

1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF FLORIDA  
3 ORLANDO DIVISION  
4  
5

6 **JOSE J. AYALA, JR. on behalf of**  
7 **himself and as representative of**  
8 **other class members similarly**  
9 **situated,**

PUTATIVE COLLECTIVE CLASS  
ACTION LAWSUIT

10  
11  
12 Plaintiffs,

13 v.

14  
15 APR AUTOMOTIVE, INC.,  
16 d/b/a REED NISSAN CLERMONT,

17  
18 Defendant.  
19

20 \_\_\_\_\_ /  
21  
22

23 **COLLECTIVE ACTION COMPLAINT**

24 The above-named individual plaintiff brings this collective action lawsuit  
25 (individually and on behalf of others similarly situated) against APR  
26 Automotive, Inc., d/b/a Reed Nissan Clermont ("Reed Nissan"), and alleges,  
27 upon personal information and knowledge as to their own actions, their  
28 counsel's investigation and upon information and good faith belief as to all  
29 other matters, the following:

30 **I. NATURE OF THIS ACTION**

31 1. Lead Plaintiff, individually and on behalf of others similarly  
32 situated, file this lawsuit in response to Reed Nissan’s pattern and practice of  
33 refusing to pay them wages lawfully earned in performing their job  
34 responsibilities, which includes paying each of them at the federal minimum  
35 wage standards, paying for overtime, failing to reimburse them for tools, and  
36 other materials purchased by them to perform their job responsibilities for  
37 their employer, among other violations of Fair Labor Standards Act, 29 U.S.C.  
38 §§ 206 and 207 (the “*FLSA*”).

39 2. Lead Plaintiff, like every individual that could opt to participate in  
40 this collective action, was not paid all compensation due him, including  
41 minimum wages, overtime wages, and other compensation lawfully due him,  
42 for multiple weeks during the statutory period, which is a direct violation of  
43 the FLSA.

44 **II. PARTIES TO THIS LAWSUIT**

45 1. Lead Plaintiff is an individual who maintains his personal  
46 residence in Orange County, Florida and worked for Reed Nissan in Orange  
47 County, Florida where the corporation’s dealership is located.

48

49           2.     Lead Plaintiff and putative members of the FLSA collective  
50 are/were individuals employed as automotive mechanics and service  
51 technicians by Reed Nissan to perform traditional maintenance, repair, and  
52 warranty services for Reed Nissan customers within the last four (4) years.

53           3.     Lead Plaintiff and each individual that would comprise the  
54 collective action members are or were nonexempt employees that received an  
55 IRS Form W2 for all wages earned as result of employment with Reed Nissan,  
56 and all were paid on an hourly basis, and were or currently are subject to Reed  
57 Nissan's unlawful compensation program referred to generally as "piece-rate"  
58 or "flat-rate" for services performed on behalf of Reed Nissan.

59           4.     Lead Plaintiff and all members of the collective action were  
60 "employees" of Reed Nissan within the meaning of FLSA, 29 U.S.C. § 203(e)(1)  
61 during the requisite statutory period.

62           5.     Reed Nissan is a Florida corporation that maintains its principal  
63 place of business and conducts its business within the jurisdiction boundaries  
64 of this District.

65           6.     Reed Nissan is an authorized dealership of Nissan North America,  
66 Inc., the manufacturer, and distributor of all Nissan motor vehicles throughout  
67 the United States of America.

68

69           7.     Reed Nissan provides, in addition to selling motor vehicles  
70 manufactured by Nissan North America, a variety of maintenance and repair  
71 services to motor vehicles owned by its customers, including warranty repair  
72 work under Nissan North America’s nationwide warranty repair program.

73           8.     Reed Nissan was and continues to be an enterprise governed by  
74 the FLSA because it is engaged in commerce or the production of goods for  
75 commerce within the meaning of Section 3(s) of the FLSA because it has had  
76 employees engaged in commerce or in the production of goods for commerce, or  
77 employees handling, selling, or otherwise working on goods or materials that  
78 have moved in or were produced for commerce by any person. 29 U.S.C. §  
79 203(s). Reed Nissan’s annual gross volume of business exceeded \$500,000.00  
80 (exclusive of taxes) each year during the requisite statutory period.

