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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

FELICIANO LOPEZ,

Plaintiff,

vs.

DALY CITY AUTO CONNECTION INC;
AYMAN MOUSSA; and DOES 1 to 25,
inclusive,

Defendants.

CASE NO.: **24CV058833**

COMPLAINT FOR DAMAGES FOR:

**1) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA")**

COMES NOW Plaintiff, FELICIANO LOPEZ (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Alameda in this judicial district because Defendants DALY CITY AUTO CONNECTION INC; AYMAN MOUSSA; and DOES 1 to 25, inclusive (collectively, "DALY CITY AUTO" or "Defendant(s)") do business in the County of Alameda, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Alameda is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Alameda, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant DALY CITY AUTO CONNECTION INC. is and was a California corporation, doing business in the County of Alameda, State of California, and which employed Plaintiff. Plaintiff is further informed and believes that at all times herein mentioned, Defendant AYMAN MOUSSA is and was a male resident of the County of Alameda, State of California, and is the owner, managing agent, and/or managing director of DALY CITY AUTO CONNECTION INC. AYMAN MOUSSA is being included in this lawsuit pursuant to Labor Code section 558.1 in that he was involved in the day-to-day operations of the business, and as such, controlled the wages, hours, and/or working conditions of Plaintiff and other hourly, non-exempt employees.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner
4 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
5 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
6 and capacities of these fictitiously named defendants.

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8 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
9 that information and belief, alleges that at all times herein mentioned, each of the remaining
10 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
11 under the authority of their agency, employment, or representative capacity, with the consent
12 of his/her codefendants.

13 **GENERAL ALLEGATIONS**

14 6. Plaintiff started working for DALY CITY AUTO on or around August 2019. During
15 his employment tenure, Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's
16 latest rate of pay was \$16 per hour.

17 7. DALY CITY AUTO has committed the below labor code violations against Plaintiff
18 and other hourly, non-exempt employees, including technicians. In the case of Huff v.
19 Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as
20 a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite
21 security provider. After about a year of employment, Huff resigned. Huff then filed suit against
22 Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code
23 requiring immediate payment of wages upon termination of employment and weekly payment
24 of wages to temporary employees. The trial court determined Huff was not a temporary
25 employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a
26 motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then
27 appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA
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1 claim and sue for Labor Code violations that did not directly affect him. Securitas
2 unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for
3 violations that the representative has personally suffered. The PAGA statute states that an
4 “aggrieved employee” is able to file suit on behalf of themselves and others. The statute also
5 states that an “aggrieved employee” is “any person who was employed by the alleged violator
6 and against whom one or more of the alleged violations was committed.” Because at least one
7 of the violations that Huff had alleged had affected him personally, the Court of Appeal denied
8 Securitas’ motion.

9 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
10 Other employees, it allows for suits broader than the specific violations the named employee
11 experienced. Therefore, even if the employee did not personally experience the Labor Code
12 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
13 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
14 other employees, including all hourly non-exempt employees, whether it be technicians or
15 other job titles that were paid on an hourly basis.

16 9. Pursuant to California Industrial Welfare Commission Order No. 4-2001/7-2001, Section
17 9(B), “When tools or equipment are required by the employer or are necessary to the
18 performance of a job, such tools and equipment shall be provided and maintained by the
19 employer, except that an employee whose wages are at least two (2) times the minimum wage
20 provided herein may be required to provide and maintain hand tools and equipment customarily
21 required by the trade or craft.” DALY CITY AUTO unequivocally required its employees, their
22 service technicians, to provide their own tools. The latter was company policy. As such, DALY
23 CITY AUTO violated the aforementioned IWC Wage Order(s) in that DALY CITY AUTO
24 required its technicians, and other employees to provide and maintain hand tools and equipment
25 customarily required by the trade but did NOT compensate these employees at least two (2) times
26 the minimum wage.

