

EMPLOYMENT LAWYERS GROUP
KARL GERBER (SBN 166003)
13418 VENTURA BLVD.
SHERMAN OAKS, CA. 91423
TELEPHONE: (818) 783-7300
FACSIMILE: (818) 995-7159

ATTORNEY FOR PLAINTIFF, ARTURO CASILLAS

STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

ARTURO CASILLAS

Plaintiff,

vs.

MCLB, INC.; DOES 1 through 100 inclusive

Defendants.

) CASE NO: BCV-23-101014
)
) FIRST AMENDED COMPLAINT FOR
) DAMAGES AND DEMAND FOR JURY
) TRIAL EXCEPT THE 7TH AND 8TH CAUSES
) OF ACTION BASED UPON:
)
) 1. MINIMUM WAGE VIOLATIONS
) 2. OVERTIME VIOLATIONS
) 3. PROMISSORY ESTOPPEL
) 4. CALIFORNIA LABOR CODE
) SECTION 2802 VIOLATIONS
) 5. CALIFORNIA LABOR CODE SECTION
) 226 PENALTIES
) 7. BUSINESS & PROFESSIONS
) CODE VIOLATIONS 17200
) 8. PAGA PENALTIES
)
)
)

Plaintiff, ARTURO CASILLAS complains and alleges as follows:

GENERAL ALLEGATIONS
(AGAINST ALL DEFENDANTS)

///

1
2 1. At all times herein mentioned Plaintiff, ARTURO CASILLAS is a resident of the State
3 of California, County of Kern.

4
5 2. At all times herein mentioned, Defendant, MCLB, INC. has been a duly organized
6 California corporation with a principal place of business located at 3101 Pacheco Road in
7 Bakersfield, California 93313, and employing Plaintiff and more than 26 people at their Lexus
8 dealership as a mechanic at 5101 Gasoline Alley in Bakersfield, California 93313.

9
10 3. Wage Order 4(9)(B) requires employers to pay employees twice minimum wage if they
11 are required to use their own tools and equipment to work as mechanics.

12 4. Plaintiff's managers Ray Matley and Aris, amongst others, promised Plaintiff he would
13 be paid for the number of hours flagged if they exceeded the actual number of hours worked.
14 Management stated human resources was behind this policy. Flagged hours are predetermined
15 hours the dealer believes it takes to do various mechanical jobs. Flagged hours must be paid at
16 twice minimum wage to Plaintiff. For every pay period Defendant provides Plaintiff with the
17 number of flag hours he completed. Plaintiff was not paid for the number of flagged hours if his
18 flagged hours exceeded the actual number of hours worked.

19
20 5. Defendant's pay practices are violatory as follows: 1) Flagged hours are not paid at
21 twice minimum wage; 2) If Plaintiff works more flagged hours than actual hours he is not paid for
22 the flagged hours at twice minimum wage; 3) California Labor Code Section 2751 requires that
23 commission agreements be in writing, state the method by which commissions shall be computed,
24 and be signed. No such document exists; 4) The paystubs do not comply with California Labor
25 Code Section 226 as described in that cause of action; 5) Plaintiff was not paid for all hours
26 worked.
27
28

1 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
2 associate, of those defendants fictitiously sued as DOES 1 through 100 inclusive and so the
3 Plaintiff sues them by these fictitious names. Upon discovering the true names and capacities of
4 these fictitiously named Defendants, the Plaintiff will amend this complaint to show the true
5 names and capacities of these fictitiously named defendants.
6

7 7. All of the foregoing and following actions taken towards the Plaintiff that are alleged in
8 this complaint were carried out by managerial employees and agents of each other acting in a
9 deliberate, cold, callous, malicious, oppressive, and intentional manner in order to injure and
10 damage the Plaintiff.
11

12
13 **FIRST CAUSE OF ACTION**
14 **FOR MINIMUM WAGE VIOLATIONS**
15 **(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)**
16

17
18 8. Plaintiff realleges the information set forth in Paragraphs 1-7 and incorporates those
19 paragraphs as though fully stated in this Cause of Action.

20 9. Wage Order 4(9)(B) requires Plaintiff be paid twice minimum wage for every hour
21 worked. Defendant's flag rate commission plan paid less than twice minimum wage per hour.
22 Defendant also failed to pay Plaintiff for each hour worked. Because he was not paid for each
23 hour worked he was not paid enough for all of his hours to be paid at twice minimum wage.
24 Plaintiff was also paid a vacation rate at an hourly rate less than twice minimum wage.
25

26 10. Plaintiff prays for relief under California Labor Code Sections 1194 and 1194.2
27 including liquidated damages to pay Plaintiff minimum wage for all hours worked, attorney fees,
28 and costs. Plaintiff prays for California Labor Code Section 1197.1 civil penalties of \$250.00 per

1 pay period when not paid minimum wage for each hour worked. Plaintiff also prays for penalties
2 under Wage Order 4(20) of \$50 for the first paycheck that failed to pay minimum wage and \$100
3 for each subsequent paycheck.
4

5
6 **SECOND CAUSE OF ACTION**
7 **FOR OVERTIME & DOUBLE TIME VIOLATIONS**
8 **(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)**
9

10
11 11. Plaintiff realleges the information set forth in Paragraphs 1-7, Paragraphs 8-10 of the
12 First Cause of Action, and incorporates those paragraphs as though fully stated in this Cause of
13 Action.

