

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

5
6 **JEFF SANTOS and SANTIAGO**
7 **CADENAS on behalf of**
8 **themselves and as**
9 **representative of other class**
10 **members similarly situated,**

PUTATIVE COLLECTIVE CLASS
ACTION LAWSUIT

11
12
13 Plaintiffs,

14 v.

15
16 ACTION NISSAN, INC.,
17 d/b/a UNIVERSAL NISSAN,

18
19 Defendant.
20

21 _____/

22
23
24 **COLLECTIVE ACTION COMPLAINT**

25 The above-named individual Lead Plaintiffs bring this collective action
26 lawsuit (individually and on behalf of others similarly situated) against Action
27 Nissan, Inc., d/b/a Universal Nissan (“*Universal Nissan*”), and alleges, upon
28 personal information and knowledge as to their own actions, their counsel’s
29 investigation and upon information and good faith belief as to all other
30 matters, the following:

31 **I. NATURE OF THIS ACTION**

32 1. Lead Plaintiffs, individually and on behalf of others similarly
33 situated, file this lawsuit in response to Universal Nissan’s pattern and
34 practice of refusing to pay them wages lawfully earned in performing their job
35 responsibilities, which includes paying each of them at the federal minimum
36 wage standards, paying for overtime, failing to reimburse them for tools, and
37 other materials purchased by them to perform their job responsibilities for
38 their employer, among other violations of Fair Labor Standards Act, 29 U.S.C.
39 §§ 206 and 207 (the “*FLSA*”).

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

45 **II. PARTIES TO THIS LAWSUIT**

46 1. Lead Plaintiffs are individuals who maintain their personal
47 residence in Orange County, Florida and worked for Universal Nissan in this
48 District.

49

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

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

61 4. Lead Plaintiffs and all members of the collective action were
62 “employees” of Universal Nissan within the meaning of FLSA, 29 U.S.C. §
63 203(e)(1) during the requisite statutory period.

64 5. Universal Nissan maintains its principal place of business and
65 conducts its business within the jurisdiction boundaries of this District.

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

69

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

74 8. Universal Nissan was and continues to be an enterprise governed
75 by the FLSA because it is engaged in commerce or the production of goods for
76 commerce within the meaning of Section 3(s) of the FLSA because it has had
77 employees engaged in commerce or in the production of goods for commerce, or
78 employees handling, selling, or otherwise working on goods or materials that
79 have moved in or were produced for commerce by any person. 29 U.S.C. §
80 203(s). Universal Nissan’s annual gross volume of business exceeded
81 \$500,000.00 (exclusive of taxes) each year during the requisite statutory
82 period.

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

88 10. Universal Nissan is directly responsible and liable for the acts and
89 omissions alleged throughout this pleading and is liable to compensate Lead
90 Plaintiffs and all potential members of the collective action for financial harm

91 due to its failure to compensate them for work performed on behalf of their
92 employer.

93 **III. JURISDICTION AND VENUE**

94 11. This Court has original subject jurisdiction under the Fair Labor
95 Standards Act, 29 U.S.C. § 201, *et. seq.*; such jurisdiction lies under 28 U.S.C.
96 §§ 1331 and 1332.

97 12. Venue is proper in this District under the provisions of 28 U.S.C.
98 § 1391 because Universal Nissan maintains its principal place of business and
99 conducts its business in this District.

100 **IV. COLLECTIVE ACTION ALLEGATIONS**

101 13. Universal Nissan’s employee compensation program (described in
102 more detail later this this pleading) violates the Fair Labor Standards Act, 29
103 U.S.C. §§ 206 and 207, for failure to pay minimum wages, overtime wages,
104 wages for for all hours worked, or any combination of the foregoing.
105

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

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

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

131 17. The collection of similarly situated individuals or potential
132 collective members (i.e., the “*Collective Members*”) sought to be certified under
133 29 U.S.C. § 216 is defined as:

134 All individuals that were employed by Universal Nissan
135 during the Collective Period who were or are automobile
136 service persons compensated under an unlawful
137 compensation program implemented by Universal Nissan
138 and referred to as “piece-rate” or “flat-rate”, in which they
139 performed services on behalf of Universal Nissan and were
140 not compensated their A) statutory minimum wage for all
141 hours worked per week during one (1) or more weeks and/or
142 B) were not compensated time-and-a-half of their regular
143 hourly rate for all hours worked in excess of forty (40) hours.
144

145 18. The precise size and identity of the entire Collective Members is
146 easily ascertainable from Universal Nissan’s business records, tax records,
147 and/or employee personnel records.

