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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

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BY: 
MEJALEE GAY, Deputy

7 Attorneys for Plaintiff Mike Sanders, on behalf of himself and all "aggrieved employees" pursuant
8 to Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BERNARDINO**

11 MIKE SANDERS, on behalf of himself and all
12 "aggrieved employees" pursuant to Labor
13 Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

16 DC AUTO, INC., a California corporation, and
17 DOES 1 through 10, inclusive,

18 Defendants.

CASE NO: **CIV SB 2318716**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 246, 510, 512,
AND 1194 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558**



1 Plaintiff MIKE SANDERS (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of DC AUTO,
3 INC., a California corporation, and/or any subsidiaries or affiliated companies (hereinafter referred
4 to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 et seq., on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 et seq., and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to properly compute bonuses, commissions, and other non-base hourly
15 wages earned by Plaintiff and other Aggrieved Employees into their regular rate of pay for
16 purposes of paying them meal period premiums, rest period premiums, sick pay, and overtime
17 wages at the correct rates of pay, in violation of Labor Code §§ 226.7, 246, 510, 512, 558 and
18 1194 and IWC Wage Order No. 7-2001. Defendants failed to properly blend bonuses,
19 commissions, and/or other non-base hourly wages and instead paid Plaintiff and other
20 Aggrieved Employees meal period premiums, rest period premiums, sick pay, and overtime
21 wages based *only* on the base hourly rate of pay, thus depriving Plaintiff and other Aggrieved
22 Employees of all meal period premiums, rest period premiums, sick pay, and overtime wages
23 earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558, and 1194 and IWC Wage
24 Order No. 7-2001;

25 b. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
26 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 7-2001.
27 Plaintiff and other Aggrieved Employees were routinely unable to take a 10-minute rest period
28 for every four (4) hours of work or major fraction thereof, but were not paid correct premium

1 wages of one hour's pay for each missed rest period. Plaintiff and Aggrieved Employees were
2 simply denied and not authorized to take their legally entitled rest periods and were never paid
3 proper premium wages for missed rest periods. This violates Labor Code § 226.7 and IWC
4 Wage Order No. 7-2001;

5 c. Failing to pay correct premium wages to Plaintiff and Aggrieved Employees
6 who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and
7 IWC Wage Order 7-2001. Plaintiff and Aggrieved Employees were routinely denied, and not
8 authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift
9 worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal
10 period for every shift worked that exceeded ten hours, but were not paid correct premium
11 wages of one hour's pay for each missed first or second meal period. Plaintiff and Aggrieved
12 Employees were often denied their entitled meal periods. This violates Labor Code §§ 226.7,
13 512, and 558 and IWC Wage Order 7-2001

14 d. Failing to provide Plaintiff and Aggrieved Employees with wage statements
15 that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff
16 and Aggrieved Employees were not paid all wages due, as stated above. As such, the wage
17 statements provided by Defendants failed to accurately state all gross wages earned, in
18 violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor
19 Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and
20 226.3, and all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate, in violation of Labor Code §§ 226(a)(9) and
22 226.3. Furthermore, and independent of the above allegations, the wage statements issued to
23 Plaintiff and other Aggrieved Employees failed to set forth all applicable hourly rates in effect
24 during the pay period and the corresponding numbers of hours worked at each rate, in violation
25 of Labor Code §§ 226(a)(9) and 226.3. The wage statements omit the applicable hourly rate
26 for certain hours worked; and

27 e. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the
28 separation of their employment based on the time frames required by Labor Code §§ 201 and

202. As stated above, Plaintiff and Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Aggrieved Employees no longer employed by Defendants.

3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendants herein arose in San Bernardino County, California.

II.

PARTIES

A. Plaintiff

5. Plaintiff MIKE SANDERS was employed by Defendants from April 28, 2022 through April 14, 2023 as a non-exempt employee in San Bernardino County, California.

B. Defendants

6. Defendant DC AUTO, INC. is a California corporation that employed Plaintiff and Aggrieved Employees throughout the State of California, including San Bernardino County, California.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

8. Plaintiff is informed and believes, and based thereon alleges, that each Defendants acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint

scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants is legally attributable to the other Defendants.

9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7, 246, 510, 512, AND 1194 AND PURSUANT TO
LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to civil penalties subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 246, 510, 512, and 1194; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On June 5, 2023, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor

1 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
2 calendar days of June 5, 2023. Plaintiff may therefore commence this action to seek civil penalties
3 pursuant to Labor Code § 2698 *et seq.*

4 Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as
5 described below.

6 **IV.**

7 **RELIEF REQUESTED**

8 WHEREFORE, Plaintiff prays for the following relief:

- 9 1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
10 Aggrieved Employees;
- 11 2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
12 and other applicable law;
- 13 3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable
14 law; and
- 15 4. Such other and further relief as this Court may deem just and proper.

16 Dated: August 10, 2023

17 Respectfully submitted,

18 GAINES & GAINES
19 A Professional Law Corporation

20 By: Daniel F. Gaines
21 DANIEL F. GAINES
22 Attorneys for Plaintiff
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