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ADRIAN GARCIA individually,
and on behalf of himself and all
other aggrieved employees

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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
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IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, HALL OF JUSTICE

ADRIAN GARCIA, an individual, on behalf of
all other aggrieved employees

Plaintiffs,

v.

MAG WEST MOSSY HONDA II, LP, a
California Limited Partnership, PHILIP E.
MOSSY, an individual, and DOES 1 through 20
inclusive,

Defendants.

Case No. 37-2023-00027660-CU-OE-CTL

COMPLAINT FOR:

1. Civil Penalties in Violation of Labor Code §§ 2698, et seq.;
2. Unfair Competition in Violation of Labor Code §§ 17200, et seq.

Jury Trial Demanded

1. Plaintiff ADRIAN GARCIA, on behalf of himself, as an aggrieved employee and on behalf of all other aggrieved employees, is informed and believes and thereon alleges as follows:

PARTIES, VENUE AND JURISDICTION

2. This enforcement action is brought pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698, et seq. ("PAGA") to recover civil penalties and any other available relief on behalf of Plaintiff, the State of California, and other current and former aggrieved employees of Defendants and against whom one or more Labor Code violations or any provision regulating hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth in this Complaint.

1 3. Plaintiff ADRIAN GARCIA worked as a line technician for MAG WEST MOSSY
2 HONDA II, LP, PHILIP E. MOSSY, and DOES 1-20, a car dealership, at 3615 Lemon Grove Ave,
3 Lemon Grove, CA 91945, from June of 2022 to November 16, 2022. Plaintiff's job duties included
4 performing diagnosing and repairing vehicles and performing maintenance on vehicles of MAG
5 WEST MOSSY HONDA II, LP customers.

6 4. Plaintiff ADRIAN GARCIA was at all times relevant hereto a resident of San Diego,
7 California.

8 5. At all relevant times herein, Defendant, MAG WEST MOSSY HONDA II, LP was a
9 limited partnership with its principal place of business in Lemon Grove, California.

10 6. Defendant PHILIP E. MOSSY was at all times relevant herein the principal of MAG
11 WEST MOSSY HONDA II, LP.

12 7. Venue is proper pursuant to California Civil Procedure Code §§ 395 (a) and 395.5
13 because this suit was filed in the county where the liability arises, where the breach occurred and where
14 Defendants resided at the commencement of this action.

15 8. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
16 unity of interest and ownership between MAG WEST MOSSY HONDA II, LP, PHILP E. MOSSY
17 and DOES 1-20 that the individuality and separateness of defendants have ceased to exist.

18 9. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
19 of purported corporate existence, MAG WEST MOSSY HONDA II, LP, PHILIP E. MOSSY and
20 DOES 1-20 are, in reality, one and the same.

21 10. MAG WEST MOSSY HONDA II, LP, PHILIP E. MOSSY and DOES 1-20 do not
22 comply with all requisite corporate formalities to maintain a legal and separate existence.

23 11. The business affairs of MAG WEST MOSSY HONDA II, LP, PHILIP E. MOSSY and
24 DOES 1-20 are, and at all times relevant were, so mixed and intermingled that the same cannot
25 reasonably be segregated, and the same are in inextricable confusion. MOSSY HOND MAG WEST
26 MOSSY HONDA II, LP, is, and at all times relevant hereto was, used by DOES 1-20 and PHILIP E.
27 MOSSY as a mere shell and conduit for the conduct of certain of Defendants' affairs, and is, and was,
28 the alter ego of DOES 1-20. The recognition of the separate existence of MAG WEST MOSSY

1 HONDA II, LP would not promote justice, in that it would permit Defendants to insulate themselves
2 from liability to Plaintiff for violations of state law. The corporate existence of MAG WEST MOSSY
3 HONDA II, LP and DOES 1-20 should be disregarded in equity and for the ends of justice because
4 such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

5 12. Accordingly, MAG WEST MOSSY HONDA II, LP, and DOES 1-20 are the alter egos
6 of one another, and the fiction of their separate corporate existence must be disregarded.

7 13. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
8 thereon alleges that MAG WEST MOSSY HONDA II, LP, PHILP E. MOSSY, and DOES 1-20 are
9 joint employers by virtue of a joint enterprise, and that the employees and agents of MAG WEST
10 MOSSY HONDA II, LP were also employees of and DOES 1-20. MAG WEST MOSSY HONDA
11 II, LP MOSSY HONDA employees performed services for each and every one of Defendants, and to
12 the mutual benefit of all Defendants, and all Defendants shared control of them as employees, either
13 directly or indirectly, and the manner in which Defendants' business was and is conducted.