148 19. Universal Nissan compensated Lead Plaintiffs and the Collective
149 Members in the same manner and under the same unlawful employee
150 compensation program, and each has worked in Florida during the Collective
151 Period.

152 20. Lead Plaintiffs and the Collective Members are owed straight time
153 and overtime wages under the FLSA.

154 21. Lead Plaintiffs maintain the right to modify the Collective Member
155 definition, create additional subclasses or classes, if necessary, and to revise

156 these definitions to maintain cohesive classes which do not require individual
157 inquiry to determine liability.

158 **V. UNLAWFUL BUSINESS PRACTICES**

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

166 23. Universal Nissan willfully engages in wage compensation
167 misconduct that denies Lead Plaintiffs and Collective Members the right to be
168 compensated for all work hours performed and benefits provided on behalf of
169 Universal Nissan.

170 24. Universal Nissan is an employer as defined under 29. U.S.C. §
171 203(d), that benefits financially and reputationally from the work performed
172 by Lead Plaintiffs and the Collective Members, such as the maintenance and
173 repair on automobiles.¹

¹ Collective members perform a specialty job integral to Universal Nissan's business given that they are responsible for servicing Nissan vehicles under manufacturer warranties.

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

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

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

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

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

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

202 31. In comparison to other vehicle manufacturers and their respective
203 dealerships, Universal Nissan established additional policies, causing their
204 technicians to suffer a significant amount of unpaid wages over the past
205 several years.

206 32. For instance:

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

217
218 b. The total amount of hours spent “on the job” by
219 Lead Plaintiffs and Collective Members are not documented
220 as required and paystubs denote what purports to be
221 “flagged hours” only, with no supportive information.
222

223 c. Lead Plaintiffs and Collective Members are
224 required to purchase tools and equipment to fulfill their
225 duties as a Universal Nissan service technician. When they
226 purchase these tools and equipment, their weekly rate of pay
227 falls below the required statutory minimum wage to which
228 they are never recompensed.

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

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

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

248 a. For example, the flat-rate pay-out to a
249 technician for replacing a transmission in a Nissan Sentra
250 that is paid directly by the customer is eight (8) hours.
251

252 b. When the same transmission is brought in by a
253 customer with the same vehicle, but under a warranty
254 (either manufacturer or an extended warranty), the
255 transmission replacement conducted by the technician will
256 now only pay four (4) hours, with no justification for the
257 significant discrepancy in pay.
258

259 c. This drastic change in the flat-rate paid to the
260 technician is arbitrary and capricious, as there is no
261 difference in the work performed or the time it takes to
262 replace a transmission (for example) in a warranty-paid
263 versus customer-paid vehicle.
264

265 35. “Warranty-paid” work provides a substantially lower payout to the
266 employees than “customer-paid” work because the warranty work constitutes
267 a great majority of the service requested at Universal Nissan.

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

272 37. Consequently, mechanics, technicians, and maintenance
273 personnel did not and are not receiving fair compensation for all hours worked
274 while providing valuable benefits and services to Universal Nissan, for which
275 Universal Nissan receives profits. These invaluable Universal Nissan
276 employees have outstanding unpaid wages² owed to them.

² “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.

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

281 39. Lead Plaintiffs and the Collective Members are routinely required
282 to purchase, and maintain their own tools, equipment, and supplies necessary
283 for the discharge of their duties for the direct benefit of Universal Nissan.

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

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

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

296 43. By requiring Lead Plaintiffs and the Collective Members to
297 purchase their own tools, Universal Nissan is effectively requiring employees
298 to kick-back their wages to the employer.

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

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

306 46. Universal Nissan and its agents/representatives are aware of and
307 materially participated in the implementation of the unfair wage
308 compensation system.

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

314 48. This action represents a situation typical of class treatment.
315

316 49. Universal Nissan’s failure to pay wages for all hours worked by all
317 mechanics, technicians, and maintenance personnel employed by Universal
318 Nissan is uniform throughout its entire business operations. These employees
319 are also similarly situated due to the application of “piece-rate” and or “flat-
320 rate” pay.

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

326 **VI. BASIC CONDITIONS PRECEDENT ALLEGATIONS**

327 51. Lead Plaintiffs have engaged the law firm of éclat law, PA to serve as
328 its lead trial counsel and are obligated to compensate these law firms for services
329 rendered in connection with prosecuting the Collective Members rights as alleged
330 herein.

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

333

334 **COUNT I**
335 **VIOLATION OF THE FLSA - MINIMUM WAGES**
336

337 53. Lead Plaintiffs reallege and incorporate by reference the
338 allegations contained in paragraphs 1 through 52 above as if fully set forth
339 herein.