27 10. Further, DALY CITY AUTO did not provide Plaintiff and other aggrieved employees
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1 with compensation for all hours worked and did not pay Plaintiff and others the minimum wages
2 to which they were entitled for work performed "off the clock" pursuant to California Labor
3 Code sections 1194, 1197 and 1197.1. Additionally, California Labor Code section 226.2,
4 effective January 1, 2016, provides that employees shall be compensated for rest and recovery
5 periods and other non-productive time separate from any piece-rate compensation. Section 226.2
6 further requires that employees must be compensated for these time periods at a rate no less than
7 the highest federal, state, or local minimum wage that is applicable to the employment. DALY
8 CITY AUTO did not fully and accurately compensate Plaintiff and all similarly situated
9 aggrieved employees for rest and recovery periods and other non-productive time separate from
10 any piece-rate compensation. Moreover, Plaintiff and others would often work "off the clock"
11 in that they would perform work duties before clocking in or after clocking out and management
12 was unequivocally aware. Plaintiff and others also worked "off the clock" due to their meal
13 breaks being consistently interrupted with work obligations and work duties. Additionally,
14 Plaintiff and others also worked "off the clock" and were not paid for all hours worked because
15 DALY CITY AUTO had a company policy wherein they would disproportionately round down
16 the number of hours worked by Plaintiff and other aggrieved employees, resulting in "time
17 shaving" and further resulting in aggrieved employees not being paid for all hours worked.

18 11. DALY CITY AUTO also violated Labor Code §510 because it failed to pay the
19 technicians similarly the correct amount of overtime (based on a base pay rate of twice the
20 minimum wage), even though they worked more than 8 hours per day, 12 hours per day, and/or
21 40 hours per week throughout their employment. Moreover, for the commissioned employees,
22 DALY CITY AUTO failed to pay overtime during pay periods during which salespersons did
23 not meet the inside salesperson exemption in that they did not earn one-and-a-half times the
24 minimum wage during a particular pay period and more than half of their wages for that
25 particular pay period were not from commission/sales. Moreover, during those particular pay
26 periods wherein the inside salesperson exemption did not apply, DALY CITY AUTO did not
27 factor in the commission payments and any bonuses in deciphering employees regular rate of
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1 pay for purposes of figuring out the overtime rate of pay. Moreover, and as alluded to above,
2 DALY CITY AUTO failed to pay the correct and accurate amount of overtime due to the “off
3 the clock” work mentioned above, whether it was due to work obligations before/after clocking
4 in and out OR due to the company’s policy in rounding/time shaving.

5 12. DALY CITY AUTO violated Labor Code §§ 512 and 226.7 as well as the applicable
6 Industrial Welfare Commission (IWC) Wage Order (no. 4 or 7) because it failed to provide
7 Plaintiff and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted
8 meal periods for every five (5) hours of work throughout their employment, and Plaintiff did not
9 validly waive said meal periods. DALY CITY AUTO did not completely relieve Plaintiff of all
10 duties during said meal periods. DALY CITY AUTO did not pay to Plaintiff one additional hour
11 of pay at Plaintiff’s regular rate of compensation for each workday that one or more statutory
12 meal periods was not provided. There were many, many occasions wherein Plaintiff and others
13 would not be able to receive their meal periods before the 5th hour worked due to work
14 obligations. Late meal breaks were consistent and pervasive and across the board for all hourly,
15 non-exempt employees. Furthermore, Plaintiff and others did not receive a second meal break
16 on those days wherein Plaintiff and others worked more than 10 hours. Moreover, and as
17 mentioned above, it was routine for Plaintiff’s and others’ meal periods to be interrupted due to
18 work obligations. Furthermore, DALY CITY AUTO failed to include bonuses/incentive
19 payments in calculating Plaintiff’s and other employees’ regular rate of pay for use in
20 deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments
21 were also not factored into Plaintiff’s and others’ regular rate for purposes of receiving meal and
22 rest break premiums per the Ferra v. Loews case.