81           9.     Reed Nissan was and continues to be an “employer” within the  
82 meaning of FLSA 29 U.S.C. § 203(d) because it is a corporation acting directly  
83 in the interest of its associated agents/business partners—in relation to the  
84 employees at issue—the technicians, mechanics, and maintenance servicemen.

85           10.    Reed Nissan is directly responsible and liable for the acts and  
86 omissions alleged throughout this pleading and is liable to compensate Lead  
87 Plaintiff and all potential members of the collective action for financial harm  
88 due to its failure to compensate them for work performed on behalf of their  
89 employer.

90 **III. JURISDICTION AND VENUE**

91 11. This Court has original subject jurisdiction under the Fair Labor  
92 Standards Act, 29 U.S.C. § 201, *et. seq.*; such jurisdiction lies under 28 U.S.C.  
93 §§ 1331 and 1332.

94 12. Venue is proper in this District under the provisions of 28 U.S.C.  
95 § 1391 because Reed Nissan maintains its principal place of business and  
96 conducts its business in this District.

97 **IV. COLLECTIVE ACTION ALLEGATIONS**

98  
99 13. Reed Nissan’s employee compensation program (described in more  
100 detail later this this pleading) violates the Fair Labor Standards Act, 29 U.S.C.  
101 §§ 206 and 207, for failure to pay minimum wages, overtime wages, wages for  
102 for all hours worked, or any combination of the foregoing.

103 14. Pursuant to 29 U.S.C. §§ 206 and 207, Lead Plaintiff and all others  
104 similarly situated, seek to prosecute their FLSA claims as a collective action  
105 on behalf of all mechanics, technicians, and/or maintenance personnel—  
106 together with Lead Plaintiff, to be collectively referred to as “the Collective  
107 Members”—who are or were employed by Reed Nissan at any time from June  
108 2018 to the entry of judgement in this case (the “Collective Period”).  
109

110           15. A collective action is appropriate in this circumstance because the  
111 Lead Plaintiff and the Collective Members are similarly situated in that 1) they  
112 were subjected to Reed Nissan’s unlawful compensation program and policies  
113 that compensated them less than the federal minimum wage for all hours  
114 worked; 2) they were victim of Reed Nissan’s failure to pay overtime wages; 3)  
115 they were forced to purchase large dollar amounts of tools which reduced their  
116 compensation below the requisite minimum wage; and 4) further acts of  
117 unlawful conduct described later in this pleading consistent with applicable  
118 law.

119           16. Lead Plaintiff’s damages are substantially similar to other  
120 individuals that could elected to part of the Collective Members because each  
121 were 1) not paid wages at or above the federal minimum wage by Reed Nissan  
122 for all hours worked; 2) were victims of Reed Nissan’s unlawful compensation  
123 program; 3) were forced to purchase expensive tools without reimbursement  
124 up to the point needed to satisfy the minimum wage requirement; 4) were not  
125 paid overtime wages for any hour worked in in excess of forty hours per week;  
126 plus 5) statutory liquidated damages as provided by federal law for Reed  
127 Nissan’s failure to pay minimum wage compensation as required by the FLSA.

128           17. The collection of similarly situated individuals or potential  
129 collective members (i.e., the “*Collective Members*”) sought to be certified under  
130 29 U.S.C. § 216 is defined as:

131 All individuals that were employed by Reed Nissan during  
132 the Collective Period who were or are automobile service  
133 persons compensated under an unlawful compensation  
134 program implemented by Reed Nissan and referred to as  
135 “piece-rate” or “flat-rate”, in which they performed services  
136 on behalf of Reed Nissan and were not compensated their A)  
137 statutory minimum wage for all hours worked per week  
138 during one (1) or more weeks and/or B) were not  
139 compensated time-and-a-half of their regular hourly rate for  
140 all hours worked in excess of forty (40) hours.

141  
142 18. The precise size and identity of the entire Collective Members is  
143 easily ascertainable from Reed Nissan’s business records, tax records, and/or  
144 employee personnel records.