340 54. Lead Plaintiffs bring this cause of action to recover unpaid
341 minimum wages owed to Lead Plaintiffs and the Collective Members pursuant
342 to the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.*

343 55. This includes failure to pay minimum wage for all hours worked
344 by the Lead Plaintiffs and the Collective Members and includes reductions in
345 the employees' paychecks for the benefit of the employer in which they required
346 employees to purchase tools to perform their work without reimbursement or
347 compensation up to the statutory minimum wage.

348 56. Lead Plaintiffs and Collective Members were or continue to be
349 automobile service or maintenance employees (or former-employees) of
350 Universal Nissan—including but not limited to mechanics/technicians and
351 maintenance servicemen as described in more detail earlier in this pleading.

352 57. Lead Plaintiffs and the Collective Members consent to sue in this
353 action pursuant to 29 U.S.C. § 216(b); additional potential opt-in Plaintiffss
354 may execute and file forms consenting to "opt in" and joining as Plaintiffss in
355 this collective action.

356 58. Lead Plaintiffs and the Collective Members were hired by
357 Universal Nissan in Florida to perform duties as a technician on behalf of
358 Universal Nissan and for Universal Nissan's profit during the Collective
359 Period.

360 59. Lead Plaintiffs and the Collective Members were employed by
361 Universal Nissan.

362 60. Lead Plaintiffs and the Collective Members were required by
363 Universal Nissan to procure and maintain tools, equipment, and supplies
364 necessary for the discharge of their duties, which reduced the employees'
365 weekly wage to an amount that was below the requisite minimum wage.
366 These tool purchases further reduced the employees' weekly wage to an
367 amount that was below the statutory minimum wage.

368 61. By failing to pay minimum wages, Universal Nissan has violated,
369 and continues to violate Sections 206 and 215 of the FLSA.

370 62. The conduct described throughout this Complaint constitutes a
371 willful violation of the FLSA.

372 63. Universal Nissan knew that it was required to pay its employees
373 at least the requisite minimum wage for all hours worked.

374 64. Instead of lawfully paying its employees, Universal Nissan
375 established and maintained systems, policies, and procedures that were

376 intentionally designed to avoid paying employees their earned wages as
377 detailed in the paragraphs above.

378 65. Universal Nissan has engaged in a widespread systematic pattern,
379 policy, and practice of violating the FLSA, as detailed throughout this
380 Complaint. Application of these practices does/did not depend on the personal
381 circumstances of the Lead Plaintiffs or any of the Collective Members. Rather,
382 the same practices which result in the non-payment of minimum wages to Lead
383 Plaintiffs and the Collective Members apply to all Collective Members.

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

387 67. Further, when tool and equipment purchases decrease the
388 employees' weekly paycheck below the statutory minimum wage, Lead
389 Plaintiffs and the Collective Members are entitled to reimbursement up to and
390 including the statutory minimum wage.

391 68. Universal Nissan violated FLSA 29 U.S.C. § 206 by failing to pay
392 minimum wages, as described above, and caused Lead Plaintiffs and the
393 Collective Members to suffer lost wages and interest thereon.

394 69. Lead Plaintiffs and the Collective Members have been required to
395 work eight (8) hours per day, and beyond, without receiving the full
396 compensation for the hours worked.

397 70. Due to Universal Nissan’s misconduct and misuse of the employee
398 compensation system, Lead Plaintiffs and the Collective Members did not earn
399 wages at the minimum wage rate for all their hours worked during one or more
400 work weeks.

401 71. Lead Plaintiffs and the Collective Members were only
402 compensated for “flagged hours”, which sufficiently reduced the compensable
403 hours included in their pay-out, effectively lowering their rate of pay in a
404 manner which falls below the federal minimum wage rate.

405 72. By way of example, on April 17, 2019, Lead Plaintiffs received a
406 paycheck stating that he worked 13 hours and was paid \$416.00 (gross), but
407 worked at least 60 hours, which is \$.32 per hour below the federal minimum
408 wage rate of \$7.25 per hour for 2019. For this one week, he is owed a total of
409 \$19.20 in unpaid federal minimum wages.

410 73. Universal Nissan knowingly, willfully, or with reckless disregard
411 carried out its illegal pattern or practice of failing to pay proper minimum
412 wages as compensation with respect to Lead Plaintiffs and the Collective
413 Members.

414 74. Universal Nissan knew that Lead Plaintiffs and the Collective
415 Members were owed compensation and that Universal Nissan was required to
416 pay such compensation. However, Universal Nissan failed to do so.