14 12. Flagged hours were not paid at the correct overtime rate. Actual hours were not paid at
15 the correct overtime rate. The regular hourly rate paid was incorrect and did not include the full
16 value of the flagged hours. In addition, the paystubs claim overtime was being paid at rates clearly
17 less than one and a half times Plaintiff's regular rate of pay. It is also believed Plaintiff was not
18 paid for each hour worked which caused him not to earn overtime. Accordingly California Labor
19 Code Sections 1194 requires the Plaintiff to receive overtime and double time and so does
20 California Labor Code Section 510.
21

22 14. Plaintiff further prays for overtime and double time pay for all hours he worked that
23 entitle him to overtime and double time pay at the correct hourly rates. Plaintiff prays for relief
24 under California Labor Code Section 1194 including unpaid overtime, double time, attorney fees,
25 and costs.
26

27 ///

1 **THIRD CAUSE OF ACTION**
2 **PROMISSORY ESTOPPEL**
3 **(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)**
4

5
6 15. Plaintiff realleges the information set forth in Paragraphs 1-7, Paragraphs 8-10 of the
7 First Cause of Action, Paragraphs 11-14 of the Second Cause of Action, and incorporates those
8 paragraphs as though fully stated in this Cause of Action.

9
10 16. Plaintiff's managers Ray Matley and Aris, amongst others, promised Plaintiff he
11 would be paid for the number of hours flagged if they exceeded the actual number of hours
12 worked. Management stated human resources was behind this policy. Flagged hours are
13 predetermined hours the dealer believes it takes to do various mechanical jobs. Flagged hours
14 must be paid at twice minimum wage to Plaintiff. For every pay period Defendant provides
15 Plaintiff with the number of flag hours he completed. Plaintiff relied on these promises to his
16 detriment by working at Defendant which did not always provide him 40 hours of work a week.
17 The incentive for working at Defendant was Plaintiff would earn what a mechanic would earn
18 who worked 40 hours a week and would earn additional compensation if he worked quickly and
19 finished tasks before the predetermined time Defendant expected it would take to do the task.
20 Thus, Plaintiff worked quickly and did more tasks than an employee would typically do in the
21 amount of time he worked.
22

23
24 17. Defendant breached the promise by: 1) Not paying Plaintiff for each flagged hour if
25 those hours exceeded his actual hours worked; 2) Not paying Plaintiff for flagged hours at a legal
26 rate of pay which needed to include twice minimum wage; 3) Using flagged hours to confuse
27 Plaintiff's paycheck to the point he was not paid correctly for anything and there erroneous
28

1 statements about hours worked and pay which made it impossible to figure out why he was paid
2 what he was paid.

3 18. Plaintiff prays for prejudgment interest, and the money he was not paid for the number
4 of hours he flagged which must be paid at twice minimum wage.
5

6
7 **FOURTH CAUSE OF ACTION**
8 **FOR CALIFORNIA LABOR CODE SECTION 2802 VIOLATIONS**
9 **(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)**
10

11
12 19. Plaintiff realleges the information set forth in Paragraphs 1-7, Paragraphs 8-10 of the
13 First Cause of Action, Paragraphs 11-14 of the Second Cause of Action, Paragraphs 15-18 of the
14 Third Cause of Action, and incorporates those paragraphs as though fully stated in this Cause of
15 Action.

16 20. Plaintiff brought many tools and much equipment to work at Defendant. Because
17 Plaintiff was not paid twice minimum wage as Wage Order 4 required, Plaintiff prays to be
18 reimbursed for all tools and equipment he used on the job.
19

20 21. Plaintiff prays for attorney fees and costs under California Labor Code Section 2802c
21 for the purpose of enforcing his rights in this Cause of Action under California Labor Code
22 Section 2802.
23

24 ///

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

FIFTH CAUSE OF ACTION
FOR CALIFORNIA LABOR CODE SECTION 226 PENALTIES
(AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS)

22. Plaintiff realleges the information set forth in Paragraphs 1-7, Paragraphs 8-11 of the First Cause of Action, Paragraphs 12-14 of the Second Cause of Action, Paragraphs 15-18 of the Third Cause of Action.

23. Defendant violated California Labor Code Section 226 in several respects: 1) the paystubs fail to state the correct number of hours worked; 2) the paystubs report erroneous numbers of overtime hours and rates; 3) the paystubs report overtime rates at illegal rates of pay which are not accurate; 4) the paystubs do not report rates of pay at accurate rates of pay.

24. Plaintiff prays for statutory California Labor Code Section 226(e) damages of \$50.00 for the first violation and \$100.00 for each subsequent violation.

25. Plaintiff prays for injunctive relief under California Labor Code Section 226(h) as well as attorney fees and costs in doing so.