145 19. Reed Nissan compensated Lead Plaintiff and the Collective  
146 Members in the same manner and under the same unlawful employee  
147 compensation program, and each has worked in Florida during the Collective  
148 Period.

149 20. Lead Plaintiff and the Collective Members are owed straight time  
150 and overtime wages under the FLSA.

151 21. Lead Plaintiff maintains the right to modify the Collective Member  
152 definition, create additional subclasses or classes, if necessary, and to revise  
153 these definitions to maintain cohesive classes which do not require individual  
154 inquiry to determine liability.

155 **V. UNLAWFUL BUSINESS PRACTICES**

156 22. Reed Nissan has engaged in willful and systematic misconduct by  
157 depriving Lead Plaintiff and all Collective Members of wages they are lawfully  
158 entitled to in violation of the FLSA, including its failure to properly reimburse  
159 Collective Members for all business expenses including, without limitation, the  
160 cost to procure and maintain tools, equipment, and supplies necessary for the  
161 discharge of their duties, resulting in failure to pay minimum wages and  
162 unpaid wages.

163 23. Reed Nissan willfully engages in wage compensation misconduct  
164 that denies Lead Plaintiff and Collective Members the right to be compensated  
165 for all work hours performed and benefits provided on behalf of Reed Nissan.

166 24. Reed Nissan is an employer as defined under 29. U.S.C. § 203(d),  
167 that benefits financially and reputationally from the work performed by Lead  
168 Plaintiff and the Collective Members, such as the maintenance and repair on  
169 automobiles.<sup>1</sup>

170 25. Lead Plaintiff and the Collective Members work under a payment  
171 system referred to as “piece-rate” pay or “flat-rate” pay, where employees are  
172 paid a fixed rate for each unit produced or service performed (“*flagged hours*”),  
173 regardless of the amount of time the employee spent working on the task.

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<sup>1</sup> Collective members perform a specialty job integral to Reed Nissan’s business given that they are responsible for servicing Nissan vehicles under manufacturer warranties.



174           26. All Nissan authorized dealerships are required to comply with this  
175 payment system, which was established by Nissan North America, which is  
176 why the impact of its application affects all members of this collective action in  
177 the same manner.

178           27. Under this payment system, the rate of pay per service varies by  
179 the task performed and whether the service is “warranty-paid” or “customer-  
180 paid”. The rate of pay is defined directly by Nissan North America to each of  
181 its dealerships in its Products Resource Manual published by Nissan North  
182 America and updated from time to time as part of its nationwide authorized  
183 dealership compliance programs.

184           28. Traditionally, this payment system was common with automotive  
185 technicians and was initially created as an incentive for their employees to  
186 work at a faster pace; in fact, it was quite lucrative for many technicians in  
187 previous years before intentionally amending its policies in order to continue  
188 compensating employees at a flat-rate or piece-rate system, while forcing them  
189 to work many hours over forty hours per week, ultimately reducing the  
190 compensation to its employees.

191           29. Reed Nissan’s misconduct and misuse of this payment system fails  
192 to properly compensate employees for a substantial number of hours worked  
193 in the day, including time working non-flagged hours for such tasks as  
194 training, cleaning the workshop, or prepping tools.

195           30. Reed Nissan’s willful misuse of the “flat-rate pay” system  
196 withholds wages owed to their technicians, thereby resulting in decreased  
197 expenses and increased profits for Reed Nissan.

198           31. In comparison to other vehicle manufacturers and their respective  
199 dealerships, Reed Nissan established additional policies, causing their  
200 technicians to suffer a significant amount of unpaid wages over the past  
201 several years.

202           32. For instance:

203                 a. Lead Plaintiff and the Collective Members, are  
204 required to perform various unpaid “non-repair” tasks,  
205 including, but not limited to cleaning, attending meetings  
206 and/or on-site/virtual trainings, traveling to offsite locations  
207 in connection with Reed Nissan’s business, reviewing service  
208 orders, and completing invoices. These tasks comprise a  
209 large portion of their “worktime”, for which the employees  
210 are not paid. Lead Plaintiff and Collective Members are not  
211 compensated for the hours spent conducting “non-piece-rate”  
212 or “non-flat-rate” tasks.

