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County of San Diego

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Attorneys for Plaintiffs and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ALDO JIMENEZ and JAVIER VAZQUEZ,
as an individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

PERRY MOTORS OF NATIONAL
CITY, LLC, a limited liability company;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 25CU004550C

**REPRESENTATIVE ACTION COMPLAINT
FOR VIOLATION OF LABOR CODE § 2698,
ET SEQ., THE PRIVATE ATTORNEYS
GENERAL ACT**

DEMAND OVER \$25,000.00

1 Plaintiffs Aldo Jimenez and Javier Vazquez (“Plaintiffs”) hereby submit this Representative
2 Action Complaint (“Complaint”) against Defendant Perry Motors of National City, LLC
3 (“Defendant”) and Does 1 through 50 (collectively, “Defendants”), on behalf of themselves and all
4 other aggrieved employees of Defendants for penalties pursuant to the Private Attorneys General
5 Act, Labor Code § 2698, et seq. (“PAGA”), for Defendants’ violations of the California Labor
6 Code, as follows:

7 **INTRODUCTION**

8 1. This representative action is within the Court’s jurisdiction under California Labor
9 Code sections 201, 202, 203, 221, 222, 223, 224, 226(a), 226.7, 512, 558, 1194, 1197, 1197.1 and
10 2698 *et. seq.*, and the applicable Wage Orders of the California Industrial Welfare Commission
11 (“IWC”).

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code against individuals who worked for Defendant.

14 3. Plaintiffs are informed and believe, and based thereon allege, that Defendants,
15 jointly and severally, have acted intentionally and with deliberate indifference and conscious
16 disregard to the rights of all employees by: (a) failing to provide off-duty meal breaks and/or pay
17 meal break premiums at the regular rate of pay in lieu thereof, in violation of Labor Code sections
18 226.7 and 512; (b) failing to pay minimum wages, in violation of Labor Code sections 201, 202,
19 203, 221, 222, 223, 224, 558, 1194, 1197 and 1197.1; (c) failing to pay employees all of their wages
20 upon separation of employment due to unpaid and/or underpaid wages, including meal break
21 premiums, in violation of Labor Code sections 201, 202 and 203; and (d) failing to provide accurate
22 wage statements, in violation of Labor Code section 226(a).

23 4. Plaintiffs are informed and believe, and based thereon allege, that Defendant has
24 engaged in, among other things a system of willful violations of the California Labor Code and the
25 applicable IWC Wage Orders by creating and maintaining policies, practices, and customs that
26 knowingly deny employees the above stated rights and benefits.

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6. Venue is proper in San Diego County, because Plaintiffs worked for Defendant in National City, California.

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8. Plaintiff Javier Vazquez (“Plaintiff Vasquez”) was previously employed by Defendant as sales representative during the approximate period of April 1, 2024 to September 12, 2024. For the duration of his employment with Defendant, Plaintiff Vasquez was an hourly, non-exempt employee.

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1 matters alleged herein and proximately caused Plaintiffs and aggrieved employees to be subject to
2 the illegal employment practices, wrongs and injuries complained of herein.

3 12. At all times herein mentioned, each defendant participated in the doing of the acts
4 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants, and
5 each of them, were the agents, servants, and employees of each of the other defendants, as well as
6 the agents of all Defendants, and at all times herein mentioned, were acting within the course and
7 scope of said agency and employment.

8 13. Plaintiffs are informed and believe, and based thereon allege, that at all times
9 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
10 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
11 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent
12 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
13 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

14 14. At all times herein mentioned, Defendants, and each of them, were members of, and
15 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and
16 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

17 15. At all times herein mentioned, the acts and omissions of various Defendants, and
18 each of them, concurred and contributed to the various acts and omissions of each and all of the
19 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
20 herein mentioned, Defendants, and each of them, ratified each and every act or omission
21 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
22 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
23 damages as herein alleged.

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

26 **(BY PLAINTIFFS AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

27 16. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
28 fully set forth herein.

