

FILED
Superior Court Of California,
Sacramento
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vblonson
By..... Deputy
Case Number:
34-2023-00332507

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11
12 CHRISTOPHER WEISS, individually and on
behalf of all other aggrieved employees

13 Plaintiff,

14 vs.

15 VICTORY AUTOMOTIVE GROUP, INC., a
16 Michigan corporation; VICTORY
AUTOMOTIVE GROUP, LLC, a Florida
17 limited liability company; CAPPO
MANAGEMENT XXIX, INC. dba HARROLD
18 FORD, a California corporation,; and DOES 1
through 50, inclusive,

19 Defendants.
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CASE NO.:

**COMPLAINT FOR VIOLATION OF
THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

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

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff CHRISTOHER WEISS ("PLAINTIFF"), individually and on behalf of all
2 aggrieved employees, hereby alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other aggrieved
5 employees of defendants VICTORY AUTOMOTIVE GROUP, INC. ("VAG INC."), a Michigan
6 corporation; VICTORY AUTOMOTIVE GROUP, LLC ("VAG LLC"), a Florida limited liability
7 company; CAPPO MANAGEMENT XXIX, INC. dba HARROLD FORD ("CAPPO
8 MANAGEMENT"), a California corporation; and DOES 1 through 50 inclusive (collectively
9 "DEFENDANTS") in the State of California during the relevant statutory period to recover
10 penalties arising from DEFENDANTS' failure to provide employees meal and rest periods (or
11 compensation therefor) as required under California law, unpaid minimum and overtime wages,
12 and unreimbursed business expenses.

13 **JURISDICTION AND VENUE**

14 2. The Superior Court of the State of California has jurisdiction in this matter because
15 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do
16 business in California and regularly conduct business in California. Further, no federal question is at
17 issue because the claims are based solely on California law.

18 3. Venue is proper in this judicial district and the County of Sacramento, California
19 because PLAINTIFF and other persons similarly situated performed work for DEFENDANTS in
20 the County of Sacramento, DEFENDANTS maintain offices and facilities and transact business
21 in the County of Sacramento, and DEFENDANTS' illegal payroll policies and practices which
22 are the subject of this action were applied, at least in part, to PLAINTIFF and other persons
23 similarly situated in the County of Sacramento.

24 **PARTIES**

25 4. PLAINTIFF is a resident of the State of California. At times material to this
26 complaint, PLAINTIFF was employed by DEFENDANTS in the State of California as a non-
27 exempt employee.

28 5. PLAINTIFF is informed and believes, and thereon alleges, that VAG, INC. is, and

1 at all times relevant hereto was, a corporation organized and existing under the laws of the State
2 of Michigan. PLAINTIFF is further informed and believes, and thereon alleges, that VAG INC.
3 is authorized to conduct business in the State of California, and does conduct business in, the
4 State of California. Specifically, VAG INC. maintains offices and facilities, conducts business,
5 and engages in illegal payroll practices or policies in the County of Sacramento, State of
6 California.

7 6. PLAINTIFF is informed and believes, and thereon alleges, that VAG LLC, is, and
8 at all times relevant hereto was, a limited liability company organized and existing under the laws
9 of the State of Florida. PLAINTIFF is further informed and believes, and thereon alleges, that
10 VAG LLC is authorized to conduct business in the State of California, and does conduct business
11 in, the State of California. Specifically, VAG LLC, maintains offices and facilities, conducts
12 business, and engages in illegal payroll practices or policies in the County of Sacramento, State of
13 California.

14 7. PLAINTIFF is informed and believes, and thereon alleges, that CAPPO
15 MANAGEMENT is, and at all times relevant hereto was, a corporation organized and existing
16 under the laws of the State of California. PLAINTIFF is further informed and believes, and
17 thereon alleges, that CAPPO MANAGEMENT is authorized to conduct business, and does
18 conduct business in, the State of California. Specifically, CAPPO MANAGEMENT maintains
19 offices and facilities, conducts business, and engages in illegal payroll practices or policies in the
20 County of Sacramento, State of California.

21 8. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
22 PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE defendants under fictitious
23 names. PLAINTIFF is informed and believes, and thereon alleges, that each defendant
24 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
25 that PLAINTIFF and other aggrieved employees' injuries and damages, as alleged herein, were
26 proximately caused by the conduct of such DOE defendants. PLAINTIFF will seek leave of the
27 court to amend this Complaint to allege their true names and capacities of such DOE defendants
28 when ascertained.

1 9. At all relevant times herein, DEFENDANTS were the joint employers of
2 PLAINTIFF and other aggrieved employees. PLAINTIFF is informed and believes, and thereon
3 alleges, that at all relevant times DEFENDANTS were the alter egos, divisions, affiliates,
4 integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-
5 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible,
6 of each other. Each defendant was completely dominated by his, her or its co-defendant, and each
7 was the alter ego of the other.