213  
214                 b. The total amount of hours spent “on the job” by  
215 Lead Plaintiff and Collective Members are not documented  
216 as required and paystubs denote what purports to be  
217 “flagged hours” only, with no supportive information.

218  
219                 c. Lead Plaintiff and Collective Members are  
220 required to purchase tools and equipment to fulfill their  
221 duties as a Reed Nissan service technician. When they  
222 purchase these tools and equipment, their weekly rate of pay  
223 falls below the required statutory minimum wage to which  
224 they are never recompensed.

225  
226

227 d. When Lead Plaintiff and Collective Members  
228 purchase the tools to fulfill their duties for Reed Nissan, they  
229 are conferring a benefit onto Reed Nissan to which Reed  
230 Nissan accepts. Reed Nissan never pays the value of the  
231 benefit back to the employees, therefore retaining an unjust  
232 enrichment in the benefit conferred.  
233

234 33. Reed Nissan has also established and employed an arbitrary  
235 system where services paid by customers directly provides a significantly  
236 higher flat-rate pay-out to the Reed Nissan employee conducting the work; on  
237 the other end of the spectrum, that same work, but for a customer with a  
238 vehicle under warranty (which consists of approximately 80% of Reed Nissan's  
239 customer base/service-work as of recent years) pays a *substantially* lower flat-  
240 rate pay-out to the employee than if it were to be paid directly by a customer.

241 34. There is no difference in the work being performed between  
242 "customer-paid" and "warranty-paid" work, other than the rate being paid to  
243 the employee.

244 a. For example, the flat-rate pay-out to a  
245 technician for replacing a transmission in a Nissan Sentra  
246 that is paid directly by the customer is eight (8) hours.  
247

248 b. When the same transmission is brought in by a  
249 customer with the same vehicle, but under a warranty  
250 (either manufacturer or an extended warranty), the  
251 transmission replacement conducted by the technician will  
252 now only pay four (4) hours, with no justification for the  
253 significant discrepancy in pay.  
254  
255

256 c. This drastic change in the flat-rate paid to the  
257 technician is arbitrary and capricious, as there is no  
258 difference in the work performed or the time it takes to  
259 replace a transmission (for example) in a warranty-paid  
260 versus customer-paid vehicle.

261  
262 35. “Warranty-paid” work provides a substantially lower payout to the  
263 employees than “customer-paid” work because the warranty work constitutes  
264 a great majority of the service requested at Reed Nissan.

265 36. The disparity between the amount of “warranty-paid” vs.  
266 “customer-paid” work has resulted in reduced profit-margins for Reed Nissan.  
267 To claw-back profits, Reed Nissan reduces the pay-out to its employees through  
268 the unlawful method described herein.

269 37. Consequently, mechanics, technicians, and maintenance  
270 personnel did not and are not receiving fair compensation for all hours worked  
271 while providing valuable benefits and services to Reed Nissan, for which Reed  
272 Nissan receives profits. These invaluable Reed Nissan employees have  
273 outstanding unpaid wages<sup>2</sup> owed to them.

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<sup>2</sup> “Unpaid wages” means the difference between the wages actually paid to an employee and the wages required to be paid to the employee including all compensation for services.

275           38. Reed Nissan's employee compensation program violates the Fair  
276 Labor Standards Act, 29 U.S.C. §§ 206 and 207, for failure to pay minimum  
277 and/or overtime wages for all hours worked, as will be described in Counts I  
278 and II of this complaint.

279           39. Lead Plaintiff and the Collective Members are routinely required  
280 to purchase, and maintain their own tools, equipment, and supplies necessary  
281 for the discharge of their duties for the direct benefit of Reed Nissan.

282           40. Reed Nissan has been unjustly enriched through their conduct by  
283 failing to reimburse employees for expenses relating to these equipment  
284 purchases resulting in profit and benefit for Reed Nissan to the detriment of  
285 the employees/Class Members.

