffs and liable
18 for damages pursuant to Labor Code §558.1.

19 9. Pursuant to the Private Attorney General Act ("PAGA"), incorporated in Labor
20 Code sections 2698, 2699 et seq., Plaintiff brings this representative action against DESERT
21 AUTO GROUP V, LLC, doing business as Chula Vista Ford and Chula Vista Kia, for wage
22 and hour violations of the California Labor Code and the Industrial Welfare Commission
23 Wage Orders (the "IWC Wage Orders"). All current and former DESERT AUTO GROUP
24 V, LLC employees, in California who suffered one or more of the Labor Code Violations
25 alleged herein, are AGGRIEVED EMPLOYEES. PLAINTIFF and all AGGRIEVED
26 EMPLOYEES are hereinafter collectively referred to as PLAINTIFFS, unless common sense
27 would otherwise dictate.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

JURISDICTION AND VENUE

10. Venue as to each Defendant is proper in this judicial district. Defendant conducts business and commit Labor Code violation in San Diego County, and each Defendant or DOE is within California for service of process. The unlawful acts alleged have a occurred and have a direct effect on the aggrieved employees within California and within San Diego County. (Code of Civil Procedure § 395.).

11. This Court has jurisdiction over Plaintiff's claims because Defendants regularly conduct business in California; are alleged to have violated the law in California; Plaintiff's claims raise no federal questions; and, PAGA civil penalty actions are not subject to federal jurisdiction.

12. This Court has jurisdiction over Plaintiff's, and the other aggrieved employees', claims under Labor Code sections 2698, *et seq.*

13. On information and belief, the California Superior Court has primary and original jurisdiction in this matter because there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the California Labor Code, IWC Wage Orders, Code of Civil Procedure and Business and Professions Code.

14. The amount of penalties sought and demanded by Plaintiff exceeds the minimum jurisdiction of this Court.

IV.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. On August 10, 2022, Plaintiff, through his counsel, gave online written notice of his employer's violations of various provisions of the California Labor Code as alleged in this complaint to the Labor and Workforce Development Agency ("LWDA") and sent that written notice *via* certified mail to his employer. The written notice specified the aggrieved employees' facts and legal theories of what policies and practices were being complained of. Plaintiff also paid the appropriate filing fee with the LWDA.

1 16. The LWDA did not provide notice of its intention to investigate Defendants for
2 their Labor Code violations within the applicable statutory period. (Cal. Lab. Code §
3 2699.3(a)(2)(A)). More than 65 days have passed since Plaintiff filed his claim with the
4 LWDA. The filing fee to the LWDA has been paid on behalf of Plaintiff.

5 17. Plaintiff has exhausted his administrative remedies under Labor Code § 2698 *et seq.*

6 **V.**

7 **FACTS COMMON TO ALL CAUSES OF ACTION:**

8 18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
9 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
10 meaning the time during which an employee is subject to the control of an employer,
11 including all the time the employee is suffered or permitted to work. DEFENDANT
12 required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all
13 the time they were under DEFENDANT's control. Specifically, DEFENDANT required
14 PLAINTIFF and AGGRIEVED EMPLOYEES to work while clocked out during what was
15 supposed to be PLAINTIFF's off-duty rest and meal breaks. PLAINTIFF was routinely
16 interrupted by work assignments such as making and returning phone calls with
17 customers and other workers. Further, Defendant's method of compensating Plaintiff
18 failed to meet the test for exemption as a salesperson nor any other salaried employee, and
19 thus he was not fully compensated for all hours worked. Further, PLAINTIFF and other
20 AGGRIEVED EMPLOYEES used their own, personal cell phones to conduct
21 DEFENDANTS' business. PLAINTIFF and the other AGGRIEVED EMPLOYEES routinely
22 used their personal cell phones to contact customers, credit reporting agencies, banks and
23 finance companies, and other dealerships on behalf of DEFENDANTS and their
24 customers. PLAINTIFFS incurred the cost of the use of their personal cell phones on behalf
25 of DEFENDANT. PLAINTIFFS' USE of their personal cell phones was reasonable and
26 known to DEFENDANTS. Despite DEFENDANTS' knowledge of this practice,
27 DEFENDANTS never established a policy of reimbursing PLAINTIFFS, and in fact never
28 did so in violation of Labor Code §2802. Further, DEFENDANTS required PLAINTIFFS to

1 work through meal and rest periods. California Labor Code §226 and §512 require
2 employers, including DEFENDANTS, to pay their employees a penalty for each missed
3 meal and rest period. DEFENDANTS failed and refused to pay PLAINTIFFS the penalties
4 they were owed by DEFENDANTS. Further, PLAINTIFFS were not timely paid all wages
5 and penalties for all time worked. In fact, even after PLAINTIFF was separated from his
6 employment with DEFENDANTS, DEFENDANTS failed and refused to pay him all wages
7 he earned during his employment in violation of Labor Code §201 and §202. As a result,
8 DEFENDANTS owed PLAINTIFF civil penalties pursuant to Labor Code §203, but failed
9 and refused to pay PLAINTIFF all penalties he was owed. On information and belief,
10 DEFENDANTS failed and refused to pay all PLAINTIFFS who separated their
11 employment with DEFENDANTS all civil penalties they were owed within the statutory
12 period. Therefore, DEFENDANTS violated Labor Code §201, 202, and 203 as to all former
13 employees.

