

ORIGINAL

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 24 2023

BY:

Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

10 CIV SB 2320530

11 ALEX GONZALEZ, on behalf of all aggrieved
employees,

12 Plaintiffs,

13 v.

14 IMPERIAL IMPORTS, INC., a California
15 corporation; SAN BERNARDINO MOTORS,
INC., a California corporation; and DOES 1
16 through 25, inclusive,

17 Defendants.

) Case No.

) COMPLAINT FOR VIOLATIONS OF
) THE PRIVATE ATTORNEYS GENERAL
) ACT OF 2004 (Labor Code section 2698, et
) seq.)

) DEMAND FOR JURY TRIAL

18
19 COMES NOW Plaintiff ALEX GONZALEZ ("Plaintiff"), on behalf of all aggrieved

20 employees, assert claims against Defendants IMPERIAL IMPORTS, INC., a California

21 corporation, SAN BERNARDINO MOTORS, INC., a California corporation, and DOES 1 through

22 25 inclusive, and hereby alleges as follows:

23 **JURISDICTION AND VENUE**

24 1. The California Superior Court has jurisdiction over this action pursuant to California
25 Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all
26 causes except those given by statute to other trial courts." The Statutes under which this action is
27 brought do not specify any other basis for jurisdiction.

28 ///

COMPLAINT



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19 COMES NOW Plaintiff ALEX GONZALEZ ("Plaintiff"), on behalf of all aggrieved
20 employees, assert claims against Defendants IMPERIAL IMPORTS, INC., a California
21 corporation, SAN BERNARDINO MOTORS, INC., a California corporation, and DOES 1 through
22 25 inclusive, and hereby alleges as follows:

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26 causes except those given by statute to other trial courts." The Statutes under which this action is
27 brought do not specify any other basis for jurisdiction.

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2. Venue and jurisdiction are proper because Defendants were doing business in San Bernardino County; Plaintiff's employment was entered into in San Bernardino County; Plaintiff worked for Defendants in San Bernardino County; and the damages sought exceed the jurisdictional minimum of this Court.

THE PARTIES

3. Plaintiff ALEX GONZALEZ ("Plaintiff") was at all relevant times herein, an individual residing in San Bernardino County, California and was employed by Defendants IMPERIAL IMPORTS, INC., SAN BERNARDINO MOTORS, INC., and DOES 1 through 25 inclusive.

4. Plaintiff is informed, believes, and thereon alleges that Defendant IMPERIAL IMPORTS, INC. ("Imperial") is, and at all times mentioned herein was, registered to do business and actively doing business in the State of California, with its principal place of business in San Bernardino County, California. At all times hereinafter mentioned, Defendant Imperial was an employer whose employees were engaged in this county and the State of California.

5. Plaintiff is informed, believes, and thereon alleges that Defendant SAN BERNARDINO MOTORS, INC. ("SB Motors") is, and at all times mentioned herein was, registered to do business and actively doing business in the State of California, with its principal place of business in San Bernardino County, California. At all times hereinafter mentioned, Defendant SB Motors was an employer whose employees were engaged in this county and the State of California.

6. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise, of Defendants sued herein as DOES 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues said Defendants by fictitious names. Plaintiff is informed, believes, and thereon alleges that each of the Defendants designed herein as DOE is legally responsible in some manner for the events and happenings referred to herein, and caused injury and damage proximately thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities of the Defendants designated herein as DOES when the same have been ascertained. Whenever in this Complaint reference is made to



1 “Defendants,” such allegation shall be deemed to mean the acts of Defendants acting individually,
2 jointly, or severally.

3 7. Plaintiff is informed, believes, and thereon alleges that Defendants were his
4 “Employer” as that term is defined in the applicable Wage Order of the Industrial Welfare
5 Commission (“IWC”). Plaintiff is informed and believes and thereon alleges that, at all relevant
6 times mentioned herein, Defendants were Plaintiff’s employer.