286           41. Reed Nissan's failure to reimburse Lead Plaintiff and Collective  
287 Members for out-of-pocket expenses resulted in a benefit to the employer, as it  
288 decreased the employees' regular wages below the minimum wage resulting in  
289 injury to the Lead Plaintiff and Collective Member.

290           42. In other words, by requiring the Lead Plaintiff and Collective  
291 Members to purchase their own tools to complete their duties, the cost of such  
292 tools purchased by the employee diminishes the overall compensation of the  
293 employee resulting in lower than minimum wage compensation.

294           43. By requiring Lead Plaintiff and the Collective Members to  
295 purchase their own tools, Reed Nissan is effectively requiring employees to  
296 kick-back their wages to the employer.

297           44. Reed Nissan's arbitrary decisions to deduct certain hours from  
298 employees' wages is an incomprehensible violation of employment laws and  
299 constitutes a kickback for the benefit of Reed Nissan.

300           45. As a result of Reed Nissan's misconduct and misuse of the flat rate  
301 pay system including failure to adequately compensate employees for hours  
302 worked and/or overtime hours, and kickbacks, employees are not compensated  
303 in accordance with the requisite minimum wage.

304           46. Reed Nissan and its agents/representatives are aware of and  
305 materially participated in the implementation of the unfair wage  
306 compensation system.

307           47. Reed Nissan employs unlawful wage compensation systems to  
308 capture more profits and combat shrinking profit margins by underpaying  
309 their essential technicians, mechanics, and maintenance personnel and failing  
310 to pay them the wages they are legally entitled to for the skilled labor they  
311 perform.

312           48. This action represents a situation typical of class treatment.  
313

314 49. Reed Nissan's failure to pay wages for all hours worked by all  
315 mechanics, technicians, and maintenance personnel employed by Reed Nissan  
316 is uniform throughout its entire business operations. These employees are also  
317 similarly situated due to the application of "piece-rate" and or "flat-rate" pay.

318 50. Determining liability for violations of the Federal Fair Labor  
319 Standards Act, Code of Federal Regulations, and other laws will ensure that  
320 all mechanics, technicians, and maintenance personnel of Reed Nissan are  
321 fairly and legally compensated under these laws then, now, and in the future.

322 **VI. BASIC CONDITIONS PRECEDENT ALLEGATIONS**

323 51. Lead Plaintiffs have engaged the law firm of éclat law, PA to serve as  
324 its lead trial counsel and are obligated to compensate these law firms for services  
325 rendered in connection with prosecuting the Collective Members and Class  
326 Members' rights as alleged herein.

327 52. All conditions precedent to bring this action have taken place, are  
328 futile, expired or were effectively waived.

329 **COUNT I**  
330 **VIOLATION OF THE FLSA - MINIMUM WAGES**

331  
332 53. Lead Plaintiff realleges and incorporates by reference the  
333 allegations contained in paragraphs 1 through 52 above as if fully set forth  
334 herein.

335           54. Lead Plaintiff brings this cause of action to recover unpaid  
336 minimum wages owed to Lead Plaintiff and the Collective Members pursuant  
337 to the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.*

338           55. This includes failure to pay minimum wage for all hours worked  
339 by the Lead Plaintiff and the Collective Members and includes reductions in  
340 the employees' paychecks for the benefit of the employer in which they required  
341 employees to purchase tools to perform their work without reimbursement or  
342 compensation up to the statutory minimum wage.

343           56. Lead Plaintiff and Collective Members were or continue to be  
344 automobile service or maintenance employees (or former-employees) of Reed  
345 Nissan—including but not limited to mechanics/technicians and maintenance  
346 servicemen as described in more detail earlier in this pleading.

347           57. Lead Plaintiff and the Collective Members consent to sue in this  
348 action pursuant to 29 U.S.C. § 216(b); additional potential opt-in plaintiffs may  
349 execute and file forms consenting to "opt in" and joining as plaintiffs in this  
350 collective action.

351           58. Lead Plaintiff and the Collective Members were hired by Reed  
352 Nissan in Florida to perform duties as a technician on behalf of Reed Nissan  
353 and for Reed Nissan's profit during the Collective Period.