8 10. At all relevant times herein, PLAINTIFF and other aggrieved employees were
9 employed by DEFENDANTS under employment agreements that were partly written, partly oral,
10 and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and
11 each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying
12 PLAINTIFF and other aggrieved employees all wages earned and due, through methods and
13 schemes which include, but are not limited to, failing to provide meal periods; failing to authorize
14 and permit rest breaks; failing to pay minimum and overtime wages; failing to provide accurate
15 itemized statements; failing to properly maintain records; and failing to properly compensate
16 PLAINTIFF and other aggrieved employees for necessary expenditures, in violation of the
17 California Labor Code ("Labor Code") and the applicable Industrial Welfare Commission
18 ("IWC") Wage Order.

19 11. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
20 of the acts and omissions alleged herein were performed by, and/or attributable to, all
21 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
22 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
23 and scope of said agency, employment and/or direction and control.

24 12. As a direct and proximate result of DEFENDANTS' unlawful actions,
25 PLAINTIFFS and other aggrieved employees have suffered, and continue to suffer, from loss of
26 earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction
27 of this Court.

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1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 13. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
3 Code §§ 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and
4 former non-exempt aggrieved employees of DEFENDANTS in the State of California at any time
5 within the period beginning one (1) year and sixty-five (65) days prior to the filing of this action,
6 and ending at the time this action settles or proceeds to final judgment (“PENALTY PERIOD”).

7 14. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice by
8 online filing on October 20, 2022 to the California Labor and Workforce Development Agency
9 (“LWDA”) and by certified mail to DEFENDANTS of the specific provisions of the California
10 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories
11 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has
12 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

13 15. Therefore, PLAINTIFF has complied with all of the requirements set forth in
14 California Labor Code § 2699.3 to commence a representative action under PAGA.

15 **FACTUAL ALLEGATIONS**

16 **Failure to Provide Required Meal Periods**

17 **[Labor Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 11]**

18 16. During the PENALTY PERIOD, DEFENDANTS have had, and continue to have,
19 a policy and practice of failing to provide PLAINTIFFS and other aggrieved employees full and
20 timely meal periods as required by California Labor Code §§ 226.7 and 512 and IWC Wage
21 Order No. 4-2001 § 11.

22 17. As a result of DEFENDANTS’ policies and practices as alleged herein,
23 PLAINTIFF and other aggrieved employees have regularly been denied, and continue to be
24 denied, the opportunity to take full, uninterrupted, and timely meal periods as required under
25 California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 4-2001 § 11.

26 18. DEFENDANTS have further violated, and continue to violate, Labor Code §§
27 226.7 and 512 and IWC Wage Order No. 7-2001, § 11 by failing to compensate PLAINTIFF and
28 other aggrieved employees who were not provided with a meal period, in accordance with the

1 applicable Wage Order, one (1) additional hour of compensation at each employee's regular rate
2 of pay for each workday that a meal period was not provided.

3 **Failure to Provide Required Rest Periods**

4 **[Labor Code §§ 226.7; IWC Wage Order No. 4-2001, § 12]**

5 19. During the PENALTY PERIOD, DEFENDANTS have had, and continue to have,
6 a policy and practice of failing to authorize and permit PLAINTIFF and other aggrieved
7 employees to take rest breaks as required by California Labor Code § 226.7 and IWC Wage Order
8 No. 4-2001 § 12. As a result of DEFENDANTS' policies and practices as alleged herein,
9 PLAINTIFFS and other aggrieved employees have regularly been denied, and continue to be
10 denied, the opportunity to take full, uninterrupted, and timely rest periods as required under
11 California Labor Code § 226.7 and IWC Wage Order No. 4-2001 § 12.

12 20. DEFENDANTS have further violated, and continue to violate, California Labor
13 Code § 226.7 and IWC Wage Order No. 4-2001, § 12 by failing to pay PLAINTIFF and other
14 aggrieved employees who were not provided with a rest period, in accordance with the applicable
15 Wage Order, one (1) additional hour of compensation at each employee's regular rate of pay for
16 each workday that a rest period was not authorized and permitted.

17 **Failure to Pay Minimum Wages**

18 **[Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001 § 4]**

19 21. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 5-
20 2001 § 4, payment to an employee of less than the applicable minimum wage for all hours
21 worked in a payroll period is unlawful.

22 22. During the PENALTY PERIOD, DEFENDANTS failed to pay PLAINTIFF and
23 other aggrieved employees minimum wages for all hours worked by, among other things:
24 requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work off the
25 clock; requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work
26 through breaks; illegally and inaccurately recording time in which PLAINTIFF and other
27 aggrieved employees worked; and other methods to be discovered.