7 **JOINT LIABILITY**

8 8. Except as hereinafter specially described, Defendants, and each of them, are and
9 were the agents and/or employees of the other Defendants, and in acting as described herein were
10 acting within the scope of their authority or employment as agents and/or employees thereof, and
11 with the permission and consent of the other Defendants.

12 9. As to each of the Defendants, Plaintiff is informed, believes, and thereon alleges
13 that, at all relevant times mentioned herein, each Defendant was the principal, agent, employer,
14 employee, partner, joint venture, officer, director, controlling shareholder, alter ego, subsidiary,
15 affiliate, parent corporation, successor in interest and predecessor in interest of some or all of the
16 other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise
17 for profit, and bore such other relationships to some or all of the other Defendants, so as to be liable
18 for the conduct of them.

19 10. Plaintiff is further informed, believes, and thereon alleges that each Defendant acted
20 pursuant to and within the scope of the relationships alleged above; that each Defendant knew or
21 should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the
22 conduct of all other Defendants; and that each Defendant acted pursuant to a conspiracy and
23 agreement to do the things alleged herein.

24 **GENERAL BACKGROUND FACTS**

25 11. On or about June 6, 2018, Plaintiff was hired by Defendants as a Sales Manager for
26 Defendants’ Subaru of San Bernardino car dealership in San Bernardino, CA and was employed by
27 Defendants until on or about August 20, 2022.

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12. On or about June 6, 2018, Defendants provided Plaintiff with a Notice to Employee which, pursuant to Labor Code section 2810.5, is generally intended to provide written notice of the following: the rate or rates of pay and basis thereof; allowances, if any, claimed as part of the minimum wage; the regular payday designated by the employer; the name of the employer, including “dba” names used; the physical address of the employer’s main office of principal place of business; the telephone number of the employer; contact information of the employer’s workers’ compensation insurance carrier; that employee may accrue and use sick leave, among other things related; and any other information the Labor Commissioner deems material and necessary.

13. Defendants Notice to Employee provided to and signed by Plaintiff failed to provide written notice of the name of the employer, including “dba” names used; the physical address of the employer’s main office of principal place of business; the telephone number of the employer; the rate or rates of pay and basis thereof; allowances, if any, claimed as part of the minimum wage; and how paid sick leave accrued as applicable to Plaintiff.

14. Plaintiff is informed and believes that Defendants failed to provide and continue to fail to provide the requisite and compliant notice to all other current and/or former sales managers and non-exempt employees.

15. On or about June 30, 2018, weeks after receiving and signing the incomplete and insufficient Notice to Employee discussed above, Plaintiff received and signed a “Sales Manager Pay Plan” (hereinafter referred to as “2018 Pay Plan”) which set forth the compensation structure, among other things, governing his employment with Defendants. In relevant part, the 2018 Pay Plan stated the following regarding Plaintiff’s job title as a Sales Manager:

“As a supervisor, your duties and responsibilities involve the management of the Sales Department. You will be required to create and implement sales plans of the Dealership and direct the work of 2 or more employees. Your suggestions and recommendations as to [sic] staffing the Sales Department will be given particular weight. You will also be required to customarily and regularly exercise discretion and independent judgment in performing your duties. Accordingly, you will be exempt from the overtime, meal and rest period, and other requirements established by the California Wage Orders.”

16. In relevant part, the 2018 Pay Plan stated the following regarding the “elements” of Plaintiff’s compensation:



1 “The Dealership in its discretion may pay a “draw” against commissions (advance
2 against your estimated but not yet earned commissions). Assuming active
3 employment on the date the guarantee is disbursed, you will be paid an interim draw
4 against your commissions. Draws may be recovered from estimated or actual
5 commissions as determined at settlement or reconciliation so long as minimum
6 compensation levels (including overtime if applicable) are satisfied for the pay
7 period. Should you leave employment without earning commissions sufficient to
8 cover the draws you were paid, you will owe the Dealership the amount of such
9 draws, less the statutory minimum or legally required compensation that the
10 Dealership is obligated to pay you.”