354           59. Lead Plaintiff and the Collective Members were employed by Reed  
355 Nissan.



356           60.    Lead Plaintiff and the Collective Members were required by Reed  
357 Nissan to procure and maintain tools, equipment, and supplies necessary for  
358 the discharge of their duties, which reduced the employees' weekly wage to an  
359 amount that was below the requisite minimum wage.   These tool purchases  
360 further reduced the employees' weekly wage to an amount that was below the  
361 statutory minimum wage.

362           61.    By failing to pay minimum wages, Reed Nissan has violated, and  
363 continues to violate Sections 206 and 215 of the FLSA.

364           62.    The conduct described throughout this Complaint constitutes a  
365 willful violation of the FLSA.

366           63.    Reed Nissan knew that it was required to pay its employees at  
367 least the requisite minimum wage for all hours worked.

368           64.    Instead of lawfully paying its employees, Reed Nissan established  
369 and maintained systems, policies, and procedures that were intentionally  
370 designed to avoid paying employees their earned wages as detailed in the  
371 paragraphs above.

372           65.    Reed Nissan has engaged in a widespread systematic pattern,  
373 policy, and practice of violating the FLSA, as detailed throughout this  
374 Complaint. Application of these practices does/did not depend on the personal  
375 circumstances of the Lead Plaintiff or any of the Collective Members. Rather,

376 the same practices which result in the non-payment of minimum wages to Lead  
377 Plaintiff and the Collective Members apply to all Collective Members.

378         66. Lead Plaintiff and the Collective Members are/were entitled to be  
379 paid at least minimum wage for all hours worked during the workweek  
380 pursuant to FLSA 29 U.S.C. § 206.

381         67. Further, when tool and equipment purchases decrease the  
382 employees' weekly paycheck below the statutory minimum wage, Lead  
383 Plaintiff and the Collective Members are entitled to reimbursement up to and  
384 including the statutory minimum wage.

385         68. Reed Nissan violated FLSA 29 U.S.C. § 206 by failing to pay  
386 minimum wages, as described above, and caused Lead Plaintiff and the  
387 Collective Members to suffer lost wages and interest thereon.

388         69. Lead Plaintiff and the Collective Members have been required to  
389 work eight (8) hours per day, and beyond, without receiving the full  
390 compensation for the hours worked.

391         70. Due to Reed Nissan's misconduct and misuse of the employee  
392 compensation system, Lead Plaintiff and the Collective Members did not earn  
393 wages at the minimum wage rate for all their hours worked during one or more  
394 work weeks.

395

396           71. Lead Plaintiff and the Collective Members were only compensated  
397 for “flagged hours”, which sufficiently reduced the compensable hours included  
398 in their pay-out, effectively lowering their rate of pay in a manner which falls  
399 below the federal minimum wage rate.

400           72. By way of example, on April 17, 2019, Lead Plaintiff received a  
401 paycheck stating that he worked 13 hours and was paid \$416.00 (gross), but  
402 worked at least 60 hours, which is \$.32 per hour below the federal minimum  
403 wage rate of \$7.25 per hour for 2019. For this one week, he is owed a total of  
404 \$19.20 in unpaid federal minimum wages.

405           73. Reed Nissan knowingly, willfully, or with reckless disregard  
406 carried out its illegal pattern or practice of failing to pay proper minimum  
407 wages as compensation with respect to Lead Plaintiff and the Collective  
408 Members.

409           74. Reed Nissan knew that Lead Plaintiff and the Collective Members  
410 were owed compensation and that Reed Nissan was required to pay such  
411 compensation. However, Reed Nissan failed to do so.

412           75. As a result of Reed Nissan’s intentional, willful, and unlawful acts  
413 in refusing to pay Lead Plaintiff and the Collective Members, and those  
414 similarly situated to them, minimum wage rates per hour worked per  
415 workweek in one or more workweeks, Lead Plaintiff and the Collective

416 Members have suffered damages, and incurred reasonable attorneys' fees and  
417 costs as provided in 29 U.S.C. § 216.