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1 **Failure to Pay Overtime Wages**

2 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001 § 3]**

3 23. Pursuant to California Labor Code §§ 510 and 1194 and IWC Wage Order No. 5-
4 2001 § 3, DEFENDANTS are required to compensate PLAINTIFF and other aggrieved
5 employees for all overtime at a rate of one and one-half (1 ½) times the regular rate of pay for all
6 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the
7 first eight (8) hours on the seventh consecutive workday and at a rate of twice the regular rate of
8 pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
9 in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

10 24. PLAINTIFF and other aggrieved employees are current and former non-exempt
11 employees entitled to the protections of California Labor Code §§ 510 and 1194 and IWC Wage
12 Order No. 5-2001. During the PENALTY PERIOD, DEFENDANTS failed to compensate, and
13 continue to fail to compensate, PLAINTIFF and other aggrieved employees for all overtime hours
14 worked as required under the foregoing provisions of the California Labor Code and IWC Wage
15 Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double
16 the regular rate of pay as provided by California Labor Code §§ 510 and 1194 and IWC Wage
17 Order No. 5-2001 § 3; requiring, suffering or permitting PLAINTIFF and other aggrieved
18 employees to work off the clock; requiring, suffering or permitting PLAINTIFF and other
19 aggrieved employees to work through meal breaks; illegally and inaccurately recording time in
20 which PLAINTIFF and other aggrieved employees worked; and other methods to be discovered.

21 **Failure to Timely Pay Wages During Employment**

22 **[Cal. Labor Code § 204]**

23 25. Pursuant to California Labor Code § 204, for all labor performed between the 1st
24 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
25 employees between the 16th and 26th day of the month during which the labor was performed.
26 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
27 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
28 between the 1st and 10th day of the following calendar month. In addition, California Labor

1 Code § 204 provides that all wages earned for labor in excess of the normal work period shall be
2 paid no later than the payday of the next regular payroll period.

3 26. During the PENALTY PERIOD, DEFENDANTS failed to timely pay
4 PLAINTIFF and other aggrieved employees all the wages for labor performed by the next regular
5 payroll period as required by California Labor Code § 204.

6 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

7 **[Cal. Labor Code §§ 201, 202]**

8 27. Pursuant to California Labor Code §§ 201 and 202, DEFENDANTS are required
9 to timely pay all earned and unpaid wages to an employee upon separation.

10 28. California Labor Code § 201 mandates that if an employer discharges an
11 employee, the employee's wages accrued and unpaid at the time of discharge are due and payable
12 immediately.

13 29. Pursuant to California Labor Code § 202, DEFENDANTS are required to pay all
14 accrued wages due to an employee no later than 72 hours after the employee quits his or her
15 employment, unless the employee provided 72 hours previous notice of his or her intention to
16 quit, in which case the employee is entitled to his or wages at the time of quitting.

17 30. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to
18 pay accrued wages and other compensation to PLAINTIFF and other aggrieved employees in
19 accordance with California Labor Code §§ 201 and 202.

20 **Failure to Maintain Required Records**

21 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5-2001 § 7]**

22 31. During the PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
23 policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned
24 and due, DEFENDANTS failed to maintain records as required under California Labor Code §§
25 226 and 1174 and IWC Wage Order No. 5-2001 § 7, including but not limited to the following
26 records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal
27 periods; time records showing when each employee begins and ends each work period; and
28 accurate itemized statements.

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1 and former non-exempt employees of DEFENDANTS pursuant to the procedures specified in
2 Labor Code § 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more
3 of the alleged Labor Code violations was committed against PLAINTIFF during the PENALTY
4 PERIOD.

5 37. Pursuant to Labor Code §§ 2698-2699.5, PLAINTIFF seeks to recover civil
6 penalties from DEFENDANTS in a representative action for the violations set forth above,
7 including but not limited to violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510,
8 512, 1174(d), 1194, 1197, 1198, and 2802. PLAINTIFF and other aggrieved employees are also
9 entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code
10 § 2699(g)(1).

11 38. Pursuant to Labor Code § 2699(a), PLAINTIFF seeks civil penalties for
12 DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically
13 provided, including but not limited to the following:

- 14 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
15 DEFENDANTS are subject to a civil penalty in the amount of one hundred
16 dollars (\$100) for the initial violation for each failure to pay each employee
17 and two hundred dollars (\$200) per employee for violations in subsequent
18 pay periods.
- 19 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a),
20 DEFENDANTS are subject to a civil penalty in the amount of two hundred
21 and fifty dollars (\$250) per aggrieved employee for the initial pay period
22 where a violation occurs and one thousand dollars (\$1,000) per aggrieved
23 employee for violations in subsequent pay periods.
- 24 c. Pursuant to Labor Code § 558(a), "[a]ny employer or other person acting
25 on behalf of an employer who violates, or causes to be violated, a section
26 of this chapter or any provision regulating hours and days of work in any
27 order of the Industrial Welfare Commission," including Labor Code §§ 510
28 and 512, shall be subject to a civil penalty, in addition to any other penalty

provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid.

d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d), DEFENDANTS are subject to a civil penalty of five hundred dollars (\$500).

e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

39. Labor Code § 2699(f) provides that for all Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. PLAINTIFF seeks such civil penalties under Labor Code § 2699(f) for DEFENDANTS' violations of Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to Labor Code §§ 201, 202, 203, 226.7, 1194, 1197, 1198, and 2802.

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1. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);
2. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
3. For reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g) and/or any other applicable provisions providing for attorneys' fees and costs; and
4. For such further relief that the Court may deem just and proper.

Respectfully submitted,

MATERN LAW GROUP, PC



MATTHEW J. MATERN
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WEISS individually, and on behalf of all
other aggrieved employees

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DATED: January 4, 2023

MATERN LAW GROUP, PC



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