14 14. The true names and capacities, whether individual, corporate, associate, or otherwise,
15 of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
16 therefore these Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
17 Complaint to insert the true names and capacities of these Defendants when they become known to
18 Plaintiff. Plaintiff is informed and believes and based thereupon alleges, that each of the fictitiously
19 named Defendant is responsible for the wrongful acts alleged herein and are therefore liable to Plaintiff
20 as alleged hereinafter.

21 15. Plaintiff is informed and believes and based thereupon alleges, that at all times relevant
22 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
23 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendant, and
24 each of them, and in doing the things alleged herein, were acting at least in part within the course and
25 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or
26 joint venture and with the permission and consent of each of the other Defendant.

27 16. Plaintiff is informed and believes and based thereupon alleges, that Defendant,
28 including those defendants named as DOES 1-20 acted in concert with one another to commit the

1 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
2 wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and
3 based thereupon alleges, that Defendant, including those defendants named as DOES 1-20 formed and
4 executed a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
5 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to
6 cause and actually causing Plaintiff's harm.

7 17. Whenever and wherever reference is made in this Complaint to any act or failure to act
8 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
9 and/or failures to act by each Defendant acting individually, jointly and severally.

10 **GENERAL ALLEGATIONS**

11 18. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and aggrieved
12 employees were not paid for all hours worked because all hours worked were not recorded.

13 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
14 have known that Plaintiff and aggrieved employees were entitled to receive certain wages for
15 overtime compensation and that they were in fact not receiving certain wages for overtime
16 compensation.

17 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and aggrieved employees were entitled to receive at least minimum
19 wages for compensation and that they were not receiving at least minimum wages for work that was
20 required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and aggrieved
21 employees were not paid at least minimum wages for work done off-the-clock.

22 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and aggrieved employees were entitled to meal periods in
24 accordance with the Labor Code or payment of one additional hour of pay at their regular rates of
25 pay when they were not provided with timely, uninterrupted, 30 minute meal periods and that Plaintiff
26 and aggrieved employees were not provided with all meal periods or payment of one additional hour
27 of pay at their regular rates of pay when they did not receive a timely, uninterrupted, 30 minute meal
28 period.

1 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and aggrieved employees were entitled to 10 minute rest periods in
3 accordance with the Labor Code and applicable IWC Wage Order or payment of one additional hour
4 of pay at their regular rates of pay when they were not provided with a compliant 10 minute rest
5 period and that Plaintiff and aggrieved employees were not provided compliant 10 minute rest
6 periods or payment of one additional hour of pay at their regular rates of pay when they were not
7 provided a compliant 10 minute rest period.

8 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and aggrieved employees were entitled to timely payment of all
10 wages earned upon termination of employment. In violation of the California Labor Code, Plaintiff
11 and aggrieved employees did not receive payment of all wages due, including overtime wages,
12 minimum wages, and meal and rest period premiums, within the time periods required by law.

13 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and aggrieved employees were entitled to timely payment of wages
15 during their employment. Plaintiff and aggrieved employees did not receive payment of all wages,
16 including overtime wages, minimum wages, and meal and rest period premiums in violation of the
17 California Labor Code.

18 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and aggrieved employees were entitled to receive full
20 reimbursement for all business-related expenses and costs they incurred in direct consequence of the
21 discharge of their duties and that they did not receive full reimbursement of applicable business-related
22 expenses and costs incurred.

23 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and
25 aggrieved employees for all hours worked, and that Defendants had the financial ability to pay such
26 compensation, but willfully, knowingly, and intentionally failed to do so.

27
28

FIRST CAUSE OF ACTION
CIVIL PENALTIES IN VIOLATION OF
LABOR CODE § 2699, ET SEQ.
(AGAINST ALL DEFENDANTS)

27. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

28. Under Labor Code § 2698, et seq., Plaintiff, as a aggrieved employee, may bring an action against defendants, on behalf of themselves and other current or former employees, seeking civil penalties for defendants' violations of the California Labor Code.

29. Plaintiff was a aggrieved employee within the meaning of Labor Code §2698, et seq. by virtue of the numerous Labor Code violations they was subjected to as plead herein.

30. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse for necessary business expenditures in violation of Labor Code § 2802, failing to pay minimum wages in violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198, failing to pay overtime in violation Labor Code §§ 510 and 1198, failing to provide meal periods in violation of §§ 226.7, 512 (a), and 1198, failing to provide rest periods in violation of Labor Code §§ 226.7 and 1198, and willful failure to pay wages in violation of Labor Code § 201-203.

31. On March 13, 2023, Plaintiff provided written notice by online filing with the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, as required by Labor Code § 2699.3 (a) (1) (A).

32. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and Workforce Development Agency of its intent to pursue an action against Defendants.

33. As a direct and proximate result of Defendants' California Labor Code violations as set forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code § 2699 (f), for those Labor Code sections not expressly providing

1 for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
2 provide for a penalty.

3 34. The PAGA penalty period encompasses all employees who are non-exempt and hourly-
4 paid in California who received at least one wage statement within one year prior to the filing of the
5 PAGA notice until the date of trial.

6 35. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the
7 recovered civil penalties.

8 **SECOND CAUSE OF ACTION**

9 **UNFAIR COMPETITION IN VIOLATION OF**

10 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

11 **(AGAINST ALL DEFENDANTS)**

12 36. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
13 though fully set forth herein.

14 37. Defendants are a "person" as defined by California Business & Professions Code
15 sections 17201.

16 38. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful
17 and harmful to Plaintiff, the aggrieved employees and to the general public. Plaintiff and the aggrieved
18 employees have suffered injury in fact and have lost money as a result of Defendants' unlawful
19 business practices. Plaintiff and the aggrieved employees seek to enforce important rights affecting
20 the public interest within the meaning of Code of Civil Procedure section 1021.5.

21 39. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
22 predicated on the violation of any state or federal law.

23 40. The employment practices engaged in by Defendant as plead herein, including
24 violations of the Labor Code sections, Code of Regulations and Wage Orders, constitute unfair
25 business practices in violation of Business & Professions Code §§17200, *et seq.*

26 41. As a result of Defendants' unfair business practices, Defendants have reaped unfair
27 benefits and illegal profits at the expense of Plaintiff, the aggrieved employees and members of the
28 public.

42. Pursuant to California Business & Professions Code §§ 17200, et seq. Plaintiff and the aggrieved employees are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and the aggrieved employees; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

PRAYER FOR RELIEF

Plaintiff, individually, on behalf of all other aggrieved employees pray for relief and judgment against Defendant as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of \$25,000, exclusive of interest and costs.

**As to the First Cause of Action
(Civil Penalties under the PAGA)**

2. That the Court declare, adjudge, and decree that Defendants violated all California Labor Code sections plead herein, including Labor Code §§ 201-203, 226.7, 510, 512, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

3. For civil penalties pursuant to 210, 226.3, 256, 558, 1174.5, 1197.1, 2699 (a) and/or 2699 (a), (f) and (g), for violations of all California Labor Code sections plead herein, including Labor Code §§ 201-203, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

4. For attorneys' fees and costs pursuant to California Labor Code § 2699 (g) (1), and any and all other relevant statutes, for Defendants' violations of all California Labor Code sections pleaded herein, including Labor Code §§ 201-203, 226.7, 510, 512, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

5. For pre-judgment and post-judgment interest as provided by law; and

6. For such other and further relief as the Court deems just and appropriate.

As to the Second Cause of Action (Unfair Competition)

7. That the employment practices engaged in by Defendants as plead herein, including

1 violations of the Labor Code, Code of Regulations and Wage Orders, constitute unfair business
2 practices in violation of Business & Professions Code §§17200, et seq.;

3 8. For restitution of unpaid wages to Plaintiff and all aggrieved employees and
4 prejudgment interest from the day such amounts were due and payable;

5 9. For the appointment of a receiver to receive, manage and distribute any and all funds
6 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result
7 of violations of California Business & Professions Code sections 17200, et seq.;

8 10. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
9 Code of Civil Procedure § 1021.5; and

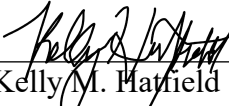
10 11. For such other and further relief as the Court deems just and appropriate.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff, individually, and on behalf of all other aggrieved employees, hereby demands a trial
13 by jury on all issues.

14 **PIMENTEL LAW, P.C.**

15
16 Dated: June 30, 2023

By: 

Kelly M. Matfield
Attorney for the Plaintiff