418         76. As a result of Reed Nissan's willful violation of FLSA § 206, Lead  
419 Plaintiff and the Collective Members are entitled to recover the full amount of  
420 any unpaid back wages unlawfully withheld, plus the same amount as  
421 liquidated damages as per 29 U.S.C. § 216.

422         77. Lead Plaintiff and the Collective Members are entitled to recover  
423 from Reed Nissan their unpaid minimum wages, damages for unreasonably  
424 delayed payment of wages, liquidated damages or pre-judgment interests,  
425 reasonable attorneys' fees, and costs and disbursements of the action pursuant  
426 to 29 U.S.C. §§ 206 and 216.

427         78. Because Reed Nissan's violations of the FLSA have been willful, a  
428 three-year statute of limitations applies pursuant to 29 U.S.C. § 255.

429         79. Collective Members request designation of this action as a  
430 collective action and prompt issuance of notice pursuant to 29 U.S.C. § 216(b)  
431 to all similarly situated members of an FLSA Opt-In Collective, apprising them  
432 of the pendency of this action, permitting them to assert timely FLSA claims  
433 in this action by filing individual Consents to Join, and appointing Plaintiffs  
434 and their counsel to represent the Collective Action Members.

435

**COUNT II**  
**NISSAN'S VIOLATION OF THE FLSA FOR FAILURE**  
**TO PAY OVERTIME WAGES<sup>3</sup>**

436  
437  
438  
439  
440       80.   Lead Plaintiff reallege and incorporate by reference the allegations  
441 contained in paragraphs 1 through 52 above as if fully set forth herein.

442       81.   Lead Plaintiff brings this cause of action to recover unpaid  
443 overtime wages owed to them pursuant to the Fair Labor Standards Act, 29  
444 U.S.C. § 201, *et seq.*

445       82.   Lead Plaintiff and Collective Members are automobile service or  
446 maintenance employees (or former-employees) of Reed Nissan—including but  
447 not limited to mechanics/technicians and maintenance servicemen as  
448 described and defined earlier in this pleading.

449       83.   All other collective action plaintiffs were, always relevant to this  
450 action, adults residing in Florida. Lead Plaintiff and the Collective Members  
451 consent to sue in this action pursuant to 29 U.S.C. § 216(b); additional potential  
452 opt-in plaintiffs may execute and file forms consenting to “opt in” and joining  
453 as plaintiffs in this collective action.

454       84.   Lead Plaintiff and the Collective Members were hired by Reed  
455 Nissan dealerships in Florida to perform duties as a technician on behalf of  
456 Reed Nissan and for Reed Nissan’s profit during the Collective Period.

457           85.    Lead Plaintiff and the Collective Members were employed by Reed  
458 Nissan.

459           86.    By failing to pay overtime wages, Reed Nissan has violated and  
460 continues to violate the FLSA sections 207 and 215.

461           87.    The conduct described throughout this Complaint and above  
462 constitutes a willful violation of the FLSA.

463           88.    Reed Nissan knew that it was required to pay its employees the  
464 requisite overtime for all overtime hours worked.

465           89.    Instead of lawfully paying its employees, Reed Nissan established  
466 and maintained systems, policies, and procedures that were intentionally  
467 designed to avoid paying employees their earned wages as detailed in the  
468 paragraphs above.

469           90.    Reed Nissan has engaged in a widespread systematic pattern,  
470 policy, and practice of violating the FLSA, as detailed throughout this  
471 Complaint.

472           91.    Application of these practices does/did not depend on the personal  
473 circumstances of the Lead Plaintiff and the Collective Members. Rather, the  
474 same practices which result in the non-payment of overtime wages to Lead  
475 Plaintiff and the Collective Members apply to all Collective Action Members.

476

477           92.    Lead Plaintiff and the Collective Members are entitled to be paid  
478 overtime at a rate not less than one and one-half times their regular rate for  
479 all hours worked in excess of forty hours per week pursuant to FLSA 29 U.S.C.  
480 § 207.