SEVENTH CAUSE OF ACTION
BUSINESS & PROFESSIONS CODE VIOLATIONS
(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)

30. Plaintiff realleges the information set forth in Paragraphs 1-7, Paragraphs 8-11 of the First Cause of Action, Paragraphs 12-14 of the Second Cause of Action, Paragraphs 15-18 of the Third Cause of Action, Paragraphs 19-21 of the Fourth Cause of Action, Paragraphs 26-29 of the Sixth Cause of Action as though fully stated herein.

1 31. Quite a few California Labor Codes require employers to pay all wages due to
2 employees. Courts have held the failure to pay wages due violates public policy. The statutory
3 bases that form the unfair, deceptive, false, fraudulent business practices that violate California
4 Business and Professions Code Section 17200 due to Defendant's conduct in not paying Plaintiff
5 for every hour of his work at twice minimum wage, not paying Plaintiff correct overtime rates,
6 not paying Plaintiff according to the flag rate compensation agreement Defendant entered into,
7 and not paying Plaintiff for all hours worked. Defendant was also required to reimburse Plaintiff
8 for reasonable expenses such as tools and equipment if they were not going to pay him twice
9 minimum wage.
10

11 32. Plaintiff prays that California Business and Professions Code Section 17202 be
12 utilized to enforce the labor laws specified in all causes of action and require Defendant to pay
13 Plaintiff for all unpaid wages due at her regular agreed to hourly rates including after such time
14 she was under a contract at Defendant. Plaintiff also prays to be reimbursed for all reasonably
15 necessary expenses she incurred in performing her job.
16

17 33. Plaintiff further prays that California Business and Professions Code Section 17203 be
18 utilized to enjoin Defendant from further engaging in the unlawful and unfair business practices
19 specified in this Cause of Action.
20

21 34. Under this Cause of Action, Plaintiff also prays that equitable relief be given including
22 disgorgement of Defendant's profits, the payment to Plaintiff of all money earned by Defendant
23 while violating the different statutes specified in this lawsuit, restitutionary relief and all remedies
24 under this Cause of Action. Plaintiff further prays for equitable relief in Defendant being
25 responsible for a judgment that pays Plaintiff for unpaid wages and all expenses incurred in doing
26 Plaintiff's job which Defendant did not reimburse.
27
28

1 **EIGHTH CAUSE OF ACTION**

2 **CALIFORNIA LABOR CODE SECTION 2699, 2699.3 PAGA PENALTIES**
3 **(AGAINST THE CORPORATE DEFENDANT AND ALL DOE DEFENDANTS)**
4

5
6 35. Plaintiff realleges the information set forth in Paragraphs 1-7, the First, Second, and
7 Fifth Causes of Action as though fully alleged herein.

8 36. On March 31, 2023 Plaintiff complied with California Labor Code Section 2699.3 by
9 exhausting administrative remedies under California Labor Code Section 2699, et. seq. by filing
10 charges with the Labor Workforce Development Agency/Department of Industrial Relations,
11 attaching this lawsuit, and a document summarizing the PAGA liability as indicated in Exhibit 1
12 attached hereto. The same day the Labor Workforce Development Agency indicated receipt of the
13 charges, and then they were sent the \$75.00 filing fee for filing a PAGA action. More than the
14 sixty-five days passed after sending these charges to the Labor Workforce Development Agency
15 and Defendant. The Labor & Workforce Development Agency did not indicate an intention to
16 investigate, and Plaintiff alleges the corporate Defendant did not cure the violations specified in
17 the charges. Under California Labor Code Section 2699.3c Plaintiff exercises his statutory right to
18 amend their existing complaint to add this Claim arising under California Labor Code Section
19 2699 within 65 days after the Labor & Workforce Development Agency ceased to indicate an
20 intention to investigate and the Defendant failed to indicate they cured their practices.
21

22 37. ARTURO CASILLAS seeks PAGA penalties against Defendant, MCLB, INC. on
23 behalf of himself and all similarly situated employees of Defendant who were nonexempt
24 mechanics going back 1 year from the date of his filing of PAGA charges and continuing into the
25 future.
26
27
28

1 38. Underlying California Labor Code Section 226 violations exist for which PAGA
2 penalties are due under California Labor Code Section 2699.3 The specific PAGA penalties at
3 issue for the PAGA groups are: California Labor Code Sections 226.3, 226.4, and 226.6 which
4 were violated for the reasons specified in the attached Complaint which can be summarized as:
5 1) the paystubs fail to state the correct number of hours worked in multiple columns; 2) the
6 paystubs report erroneous numbers of overtime hours and rates; 3) the paystubs report overtime
7 rates at illegal rates of pay which are not accurate; 4) the paystubs do not report rates of pay at
8 accurate rates of pay.
9

10 39. In addition to the California Labor Code Section 226 underlying violations that exist,
11 underlying California Labor Code Section 510, 516, 1194, 1194.2, and 1197.1 violations led to
12 California Labor Code Section 558 violations due to failures to pay all regular pay, overtime, and
13 double time thereby violating California Labor Code Sections 204, 210, 215, 216, 558 which
14 provide for PAGA penalties because not all wages were paid as required by these statutes.
15

16 40. California Labor Code Section 2751 was violated because the PAGA group were not
17 provided with commission agreements in writing, stating the method by which commissions (flag
18 rates) shall be computed, nor was one signed. No such document exists.
19

20 41. The above 9 PAGA violations per pay period are worth \$1,800.00 in PAGA penalties
21 per employee, per weekly pay period. These violations go back a year before this charge was
22 filed.
23

24 42. There are believed to be 11 people, in addition to Plaintiff, in the PAGA group at the
25 time of this filing.