23 13. If DALY CITY AUTO had Plaintiff sign a meal period waiver, it would not be valid and
24 enforceable since Plaintiff and others generally worked more than a 6-hour shift. If DALY CITY
25 AUTO had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work
26 through the meal periods or stay on the premises during meal periods, it would be invalid and
27 unenforceable because the nature of Plaintiff’s job does not and did not prevent him from taking
28 a meal period. DALY CITY AUTO could have easily hired more staff, which would have

1 allowed Plaintiff to take a timely, uninterrupted break and be relieved of all work duties. If
2 DALY CITY AUTO argues that Plaintiff and others were actually paid for their meal breaks,
3 the latter would not mean there was no violation since Plaintiff and others were essentially denied
4 any meal breaks for them to rest and get something to eat. The solution for DALY CITY AUTO
5 is not to keep their employees from taking meal periods, but to hire additional staff and
6 “breakers” to make sure that their employees receive statutory breaks. To the extent that DALY
7 CITY AUTO argues that employees receive meal break premium pay for missed meal periods,
8 that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for
9 the violations themselves, irrespective of whether an employee received the premium payment
10 for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the
11 Court stated, “section 226.7 does not give employers a lawful choice between
12 providing *either* meal and rest breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire*
13 *Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of
14 pay does not excuse the violation; the employer has still committed a violation even if the remedy
15 for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL
16 1110302 at *4). As such, the work environment and culture at DALY CITY AUTO was not
17 conducive to receiving consistent, timely, uninterrupted statutory meal breaks under California
18 law. Moreover, any meal or rest break premiums paid were not compensated at the weighted
19 average regular rate, inclusive of bonuses and/or incentive payments.

20 14. DALY CITY AUTO violated Labor Code § 226.7 as well as the applicable IWC Wage
21 Order (no. 4 or 7) because it failed to provide Plaintiff and other similarly situated aggrieved
22 employees 10-minute rest periods for every four hours of work, or majority portion thereof,
23 throughout their employment. DALY CITY AUTO did not completely relieve Plaintiff of all
24 duty during said rest periods. DALY CITY AUTO did not pay to Plaintiff one additional hour
25 of pay at Plaintiff’s regular rate of compensation for each workday that one or more statutory
26 rest periods was not provided. It was not company policy and not part of the company culture
27 for employees such as Plaintiff and others to take rest breaks, especially two daily rest breaks of
28 at least 10 minutes each wherein Plaintiff and others were fully relieved of their work duties.
The latter simply did not exist. As such, the culture at DALY CITY AUTO did not lend itself to

1 the employees receiving statutory breaks wherein they were relieved of all work duties. It was
2 the normal practice and custom of DALY CITY AUTO not to authorize, permit, and enforce
3 statutory rest periods. As such, the environment and culture at DALY CITY AUTO was not
4 conducive to receiving statutory rest breaks under California law.

5 15. Furthermore, during the relevant time period, and due to the aforementioned violations,
6 DALY CITY AUTO failed to pay Plaintiff and other similarly situated aggrieved employees all
7 wages due to them within any time period specified by California Labor Code section 204.
8 DALY CITY AUTO was also in violation of California Labor Code section 226(a) by failing to
9 include pertinent information on the wage statements, including but not limited to, the correct
10 hourly rate, all hours worked, overtime hours worked, correct overtime pay, correct amount of
11 pay for non-productive time, gross wages earned, premium pay for missed meal and rest breaks,
12 all deductions, net wages earned, the correct name and address of the employer, employee
13 identifying information, the correct start and end of the pay periods, and reimbursement for
14 business expenses, among others. This is so partly because DALY CITY AUTO did not
15 compensate a certain number of its employees, including technicians, at least two (2) times the
16 minimum wage despite requiring its technician employees to provide and maintain hand tools
17 and equipment. As such, DALY CITY AUTO did not provide Plaintiff and other similarly
18 situated aggrieved employees with complete, accurate itemized wage statements.

19 16. DALY CITY AUTO violated Labor Code § 203 because it willfully failed to pay
20 Plaintiff and other similarly situated aggrieved employees earned and due wages upon
21 separation of employment, either immediately upon involuntary termination, or within 72
22 hours of resignation. After aggrieved employees stopped working at DALY CITY AUTO and
23 after their employment with DALY CITY AUTO ended, DALY CITY AUTO failed and
24 refused to pay all wages earned and due immediately upon separation. These earned but
25 unpaid wages include the unpaid minimum wages/compensation for all hours worked including
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1 non-productive time, "off the clock" work, overtime, premium pay for missed meal and rest
2 breaks, and business expense reimbursement, among others.

3 17. It is Plaintiff's contention that the rounding/time shaving, and statutory meal and rest
4 period violations would trigger penalties under Labor Code sections 203, 204, and 226 per
5 Naranjo v. Spectrum Security Services Inc. (2022) 13 Cal. 5th 93.