1 17. Plaintiffs bring this cause of action as a proxy for the State of California and in this
2 capacity, seeks penalties on behalf of all Aggrieved Employees in the State of California from
3 November 19, 2023, through the present, for Defendant's violations of Labor Code sections 201,
4 202, 203, 221, 222, 223, 224, 226(a), 226.7, 512, 558, 1194, 1197 and 1197.1 arising from
5 Defendant's policy and practice of: (a) failing to provide off-duty meal breaks and/or pay meal
6 break premiums at the regular rate of pay in lieu thereof, in violation of Labor Code sections 226.7
7 and 512; (b) failing to pay minimum wages, in violation of Labor Code sections 201, 202, 203, 221,
8 222, 223, 224, 558, 1194, 1197 and 1197.1; (c) failing to pay employees all of their wages upon
9 separation of employment due to unpaid and/or underpaid wages, including meal break premiums,
10 in violation of Labor Code sections 201, 202 and 203; and (d) failing to provide accurate wage
11 statements, in violation of Labor Code section 226(a).

12 18. Plaintiffs and Aggrieved Employees were not provided proper meal breaks, as such
13 meal breaks were not provided or were provided on a late or short basis. Relatedly, as a matter of
14 corporate policy and practice, Defendant paid meal period premiums at a rate that was below the
15 regular rate of pay. Plaintiffs and Aggrieved Employees earned non-discretionary incentive
16 compensation, including commission pay. As these items are non-discretionary forms of
17 remuneration, they should have been included in the regular rate of pay for purposes of paying
18 "Meal Penalty" pay. However, whenever Plaintiffs and Aggrieved Employees earned "Meal
19 Penalty" pay and non-discretionary incentives in the same workweek, the "Meal Penalty" was
20 always paid at the employee's base rate of pay.

21 19. Defendant failed to pay minimum wages to Plaintiff Jiminez and Aggrieved
22 Employees. Specifically, as a matter of corporate policy and practice, Defendant retroactively
23 deducted wages/commissions from employee paychecks. As a result of such deductions, Plaintiff
24 Jiminez and Aggrieved Employees were paid less than minimum wage for the hours worked in the
25 affected pay period.

26 20. Due to the non-payment and/or underpayment of wages, including Meal Penalty
27 Pay, Plaintiffs and Aggrieved Employees were not paid all wages upon separation of employment.

28 21. Additionally, Defendant failed to provide accurate itemized wage statements to
Plaintiffs and Aggrieved Employees. The hours displayed on the wage statements provided to

1 Plaintiffs and Aggrieved Employees did not display the correct number of total hours worked
2 during the pay period. Separately, as a result of the aforementioned underpayment of wages, the
3 wage statements failed to accurately identify all applicable hourly rates of pay, and gross and net
4 wages earned.

5 22. On or about November 19, 2024, Plaintiffs sent written notice to the California
6 Labor & Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code
7 sections 201, 202, 203, 221, 222, 223, 224, 226(a), 226.7, 512, 558, 1194, 11971 and 1197.1,
8 pursuant to the PAGA. In addition to the LWDA, Plaintiffs also sent their notices to Defendant via
9 certified mail pursuant to Labor Code section 2699.3.

10 23. As of the date of the filing of this Complaint, the LWDA has not responded to
11 Plaintiffs’ written notices nor indicated that it intends to investigate the Labor Code violations
12 provided for in the written notices.

13 24. As such, pursuant to Labor Code section 2699(a), Plaintiffs seek recovery of any and
14 all applicable civil penalties for Defendant’s violations of Labor Code sections 201, 202, 203, 221,
15 222, 223, 224, 226(a), 226.7, 512, 558, 1194, 1197 and 1197.1, for the time period described above,
16 on behalf of themselves and other Aggrieved Employees.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for judgment individually and all others on whose behalf this
19 suit is brought against Defendants, jointly and severally, as follows:

20 1. Upon the First Cause of Action, for penalties pursuant to California Labor Code
21 sections 201, 202, 203, 221, 222, 223, 224, 226(a), 226.7, 512, 558, 1194, 1197, 1197.1 and 2698,
22 *et seq.*, and for costs and attorneys’ fees; and

23 2. On all causes of action for attorneys’ fees and costs as provided by Labor Code
24 sections 218.5 and California Code of Civil Procedure section 1021.5; and

25 3. For such other and further relief as the Court may deem just and proper.
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1 DATED: January 24, 2025

DIVERSITY LAW GROUP, P.C.
DAVID LEE LAW

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3 By: _____
4 Larry W. Lee
5 Kristen M. Agnew
6 David Lee
7 Attorneys for Plaintiffs and the Aggrieved
8 Employees
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