26 43. Plaintiff prays for attorney fees and costs under California Labor Code Section
27 2699(g) which provide for attorney fees and costs.
28

1 WHEREFORE, the Plaintiff prays for the following relief, to be determined by a jury as
2 follows other than the Seventh and Eighth Causes of Action:

3
4 For all causes of action, Plaintiff prays for:

- 5
6
7 1. For all costs and disbursements incurred in this suit;
8 2. For such other and further relief as the Court deems just and proper;
9 3. For interest, including prejudgment interest, on all causes of action other than
10 the Seventh, statutory interest where allowed based upon the Cause of Action pled;

11
12
13 For all causes of action other than California Business and Professions Code
14 Section 17200:

- 15
16 4. For all costs and disbursements incurred in this suit;
17 5. For such other and further relief as the Court deems just and proper;

18
19
20 For the First Cause of Action:

21
22 4. For all unpaid minimum wages due as well as liquidated damages under California
23 Labor Code Sections 1194, 1194.2 and 1197.1, California Labor Code Section 1197.1 civil
24 penalties of \$250.00 per pay period when not paid minimum wage for each hour worked,
25 penalties under Wage Order 4(20) of \$50 for the first paycheck that failed to pay minimum wage
26 and \$100 for each subsequent paycheck.

27
28 5. Attorney fees and costs under California Labor Code Section 1194;

1 For the Second Cause of Action:

2
3 6. All overtime and double time compensation due under California Labor Code Section
4 1194 as well as all overtime and double time compensation provided by California Labor Code
5 Section 510;
6

7 7. Attorney fees and costs under California Labor Code Section 1194;
8

9 For the Third Cause of Action:

10
11 8. For flagged hours at the proper rate of pay if those hours exceeded his actual hours
12 worked, for flagged hours to be paid at twice minimum wage.
13
14

15 For the Fourth Cause of Action:

16
17 9. Attorney fees and costs under California Labor Code Section 2802c;
18

19 10. Reimbursement for all reasonably necessary expenses for Plaintiff to perform her job
20 at Defendant;
21

22 For the Fifth Cause of Action:

23
24 11. California Labor Code Section 226(e) damages of \$50.00 for the first violation and
25 \$100.00 for each subsequent violation.
26

27 12. Plaintiff prays for injunctive relief under California Labor Code Section 226(h) as
28

1 For the Seventh Cause of Action:

2
3 15. For all equitable and restitutionary remedies allowed.
4

5
6 For the Eighth Cause of Action:

7
8 13. For California Labor Code Section 2699(f) penalties;

9 14. For California Labor Code Section 2699(g) fees and costs.
10

11
12 Dated: June 6, 2023

EMPLOYMENT LAWYERS GROUP

13 /s



14
15 KARL GERBER,
16 ATTORNEY FOR PLAINTIFF,
17 ARTURO CASILLAS
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Karl

Your Last Name *

Gerber

Firm Name (if any) *

Employment Lawyers Group

(Enter "in pro per" if you are representing yourself)

Your Email Address *

employmentlawyersgroup

Your Street Name, Number and Suite/Apt *

13418 Ventura Blvd.

Your Mobile Phone Number

8187837300

Your City *

Sherman Oaks

Your Work Phone Number

8187837300

Your State *

California

Your Zip/Postal Code *

91423

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Arturo Casillas

Plaintiff/Aggrieved Employee Occupation *

Mechanic

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation

Employer Name *

MCLB, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

5101 Gasoline Alley

Employer City *

Bakersfield

Employer State *

California

**Employer Zip/Postal Code ***

93313

Employer Industry *

Auto Repair

**Add additional defendants**

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information**Estimated Number of Employees Impacted by Violations ***

12

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☐ Not paid wages due on termination
- ☒ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☐ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information**Billing First Name ***

Karl

Billing Last Name *

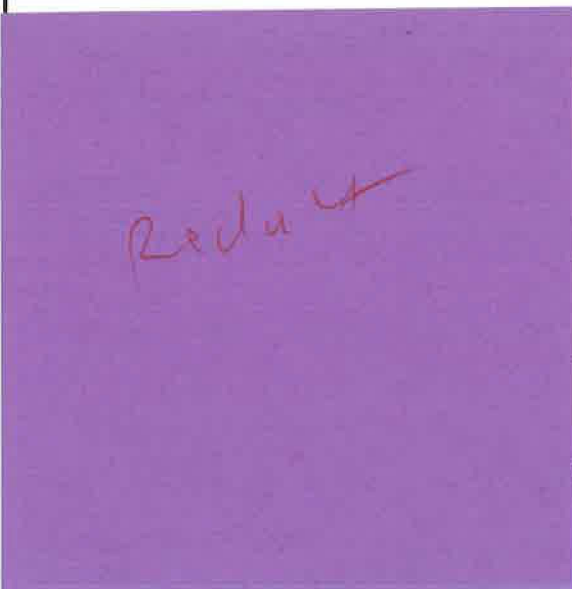
Gerber

Billing Email *

emplawyersgrouppla@gmail

Billing Phone

8187837300

**Notice and Other Attachments****PAGA Claim Notice (must be a .pdf) *****Choose File** casillas.pagaf...lfinalfinal.pdf**Other Attachment – (if any) (must be a .pdf)****Choose File** casillas.comfinalfinal.pdf