417 75. As a result of Universal Nissan’s intentional, willful, and unlawful
418 acts in refusing to pay Lead Plaintiffs and the Collective Members, and those
419 similarly situated to them, minimum wage rates per hour worked per
420 workweek in one or more workweeks, Lead Plaintiffs and the Collective
421 Members have suffered damages, and incurred reasonable attorneys’ fees and
422 costs as provided in 29 U.S.C. § 216.

423 76. As a result of Universal Nissan’s willful violation of FLSA § 206,
424 Lead Plaintiffs and the Collective Members are entitled to recover the full
425 amount of any unpaid back wages unlawfully withheld, plus the same amount
426 as liquidated damages as per 29 U.S.C. § 216.

427 77. Lead Plaintiffs and the Collective Members are entitled to recover
428 from Universal Nissan their unpaid minimum wages, damages for
429 unreasonably delayed payment of wages, liquidated damages or pre-judgment
430 interests, reasonable attorneys’ fees, and costs and disbursements of the action
431 pursuant to 29 U.S.C. §§ 206 and 216.

432 78. Because Universal Nissan’s violations of the FLSA have been
433 willful, a three-year statute of limitations applies pursuant to 29 U.S.C. § 255.

434 79. Collective Members request designation of this action as a
435 collective action and prompt issuance of notice pursuant to 29 U.S.C. § 216(b)
436 to all similarly situated members of an FLSA Opt-In Collective, apprising them
437 of the pendency of this action, permitting them to assert timely FLSA claims

438 in this action by filing individual Consents to Join, and appointing Plaintiffs
439 and their counsel to represent the Collective Action Members.

440
441 **COUNT II**
442 **NISSAN'S VIOLATION OF THE FLSA FOR FAILURE**
443 **TO PAY OVERTIME WAGES³**
444

445 80. Lead Plaintiffs reallege and incorporate by reference the
446 allegations contained in paragraphs 1 through 52 above as if fully set forth
447 herein.

448 81. Lead Plaintiffs bring this cause of action to recover unpaid
449 overtime wages owed to them pursuant to the Fair Labor Standards Act, 29
450 U.S.C. § 201, *et seq.*

451 82. Lead Plaintiffs and Collective Members are automobile service or
452 maintenance employees (or former-employees) of Universal Nissan—including
453 but not limited to mechanics/technicians and maintenance servicemen as
454 described and defined earlier in this pleading.

455 83. All other collective action Plaintiffs were, always relevant to this
456 action, adults residing in Florida. Lead Plaintiffs and the Collective Members
457 consent to sue in this action pursuant to 29 U.S.C. § 216(b); additional potential
458 opt-in Plaintiffs may execute and file forms consenting to "opt in" and joining
459 as Plaintiffs in this collective action.

460 84. Lead Plaintiffs and the Collective Members were hired by
461 Universal Nissan dealerships in Florida to perform duties as a technician on
462 behalf of Universal Nissan and for Universal Nissan's profit during the
463 Collective Period.

464 85. Lead Plaintiffs and the Collective Members were employed by
465 Universal Nissan.

466 86. By failing to pay overtime wages, Universal Nissan has violated
467 and continues to violate the FLSA sections 207 and 215.

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

470 88. Universal Nissan knew that it was required to pay its employees
471 the requisite overtime for all overtime hours worked.

472 89. Instead of lawfully paying its employees, Universal Nissan
473 established and maintained systems, policies, and procedures that were
474 intentionally designed to avoid paying employees their earned wages as
475 detailed in the paragraphs above.

476 90. Universal Nissan has engaged in a widespread systematic pattern,
477 policy, and practice of violating the FLSA, as detailed throughout this
478 Complaint.

479 91. Application of these practices does/did not depend on the personal
480 circumstances of the Lead Plaintiffs and the Collective Members. Rather, the

481 same practices which result in the non-payment of overtime wages to Lead
482 Plaintiffs and the Collective Members apply to all Collective Action Members.

483 92. Lead Plaintiffs and the Collective Members are entitled to be paid
484 overtime at a rate not less than one and one-half times their regular rate for
485 all hours worked more than forty hours per week pursuant to FLSA 29 U.S.C.
486 § 207.

487 93. Universal Nissan violated the FLSA, 29 U.S.C. § 207, by failing to
488 pay Lead Plaintiffs and the Collective Members overtime wages at a rate of
489 time and a half of their regular pay during the weeks that they worked more
490 than forty (40) hours, as described in the paragraphs above, and caused Lead
491 Plaintiffs and the Collective Members to suffer lost wages and interest thereon.