14 19. On information and belief, PLAINTIFF and certain other AGGRIEVED
15 EMPLOYEES were paid in part or in whole on a commissioned and/or bonus basis.
16 However, DEFENDANTS failed and refused to pay all such PLAINTIFFS for all hours
17 worked during non-productive time, while PLAINTIFFS were performing non-productive
18 tasks, such as sales meetings, training and preparing accounting and reports to
19 DEFENDANTS.

20 20. California Labor Code Section 226 requires every employer to furnish each
21 employee with accurate, itemized wage statements setting forth, inter alia, all wages
22 earned and applicable hourly rates. On information and belief, DEFENDANTS failed and
23 refused to include the amount of time PLAINTIFFS spent performing non-productive
24 tasks on DEFENDANTS' behalf nor for any other premium rates. As a result,
25 DEFENDANTS violated California Labor Code §226 during the PAGA PERIOD in an
26 amount according to proof. . As a direct and proximate result of DEFENDANTS' routine
27 violations of the California Labor Code as set forth herein, DEFENDANTS also violated
28 Labor Code S and other AGGRIEVED EMPLOYEES forfeited minimum wage, overtime

1 wage compensation, and meal break wages, by working without their time being correctly
2 recorded and without compensation at the applicable rates. DEFENDANT's policy and
3 practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
4 is evidenced by DEFENDANT's business records. DEFENDANT knew or should have
5 known that PLAINTIFF and other AGGRIEVED EMPLOYEES were working off the clock
6 and were not being paid their correct minimum wage and overtime compensation.

7 21. Defendants' and/or DOES' failure to retain accurate records of total hours worked
8 by Plaintiffs and the proposed class was willful and deliberate, was a continuous breach of
9 Defendants and/or DOES' duty owed to Plaintiff and the proposed class.

10 22. All of the conduct and violations alleged herein occurred during the PAGA
11 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
12 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
13 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
14 2018 AJDAR 12157 (Certified for Publication 12/19/18).

15 **FIRST CAUSE OF ACTION:**

16 **Violation of the Private Attorneys General Act**

17 **[California Labor Code §2698, et seq]**

18 **By Plaintiff**

19 **Against All Defendants**

20 23. Plaintiffs re-allege and incorporates herein by reference each and every allegation
21 in the preceding and subsequent paragraphs.

22 24. PAGA is a statutory scheme established in California. Under the PAGA, an
23 Aggrieve Employee 'stands in the shoes' of the State to enforce state labor laws on behalf
24 of all Aggrieved Employees and on behalf of the State of California. Under PAGA, an
25 Aggrieved Employee is 'deputized' to enforce the labor code by demanding civil penalties
26 through the Courts. The courts are then tasked with oversight of resolution.

27 25. PLAINTIFF, and such persons that may be added from time to time who satisfy the
28 requirements and exhaust the administrative procedures under the Private Attorney

1 General Act, brings this Representative Action on behalf of the State of California with
2 respect to himself and all individuals who are or previously were employed by
3 DEFENDANT in California and suffered one or more of the same violations as set forth
4 herein from June 6, 2021 until a date as determined by the Court (the "PAGA PERIOD").

5 26. On August 10, 2022, PLAINTIFF gave written notice by electronic mail to the
6 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
7 employer of the specific provisions of this code alleged to have been violated as required
8 by Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these
9 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
10 PLAINTIFF may now commence a representative civil action under PAGA pursuant to
11 Section 2699 on the State's behalf for all AGGRIEVED EMPLOYEES.

12 27. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
14 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
15 properly record and provide legally required meal and rest periods, (c) failed to pay
16 overtime wages, (d) failed to pay minimum wages, (e) failed to reimburse for required
17 expenses, and (f) failed to provide wages when due in violation of the applicable Labor
18 Code sections listed in Labor Code §§ 201, 202, 203, 204 et seq., 210, 226(a), 226.7, 351, 510,
19 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
20 Section 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and
21 thereby gives rise to civil penalties as a result of such conduct. PLAINTIFF hereby seeks
22 recovery of only civil penalties as prescribed by the Labor Code Private Attorney General
23 Act of 2004 as the representative of the State of California for the illegal conduct
24 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES..
25
26

27 **PRAYER FOR RELIEF**
28

1 WHEREFORE, Plaintiff, prays for judgment against DEFENDANTS, and each of
2 them jointly and severally, as follows:

3 1. On behalf of the Stae of California and with respect to all AGGRIEVED
4 EMPLOYEES:

5 a. Recovery of civil penalties as prescribed by the Labor Code Private
6 Attorneys General Act of 2004; and

7 b. An award of attorneys' fees and costs of suit, as allowable under the law,
8 including but not limited to Labor Code §2699 g (1).

9 Law Offices of Arthur R. Botham, Jr. ALC
10 Zachary T. Tyson, ALC

11 Dated: November 1, 2022

12 By: s/ Arthur R. Botham, Jr.
13 Arthur R. Botham, Jr.
14 Zachary T. Tyson
15 Attorneys for Plaintiffs
16
17
18
19
20
21
22
23
24
25
26
27
28