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information**Billing First Name ***

Karl

Billing Last Name *

Gerber

Billing Email *

emplayersgrouppla@gmail

Billing Phone

8187837300

Notice and Other Attachments**PAGA Claim Notice (must be a .pdf) *** casillas.pagaf...lfinalfinal.pdf**Other Attachment – (if any) (must be a .pdf)** casillas.comfinalfinal.pdf

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

ARTURO CASILLAS seeks PAGA penalties against Defendant, MCLB, INC. on behalf of himself and all similarly situated employees of Defendant who were nonexempt mechanics going back 1 year from the date of this filing and continuing into the future.

Underlying California Labor Code Section 226 violations exist for which PAGA penalties are due under California Labor Code Section 2699.3 The specific PAGA penalties at issue for the PAGA groups are: California Labor Code Sections 226.3, 226.4, and 226.6 which were violated for the reasons specified in the attached Complaint which can be summarized as: 1) the paystubs fail to state the correct number of hours worked in multiple columns; 2) the paystubs report erroneous numbers of overtime hours and rates; 3) the paystubs report overtime rates at illegal rates of pay which are not accurate; 4) the paystubs do not report rates of pay at accurate rates of pay.

In addition to the California Labor Code Section 226 underlying violations that exist, underlying California Labor Code Section 510, 516, 1194, 1194.2, and 1197.1 violations led to California Labor Code Section 558 violations due to failures to pay all regular pay, overtime, and double time thereby violating California Labor Code Sections 204, 210, 215, and 216 which provide for PAGA penalties because not all wages were paid as required by these statutes.

California Labor Code Section 2751 was violated because the PAGA group were not provided with commission agreements in writing, stating the method by which commissions (flag rates) shall be computed, nor was one signed. No such document exist.

The above 8 PAGA violations per pay period are worth \$1,600.00 in PAGA penalties per employee, per weekly pay period. These violations go back a year before this charge was filed.

There are believed to be 11 people, in addition to Plaintiff, in the PAGA group at the time of this filing.

1 **EMPLOYMENT LAWYERS GROUP**
KARL GERBER (SBN 166003)
2 13418 VENTURA BLVD.
SHERMAN OAKS, CA. 91423
3 TELEPHONE: (818) 783-7300
FACSIMILE: (818) 995-7159
4

5 ATTORNEY FOR PLAINTIFF, ARTURO CASILLAS
6
7

8 **STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF KERN**
10
11

12 ARTURO CASILLAS

13 Plaintiff,

14 vs.

15 MCLB, INC.; DOES 1 through 100 inclusive

16 Defendants.
17
18 _____

) CASE NO:

)

) COMPLAINT FOR DAMAGES AND

) DEMAND FOR JURY TRIAL EXCEPT THE

) 7TH CAUSE OF ACTION BASED UPON:

)

) 1. MINIMUM WAGE VIOLATIONS

) 2. OVERTIME VIOLATIONS

) 3. PROMISSORY ESTOPPEL

) 4. CALIFORNIA LABOR CODE

) SECTION 2802 VIOLATIONS

5. CALIFORNIA LABOR CODE SECTION
226 PENALTIES

6. CALIFORNIA LABOR CODE SECTION
558 VIOLATIONS

7. BUSINESS & PROFESSIONS
CODE VIOLATIONS 17200

19 Plaintiff, ARTURO CASILLAS complains and alleges as follows:
20
21
22

23 **GENERAL ALLEGATIONS**

24 **(AGAINST ALL DEFENDANTS)**
25
26

27 ///

1 1. At all times herein mentioned Plaintiff, ARTURO CASILLAS is a resident of the State
2 of California, County of Kern.

3 2. At all times herein mentioned, Defendant, MCLB, INC. has been a duly organized
4 California corporation with a principal place of business located at 3101 Pacheco Road in
5 Bakersfield, California 93313, and employing Plaintiff and more than 26 people at their Lexus
6 dealership as a mechanic at 5101 Gasoline Alley in Bakersfield, California 93313.

7 3. Wage Order 4(9)(B) requires employers to pay employees twice minimum wage if they
8 are required to use their own tools and equipment to work as mechanics.