492 94. Lead Plaintiffs and the Collective Members were only
493 compensated for “flagged hours”, which sufficiently reduced the compensable
494 hours included in their pay-out. Furthermore, “flagged hours” were the only
495 hours that were counted for purposes of determining whether Collective
496 Members were entitled to overtime, rather than the actual hours worked by
497 the Collective Members.

498 95. Therefore, Lead Plaintiffs and the Collective Members frequently
499 worked over forty hours per week but did not receive the required overtime for
500 every hour worked more than forty (40) hours per week, since flagged hours
501 were the only hours that were counted for purposes of overtime.

502 96. By way of example, on January 31, 2020, Lead Plaintiffs received
503 a paycheck stating that he worked 48 hours and was paid \$1,536.00 (gross). He
504 was paid at his straight rate for each of these hours. Under 29 U.S.C. § 207,
505 Lead Plaintiffs should have been paid at a rate not less than one and one-half
506 times the regular rate at which he is employed for every hour in excess of forty
507 (40) hours, which he was not. For this one week, he is owed a total of \$384 in
508 unpaid overtime wages.

509 97. Moreover, despite working more than forty (40) hours per week,
510 Universal Nissan failed to pay Collective Members overtime compensation at
511 the appropriate rate.

512 98. Universal Nissan knowingly, willfully, or with reckless disregard
513 carried out its illegal pattern or practice of failing to pay Collective Members
514 the required overtime wages.

515 99. Universal Nissan knew that Lead Plaintiffs and the Collective
516 Members were owed compensation and that Universal Nissan was required to
517 pay such compensation. However, Universal Nissan failed to do so.

518 100. As a result of Universal Nissan's intentional, willful, and unlawful
519 acts in refusing to pay Lead Plaintiffs and the Collective Members, and those
520 similarly situated to them, overtime wage rates per hour worked per workweek
521 in one or more workweeks, Lead Plaintiffs and the Collective Members, and

522 those similarly situated to them, have suffered damages, and incurred
523 reasonable attorneys' fees and costs as provided in 29 U.S.C. § 216.

524 101. As a result of Universal Nissan's willful violation of FLSA § 207,
525 Lead Plaintiffs and the Collective Members are entitled to recover the full
526 amount of any unpaid back wages unlawfully withheld, plus the same amount
527 as liquidated damages or pre-judgment interest as per 29 U.S.C. § 216. They
528 are further entitled to reasonable attorneys' fees, costs, and disbursements.

529 102. Because Universal Nissan's violations of the FLSA have been
530 willful, a three-year statute of limitations applies pursuant to 29 U.S.C. § 255.

531 103. Lead Plaintiffs and the Collective Members request designation of
532 this action as a collective action and prompt issuance of notice pursuant to 29
533 U.S.C. § 216(b) to all similarly situated members of an FLSA Opt-In Class,
534 apprising them of the pendency of this action, permitting them to assert timely
535 FLSA claims in this action by filing individual Consents to Join, and
536 appointing Plaintiffs and their counsel to represent the Collective Action
537 Members.

538 PRAYER FOR RELIEF

539 WHEREFORE, Lead Plaintiffs and the Collective Members respectfully
540 request that judgment be entered in their favor, against Universal Nissan,
541 and:

542 a. Certification and acknowledgement of the Collective Action
543 and appointing the Lead Plaintiffs and trial counsel the opportunity to
544 represent the Collective Members.

545 b. Awarding Lead Plaintiffs and the Collective Members
546 his/their unpaid wages in the amount due to him/them for Lead Plaintiffs
547 and the Collective Members, time worked in each work week at
548 minimum wage, any owed overtime wages, and any other relief provided
549 for under law.

550 c. Awarding Lead Plaintiffs and the Collective Members
551 liquidated damages as permitted by law.

552 d. Awarding Lead Plaintiffs and the Collective Members
553 reasonable attorneys' fees and costs and expenses of the litigation
554 pursuant to the FLSA.

555 e. Awarding Lead Plaintiffs and the Collective Members
556 punitive damages and/or pre-judgment interest as permitted by law.

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

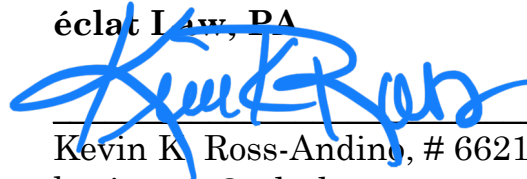
561 g. Granting any other further relief, the Court deems just and
562 proper.

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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
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