11 17. While it is unclear whether Defendants intended to classify Plaintiff as an exempt
12 employee under the executive or commissioned salesperson exemptions, Defendants failed to meet
13 both exemptions.

14 18. First, the language in Defendants’ 2018 Pay Plan regarding Plaintiff’s job title as
15 Sales Manager appears to suggest Defendants believed Plaintiff to be an exempt employee under
16 the executive exemption. If so, Defendants failed to satisfy the exemption. Regardless of Plaintiff’s
17 expected and actual job duties, Plaintiff never received a salary, meaning a predetermined amount
18 that was not subject to reduction. Merely listing it as such on Plaintiff’s paystubs is insufficient.

19 19. Moreover, while Plaintiff’s employment was terminated prior to him signing
20 Defendants’ alleged “General Sales Manager Pay Plan” (hereinafter referred to as “2022 Pay
21 Plan”), which lists an effective date of September 1, 2022, Defendants’ addition of the word
22 “Guaranteed” to the compensation elements is not only suspect but fails to impact the fact that a
23 draw is not a salary and is rather a loan.

24 20. To the extent Defendants argue Plaintiff’s draw was a salary, not only is this
25 inaccurate due to the fact that it was a recoverable advance on future commission, but this
26 argument would result in Defendants having made unlawful deductions from Plaintiff’s draw.
27 Defendants’ draw to Plaintiff was nothing but a loan.

28 21. Second, if Defendants’ intention was to classify Plaintiff as an exempt
commissioned salesperson, Defendants’ paystubs for Plaintiff confirm that at no point during
Plaintiff’s employment with Defendants did Defendants separately compensate Plaintiff for rest
periods or any non-productive and/or non-sales time spent working despite Defendants obligations
under California law to do so. Plaintiff routinely performs non-productive tasks such as team



1 meetings, one-on-one meetings, team trainings, and trainings with other sales representatives,
2 among many other things.

3 22. Plaintiff is informed and believes all current and/or former sales managers and/or
4 sales employees of Defendants were misclassified and, as a result, Defendants failed to separately
5 compensate for rest periods and all other non-productive time spent performing non-sales related
6 duties; failed to pay all wages; failed to timely pay wages; failed to maintain accurate records;
7 failed to provide accurate itemized wage statements showing Plaintiff's proper gross and/or net
8 wages earned, total hours worked, all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each respective rate; and failed to pay all wages due and
10 payable at separation of employment, among other violations.

11 23. Plaintiff brings this action both on an individual basis and pursuant to the Private
12 Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698 *et seq.* on behalf of the State
13 of California and on a representative basis on behalf of all California current and former employees
14 who were classified as non-exempt employees by Defendants; all California current and former
15 sales managers and sales employees who were classified as either non-exempt or exempt by
16 Defendants.

17 24. Plaintiff filed a PAGA Notice with the Labor and Workforce Development Agency
18 ("LWDA") on November 18, 2022. Therefore, Plaintiff has waited the mandatory sixty-five (65)
19 days since filing his PAGA Notice, during which the LWDA failed to intervene.

20 25. Plaintiff and Defendants, by and through their respective counsel of record, have
21 entered into Tolling Agreements agreeing to toll the statute of limitations for Plaintiff's PAGA
22 claim against Defendants for the period of January 22, 2023 through August 23, 2023 ("Tolling
23 Period"). Applicable statutes of limitation shall not run during the Tolling Period until after August
24 23, 2023. Therefore, the Tolling Period has run as of the date of the filing of this Complaint.

25 26. Plaintiff filed an Amended PAGA Notice with the LWDA on or about August 24,
26 2023. Plaintiff will wait the mandatory sixty-five (65) days and, shall the LWDA fail to intervene,
27 Plaintiff will be prepared to amend this Complaint by filing a First Amended Complaint ("FAC").

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

3 **IN VIOLATION OF LABOR CODE § 2698, ET SEQ.**

4 **(Against All Defendants)**

5 27. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully
6 set forth herein.