9 4. Plaintiff's managers Ray Matley and Aris, amongst others, promised Plaintiff he would
10 be paid for the number of hours flagged if they exceeded the actual number of hours worked.
11 Management stated human resources was behind this policy. Flagged hours are predetermined
12 hours the dealer believes it takes to do various mechanical jobs. Flagged hours must be paid at
13 twice minimum wage to Plaintiff. For every pay period Defendant provides Plaintiff with the
14 number of flag hours he completed. Plaintiff was not paid for the number of flagged hours if his
15 flagged hours exceeded the actual number of hours worked.

16 5. Defendant's pay practices are violatory as follows: 1) Flagged hours are not paid at
17 twice minimum wage; 2) If Plaintiff works more flagged hours than actual hours he is not paid for
18 the flagged hours at twice minimum wage; 3) California Labor Code Section 2751 requires that
19 commission agreements be in writing, state the method by which commissions shall be computed,
20 and be signed. No such document exists; 4) The paystubs do not comply with California Labor
21 Code Section 226 as described in that cause of action; 5) Plaintiff was not paid for all hours
22 worked.

23 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
24 associate, of those defendants fictitiously sued as DOES 1 through 100 inclusive and so the
25

1 Plaintiff sues them by these fictitious names. Upon discovering the true names and capacities of
2 these fictitiously named Defendants, the Plaintiff will amend this complaint to show the true
3 names and capacities of these fictitiously named defendants.
4

5 7. All of the foregoing and following actions taken towards the Plaintiff that are alleged in
6 this complaint were carried out by managerial employees and agents of each other acting in a
7 deliberate, cold, callous, malicious, oppressive, and intentional manner in order to injure and
8 damage the Plaintiff.
9

10
11 **FIRST CAUSE OF ACTION**
12 **FOR MINIMUM WAGE VIOLATIONS**
13 **(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)**
14

15 8. Plaintiff realleges the information set forth in Paragraphs 1-7 and incorporates those
16 paragraphs as though fully stated in this Cause of Action.
17

18 9. Wage Order 4(9)(B) requires Plaintiff be paid twice minimum wage for every hour
19 worked. Defendant's flag rate commission plan paid less than twice minimum wage per hour.
20 Defendant also failed to pay Plaintiff for each hour worked. Because he was not paid for each
21 hour worked he was not paid enough for all of his hours to be paid at twice minimum wage.
22 Plaintiff was also paid a vacation rate at an hourly rate less than twice minimum wage.
23

24 10. Plaintiff prays for relief under California Labor Code Sections 1194 and 1194.2
25 including liquidated damages to pay Plaintiff minimum wage for all hours worked, attorney fees,
26 and costs. Plaintiff prays for California Labor Code Section 1197.1 civil penalties of \$250.00 per
27 pay period when not paid minimum wage for each hour worked. Plaintiff also prays for penalties
28

1 under Wage Order 4(20) of \$50 for the first paycheck that failed to pay minimum wage and \$100
2 for each subsequent paycheck.
3

4
5 **SECOND CAUSE OF ACTION**
6 **FOR OVERTIME & DOUBLE TIME VIOLATIONS**
7 **(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)**
8

9 11. Plaintiff realleges the information set forth in Paragraphs 1-7, Paragraphs 8-10 of the
10 First Cause of Action, and incorporates those paragraphs as though fully stated in this Cause of
11 Action.
12

13 12. Flagged hours were not paid at the correct overtime rate. Actual hours were not paid at
14 the correct overtime rate. The regular hourly rate paid was incorrect and did not include the full
15 value of the flagged hours. In addition, the paystubs claim overtime was being paid at rates clearly
16 less than one and a half times Plaintiff's regular rate of pay. It is also believed Plaintiff was not
17 paid for each hour worked which caused him not to earn overtime. Accordingly California Labor
18 Code Sections 1194 requires the Plaintiff to receive overtime and double time and so does
19 California Labor Code Section 510.
20

21 14. Plaintiff further prays for overtime and double time pay for all hours he worked that
22 entitle him to overtime and double time pay at the correct hourly rates. Plaintiff prays for relief
23 under California Labor Code Section 1194 including unpaid overtime, double time, attorney fees,
24 and costs.
25

26 ///

1 **THIRD CAUSE OF ACTION**

2 **PROMISSORY ESTOPPEL**

3 **(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)**

4
5
6 15. Plaintiff realleges the information set forth in Paragraphs 1-7, Paragraphs 8-10 of the
7 First Cause of Action, Paragraphs 11-14 of the Second Cause of Action, and incorporates those
8 paragraphs as though fully stated in this Cause of Action.