481           93.    Reed Nissan violated the FLSA, 29 U.S.C. § 207, by failing to pay  
482 Lead Plaintiff and the Collective Members overtime wages at a rate of time  
483 and a half of their regular pay during the weeks that they worked more than  
484 forty (40) hours, as described in the paragraphs above, and caused Lead  
485 Plaintiff and the Collective Members to suffer lost wages and interest thereon.

486           94.    Lead Plaintiff and the Collective Members were only compensated  
487 for “flagged hours”, which sufficiently reduced the compensable hours included  
488 in their pay-out. Furthermore, “flagged hours” were the only hours that were  
489 counted for purposes of determining whether Collective Members were entitled  
490 to overtime, rather than the actual hours worked by the Collective Members.

491           95.    Therefore, Lead Plaintiff and the Collective Members frequently  
492 worked over forty hours per week but did not receive the required overtime for  
493 every hour worked more than forty (40) hours per week, since flagged hours  
494 were the only hours that were counted for purposes of overtime.

495           96.    By way of example, on January 31, 2020, Lead Plaintiff received a  
496 paycheck stating that he worked 48 hours and was paid \$1,536.00 (gross). He  
497 was paid at his straight rate for each of these hours. Under 29 U.S.C. § 207,

498 Lead Plaintiff should have been paid at a rate not less than one and one-half  
499 times the regular rate at which he is employed for every hour in excess of forty  
500 (40) hours, which he was not. For this one week, he is owed a total of \$384 in  
501 unpaid overtime wages.

502 97. Moreover, despite working more than forty (40) hours per week,  
503 Reed Nissan failed to pay Collective Members overtime compensation at the  
504 appropriate rate.

505 98. Reed Nissan knowingly, willfully, or with reckless disregard  
506 carried out its illegal pattern or practice of failing to pay Collective Members  
507 the required overtime wages.

508 99. Reed Nissan knew that Lead Plaintiff and the Collective Members  
509 were owed compensation and that Reed Nissan was required to pay such  
510 compensation. However, Reed Nissan failed to do so.

511 100. As a result of Reed Nissan's intentional, willful, and unlawful acts  
512 in refusing to pay Lead Plaintiff and the Collective Members, and those  
513 similarly situated to them, overtime wage rates per hour worked per workweek  
514 in one or more workweeks, Lead Plaintiff and the Collective Members, and  
515 those similarly situated to them, have suffered damages, and incurred  
516 reasonable attorneys' fees and costs as provided in 29 U.S.C. § 216.

517





538           b.     Awarding Lead Plaintiff and the Collective Members  
539 his/their unpaid wages in the amount due to him/them for Lead Plaintiff  
540 and the Collective Members, time worked in each work week at  
541 minimum wage, any owed overtime wages, and any other relief provided  
542 for under law.

543           c.     Awarding Lead Plaintiff and the Collective Members  
544 liquidated damages as permitted by law.

545           d.     Awarding Lead Plaintiff and the Collective Members  
546 reasonable attorneys' fees and costs and expenses of the litigation  
547 pursuant to the FLSA.

548           e.     Awarding Lead Plaintiff and the Collective Members  
549 punitive damages and/or pre-judgment interest as permitted by law.

550           f.     Granting Lead Plaintiff and the Collective Members an  
551 Order, on an expedited basis, allowing them to send notice of this action  
552 as a collective action pursuant to 29 U.S.C. § 216(b) to those similarly  
553 situated Collective Action Members; and

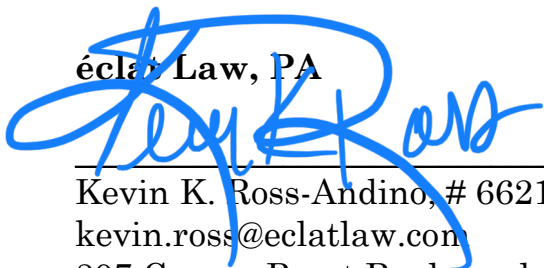
554           g.     Granting any other further relief, the Court deems just and  
555 proper.

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**JURY TRIAL DEMANDED**

Class Members respectfully demand a trial by jury on all issues so triable.



eclat Law, PA

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*Lead Trial Counsel to the Plaintiffs and  
each Class Member*