7 28. Labor Code sections 2698-2699.5, in relevant part, provides, "any provision of this
8 code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
9 Development Agency. . . for a violation of this code may, as an alternative, be recovered through a
10 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
11 former employees pursuant to the procedures specified in section 2699.3."

12 29. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
13 PAGA only after giving notice to the LWDA and the employer of the Labor Code sections alleged
14 to have been violation, and after receiving notice from the LWDA of its intention not to investigate,
15 or after sixty-five (65) days have passed without notice.

16 30. To the extent applicable, Plaintiff has satisfied in full the requirements of Labor
17 Code section 2699.3. Plaintiff sent notice to Defendants and the LWDA on or about November 18,
18 2022, detailing Defendants' alleged Labor Code violations. In particular, Plaintiff's notice alleged
19 violations of Labor Code sections 510; 1194; 1198; 201; 202; 203; 221; 224; 2751; 2810.5; 226.7;
20 512; 1174; 1174.5; 1175; and 226.

21 31. LWDA did not provide notice of its intention to investigate Defendants' alleged
22 violations within sixty-five (65) calendar days of the postmark date of Plaintiff's notice.

23 32. Plaintiff is an "aggrieved employee" under PAGA because he was employed by
24 Defendants during the applicable statutory period and suffered one or more of the Labor Code
25 violations set forth in this Complaint.

26 33. Plaintiff seeks to recover, on his behalf, on behalf of the State, and on behalf of all
27 former and current aggrieved employees of Defendants, the civil penalties provided by PAGA, plus
28 reasonable attorney's fees and costs through a representative action permitted by PAGA and the



1 California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.App.4th 969. Therefore, class
2 certification is not required.

3 34. Plaintiff seeks penalties pursuant to PAGA for the following Labor Code violations:

4 A. Failure to Pay Minimum and Overtime Wages in violation of Labor Code
5 sections 510; 1194; and 1198;

6 B. Failure to Timely Pay Wages in violation of Labor Code sections 201 and 202;

7 C. Unlawful Deductions and Chargebacks in violation of Labor Code section 221
8 and 224;

9 D. Failure to Provide Compliant Written Commission Agreements in violation of
10 Labor Code sections 2751;

11 E. Failure to Provide Compliant Notices to Employee in violation of Labor Code
12 section 2810.5;

13 F. Failure to Provide Meal and Rest Periods or Wage Premiums in Lieu Thereof
14 and Failure to Separately Compensate Rest Periods in violation of Labor Code
15 sections 226.7 and 512;

16 G. Failure to Maintain Accurate Records in violation of Labor Code sections 1174;
17 1174.5; and 1175;

18 H. Failure to Provide Accurate Itemized Wage Statements in violation of Labor
19 Code section 226; and

20 I. Failure to Pay All Wages Due and Payable at Separation of Employment in
21 violation of Labor Code sections 201 and 203.

22 35. Labor Code section 2699, *et seq.* imposes a civil penalty of one hundred dollars
23 (\$100.00) per pay period, per aggrieved employee for initial violations, and two hundred dollars
24 (\$200.00) per pay period, per aggrieved employee for subsequent violations for all Labor Code
25 provisions for which a civil penalty is not specifically provided.

26 36. As a proximate result of the action and conduct described in the paragraphs above,
27 which constitute violations of certain Labor Code sections, Plaintiff and all other aggrieved
28 employees have been damaged in an amount according to proof at the time of trial and seeks civil



1 penalties and attorney's fees pursuant to Labor Code section 2699(f) and (g) against Defendants.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays, individually and on behalf of aggrieved employees,
4 judgment against Defendants, and each of them, as follows:

- 5 1. For an award of civil penalties pursuant to PAGA;
- 6 2. For an award of reasonable attorneys' fees and costs pursuant to Labor Code section
7 1699(g) and/or other applicable law;
- 8 3. For pre-judgment and post-judgment interest as provided by law; and
- 9 4. For such other and further relief as the Court deems just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

12 Dated: August 24, 2023

KRING & CHUNG, LLP

13
14 By: _____

Tyler D. Kring
Attorneys for Plaintiff
ALEX GONZALEZ