9
10 16. Plaintiff's managers Ray Matley and Aris, amongst others, promised Plaintiff he
11 would be paid for the number of hours flagged if they exceeded the actual number of hours
12 worked. Management stated human resources was behind this policy. Flagged hours are
13 predetermined hours the dealer believes it takes to do various mechanical jobs. Flagged hours
14 must be paid at twice minimum wage to Plaintiff. For every pay period Defendant provides
15 Plaintiff with the number of flag hours he completed. Plaintiff relied on these promises to his
16 detriment by working at Defendant which did not always provide him 40 hours of work a week.
17 The incentive for working at Defendant was Plaintiff would earn what a mechanic would earn
18 who worked 40 hours a week and would earn additional compensation if he worked quickly and
19 finished tasks before the predetermined time Defendant expected it would take to do the task.
20 Thus, Plaintiff worked quickly and did more tasks than an employee would typically do in the
21 amount of time he worked.
22

23
24 17. Defendant breached the promise by: 1) Not paying Plaintiff for each flagged hour if
25 those hours exceeded his actual hours worked; 2) Not paying Plaintiff for flagged hours at a legal
26 rate of pay which needed to include twice minimum wage; 3) Using flagged hours to confuse
27 Plaintiff's paycheck to the point he was not paid correctly for anything and there erroneous
28

1 statements about hours worked and pay which made it impossible to figure out why he was paid
2 what he was paid.

3 18. Plaintiff prays for prejudgment interest, and the money he was not paid for the number
4 of hours he flagged which must be paid at twice minimum wage.
5

6
7 **FOURTH CAUSE OF ACTION**
8 **FOR CALIFORNIA LABOR CODE SECTION 2802 VIOLATIONS**
9 **(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)**
10

11
12 19. Plaintiff realleges the information set forth in Paragraphs 1-7, Paragraphs 8-10 of the
13 First Cause of Action, Paragraphs 11-14 of the Second Cause of Action, Paragraphs 15-18 of the
14 Third Cause of Action, and incorporates those paragraphs as though fully stated in this Cause of
15 Action.

16 20. Plaintiff brought many tools and much equipment to work at Defendant. Because
17 Plaintiff was not paid twice minimum wage as Wage Order 4 required, Plaintiff prays to be
18 reimbursed for all tools and equipment he used on the job.
19

20 21. Plaintiff prays for attorney fees and costs under California Labor Code Section 2802c
21 for the purpose of enforcing his rights in this Cause of Action under California Labor Code
22 Section 2802.
23

24 ///

1 **FIFTH CAUSE OF ACTION**
2 **FOR CALIFORNIA LABOR CODE SECTION 226 PENALTIES**
3 **(AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS)**
4

5
6 22. Plaintiff realleges the information set forth in Paragraphs 1-7, Paragraphs 8-11 of the
7 First Cause of Action, Paragraphs 12-14 of the Second Cause of Action, Paragraphs 15-18 of the
8 Third Cause of Action.

9 23. Defendant violated California Labor Code Section 226 in several respects: 1) the
10 paystubs fail to state the correct number of hours worked; 2) the paystubs report erroneous
11 numbers of overtime hours and rates; 3) the paystubs report overtime rates at illegal rates of pay
12 which are not accurate; 4) the paystubs do not report rates of pay at accurate rates of pay.
13

14 24. Plaintiff prays for statutory California Labor Code Section 226(e) damages of \$50.00
15 for the first violation and \$100.00 for each subsequent violation.

16 25. Plaintiff prays for injunctive relief under California Labor Code Section 226(h) as
17 well as attorney fees and costs in doing so.
18

19
20 **SIXTH CAUSE OF ACTION FOR**
21 **CALIFORNIA LABOR CODE SECTION 558 PENALTIES**
22 **(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)**
23

24
25 26. Plaintiff realleges the information set forth in Paragraphs 1-7, Paragraphs 8-11 of the
26 First Cause of Action, Paragraphs 12-14 of the Second Cause of Action, Paragraphs 15-18 of the
27 Third Cause of Action.
28

1 27. Plaintiff was not paid all wages due. He was not paid for all hours worked. He was not
2 paid for all hours flagged. He was not paid at twice minimum wage for flag rates. He was paid at
3 erroneous overtime rates of pay.

4
5 28. Plaintiff prays to recover all underpaid wages under California Labor Code Section
6 558(a)(3).

7 29. Against Defendant, Plaintiff prays for the California Labor Code Section 558(a)
8 penalty of \$100 for each violation after the initial \$50 penalty for the initial underpayment
9 violation.

10
11
12 **SEVENTH CAUSE OF ACTION**

13 **BUSINESS & PROFESSIONS CODE VIOLATIONS**

14 **(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)**
15

16
17 30. Plaintiff realleges the information set forth in Paragraphs 1-7, Paragraphs 8-11 of the
18 First Cause of Action, Paragraphs 12-14 of the Second Cause of Action, Paragraphs 15-18 of the
19 Third Cause of Action, Paragraphs 19-21 of the Fourth Cause of Action, Paragraphs 22-25 of the
20 Fifth Cause of Action, Paragraphs 26-29 of the Sixth Cause of Action as though fully stated
21 herein.

22
23 31. Quite a few California Labor Codes require employers to pay all wages due to
24 employees. Courts have held the failure to pay wages due violates public policy. The statutory
25 bases that form the unfair, deceptive, false, fraudulent business practices that violate California
26 Business and Professions Code Section 17200 due to Defendant's conduct in not paying Plaintiff
27 for every hour of his work at twice minimum wage, not paying Plaintiff correct overtime rates,
28 not paying Plaintiff according to the flag rate compensation agreement Defendant entered into,

1 and not paying Plaintiff for all hours worked. Defendant was also required to reimburse Plaintiff
2 for reasonable expenses such as tools and equipment if they were not going to pay him twice
3 minimum wage.