6 18. During the relevant time period, DALY CITY AUTO also failed to keep accurate and
7 complete payroll records showing the correct wages paid (for instance, twice the minimum wage
8 and the correct overtime compensation) to Plaintiff and other aggrieved employees, including
9 technicians, pursuant to California Labor Code sections 1174(d).

10 19. Alternatively, during the relevant time period, Plaintiff and other aggrieved employees
11 incurred necessary, business-related expenses and costs that were not reimbursed by DALY
12 CITY AUTO. These costs include, but are not limited to, the purchase and use of their own
13 tools in carrying out their job duties as technicians. Additionally, Plaintiff and other similarly
14 situated aggrieved employees had to use their personal cell phones for work purposes. Plaintiff
15 and others were also not reimbursed for their uniforms. Moreover, Accordingly, DALY CITY
16 AUTO was in violation of California Labor Code sections 2800 and 2802.

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18 **FIRST CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT**

20 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
21 **202, 203, 204 and/or 204b, 210, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194,**
1197, 1198, 2802)

22 **(Against All Named Defendants and all DOE Defendants)**

23 20. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 19, inclusive, of this Complaint as though fully set forth herein.

25 21. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
26 Defendants of the specific violations of the California Labor Code that Defendants
27 and DOE defendants have violated and continue to violate.
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1 22. Pursuant to California Labor code section 2699.3, no response was received from the
2 LWDA within 65 days of the postmark date of the above-alleged letter.

3 23. Plaintiff therefore has exhausted all administrative remedies required of him under
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
5 cause of action and pursue penalties in a representative action for Defendants' violations of the
6 Labor Code.

7 24. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
8 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
9 departments, divisions, commissions, boards, agencies, or employees for violation of the code
10 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
11 on behalf of himself or herself and other current or former employees pursuant to the
12 procedures specified in California Labor Code section 2699.3.

13 25. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
14 violator and had one or more of the alleged violations committed against him, and therefore is
15 properly suited to represent the interests of other current and former employees, including all
16 hourly, non-exempt employees who worked for Defendants in the State of California during
17 the PAGA period at any of their locations in California.

18 26. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
19 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
20 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

21 27. Plaintiff therefore has exhausted all administrative remedies required of him under
22 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
23 cause of action and pursue penalties in a representative action for Defendants' violations of the
24 Labor Code.

25 28. California Labor Code section 2699 et seq. imposes penalties upon culpable
26 Defendants for violating the Labor Code.
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1 29. California Labor Code section 558 establishes a civil penalty as follows: Any
2 employer or other person action on behalf of an employer who violates, or causes to be
3 violated, a section of this chapter or any provision regulating hours and days of work in any
4 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
5 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
6 dollars (\$50) for each underpaid employee for each pay period for which the employee was
7 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
8 employee for each pay period for which the employee was underpaid ...;

9 30. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
10 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
11 seeking individual/victim specific relief or underpaid wages under this particular cause of
12 action.

13 31. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
14 the following:

15 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
16 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, via 2698 and
17 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order
18 Provisions (nos. 4 and/or 7) violated based on the facts alleged in this Complaint.

19 32. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
20 costs, civil penalties, and wages on behalf of Plaintiff and other current and former aggrieved
21 employees as alleged herein in an amount to be shown according to proof at trial and within the
22 jurisdictional limits of this Court.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
25 follows:

- 26 1. For the imposition of civil penalties;
- 27 2. For maximum civil penalties available under Labor Code Section 2699 against
28 Defendants in a manner and amount authorized by that statute, as described more

1 particularly in the Complaint and representative PAGA claims;

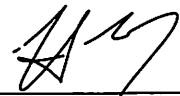
2 3. For all costs and disbursements incurred in this suit;

3 4. Reasonable attorney's fees where available by law, including but not limited to,
4 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section
5 1021.5, and/or other applicable laws; and

6 5. For such other and further relief as this Court may deem proper.

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8 DATED: January 4, 2024

MESSRELIAN LAW INC.

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10 By  _____

11 Harout Messrelian, Esq.

12 Attorneys for Plaintiff Feliciano Lopez
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