4
5 32. Plaintiff prays that California Business and Professions Code Section 17202 be
6 utilized to enforce the labor laws specified in all causes of action and require Defendant to pay
7 Plaintiff for all unpaid wages due at her regular agreed to hourly rates including after such time
8 she was under a contract at Defendant. Plaintiff also prays to be reimbursed for all reasonably
9 necessary expenses she incurred in performing her job.

10
11 33. Plaintiff further prays that California Business and Professions Code Section 17203 be
12 utilized to enjoin Defendant from further engaging in the unlawful and unfair business practices
13 specified in this Cause of Action.

14 34. Under this Cause of Action, Plaintiff also prays that equitable relief be given including
15 disgorgement of Defendant's profits, the payment to Plaintiff of all money earned by Defendant
16 while violating the different statutes specified in this lawsuit, restitutionary relief and all remedies
17 under this Cause of Action. Plaintiff further prays for equitable relief in Defendant being
18 responsible for a judgment that pays Plaintiff for unpaid wages and all expenses incurred in doing
19 Plaintiff's job which Defendant did not reimburse.
20

21 WHEREFORE, the Plaintiff prays for the following relief, to be determined by a jury as
22 follows other than the Seventh Cause of Action:
23

24
25 For all causes of action, Plaintiff prays for:

- 26
27 1. For all costs and disbursements incurred in this suit;
28 2. For such other and further relief as the Court deems just and proper;

1 3. For interest, including prejudgment interest, on all causes of action other than
2 the Seventh, statutory interest where allowed based upon the Cause of Action pled;
3

4 For all causes of action other than California Business and Professions Code
5
6 Section 17200;

7
8 4. For all costs and disbursements incurred in this suit;

9 5. For such other and further relief as the Court deems just and proper;
10

11 For the First Cause of Action:
12

13
14 4. For all unpaid minimum wages due as well as liquidated damages under California
15 Labor Code Sections 1194, 1194.2 and 1197.1, California Labor Code Section 1197.1 civil
16 penalties of \$250.00 per pay period when not paid minimum wage for each hour worked,
17 penalties under Wage Order 4(20) of \$50 for the first paycheck that failed to pay minimum wage
18 and \$100 for each subsequent paycheck.
19

20 5. Attorney fees and costs under California Labor Code Section 1194;
21

22 For the Second Cause of Action:
23

24
25 6. All overtime and double time compensation due under California Labor Code Section
26 1194 as well as all overtime and double time compensation provided by California Labor Code
27 Section 510;
28

 7. Attorney fees and costs under California Labor Code Section 1194;

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

For the Third Cause of Action:

8. For flagged hours at the proper rate of pay if those hours exceeded his actual hours worked, for flagged hours to be paid at twice minimum wage.

For the Fourth Cause of Action:

- 9. Attorney fees and costs under California Labor Code Section 2802c;
- 10. Reimbursement for all reasonably necessary expenses for Plaintiff to perform her job at Defendant;

For the Fifth Cause of Action:

- 11. California Labor Code Section 226(e) damages of \$50.00 for the first violation and \$100.00 for each subsequent violation.
- 12. Plaintiff prays for injunctive relief under California Labor Code Section 226(h) as

For the Sixth Cause of Action:

- 13. Plaintiff prays to recover all underpaid wages under California Labor Code Section 558(a)(3).

14. Against Defendant Plaintiff prays for the California Labor Code Section 558(a) penalty of \$100 for each violation after the initial \$50 penalty for the initial underpayment violation.

For the Seventh Cause of Action:

15. For all equitable and restitutionary remedies allowed.

Dated: March 31, 2023

EMPLOYMENT LAWYERS GROUP

/s

KARL GERBER,
ATTORNEY FOR PLAINTIFF,
ARTURO CASILLAS



Search mail



Compose

Inbox 7,588

Starred

Snoozed

Important

Sent

Drafts 38

Categories

More

Labels

KABCRADIO.ORG 95

Personal

More

Thank you for submission of your PAGA Case.

Inbox x



LWDA DO NOT REPLY

to me

3/31/2023

LWDA Case No. LWDA-CM-916611-23
Law Firm : Employment Lawyers Group
Plaintiff Name : Arturo Casillas
Employer: MCLB, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Reply

Forward

UNITED STATES POSTAL SERVICE **SANTA CLARITA CA 913**

3 APR 2023 PM 1:14

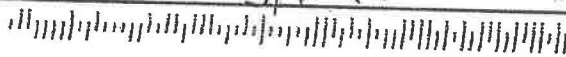
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Employment Lawyers Group
13418 Ventura Blvd.
Sherman Oaks, CA 91423

Re: Casillas v. MCLB, Inc.

1423-391416



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: **MCLB INC.**
KAREN HARRAKA
3101 Pacheco Road
Bakersfield, CA 93313

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

D. West

☐ Agent

☐ Addressee

B. Received by (Printed Name)

D. West

C. Date of Delivery

4/3

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☒ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7020 1290 0001 2820 7177

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540