

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO.: 09-20301-CIV-UNGARO/SIMONTON

Victor Galban; Jose Quiros,
and; others similarly situated,

Plaintiff,

vs.

CLASS REPRESENTATION

Bill Seidle's Nissan, Inc.,
a Florida corporation, et al.,

Defendant.

AMENDED FAIR LABOR STANDARDS ACT COMPLAINT

Plaintiffs Victor Galban, Jose Quiros, and others similarly situated, sue Defendant, Bill Seidle's Nissan, Inc., a Florida corporation, *et al.*, and allege:

JURISDICTIONAL ALLEGATIONS

1. This is an action to recover money damages for unpaid minimum wages brought under the laws of the United States of America. This Court has jurisdiction pursuant to the Fair Labor Standards Act, 29 U.S.C., Sections 201-219, inclusive ("FLSA").

2. Plaintiffs Victor Galban and Jose Quiros worked as automobile salespersons at an automobile dealership location known as "Bill Seidle's Nissan, Inc." in Miami-Dade County, Florida. Each named or represented Plaintiff is an "employee" within the meaning of 29 U.S.C. §203(e).

3. Defendant Bill Seidle's Nissan, Inc., is a corporation, and one of several related, closely, privately held automobile dealership locations or entities operating under the umbrella of the joint unregistered marketing entity, organization or fictitious names "Bill Seidle Automotive

Group Miami, FL” or “Bill Seidle Dealerships of Florida”. This related group of closely, privately held automobile dealership locations or entities include the following Florida for-profit corporations: Bill Seidle Nissan, Inc.; Bill Seidle Imports, Inc.; Bill Seidle Imports of South Florida, Inc.; Bill Seidle Imports of Davie, Inc.; Bill Seidle Suzuki, Inc., and; Bill Seidle Suzuki of Davie, Inc. Each of these related corporate entities have the same registered agent, and either the same mailing address or registered-agent-address, which address (2900 N.W. 36th Street, Miami, Florida) is listed in the Miami-Dade County Public Records as being owned by William D. Seidle and Betty Seidle, as husband and wife. Additionally, the President or Director of each of these related entities is listed in the publicly filed Annual Reports as either Mr. William D. Seidle or Michael Seidle.

4. Each of the related corporate entities represents either a “Bill Seidle Automotive Group” dealership location or it is the registered owner of a fictitious name under which the “Bill Seidle Automotive Group” transacts business, including: “Bill Seidle’s Mitsubishi”; “Bill Seidles Mitsubishi”; “Bill Seidle Kia”, and; “Bill Seidle Hyundai”.

5. An internet link to each related dealership location is found at a single web address (www.billseidleautogroup.com) entitled “Bill Seidle Automotive Group Miami, FL” which greets potential customers to their joint web site with the declaration: “Welcome to *Bill Seidle Dealerships of Florida*, offering you the best selection of quality vehicles from Nissan, Mitsubishi, Kia, Suzuki, and Hyundai”. See attached Exhibit “A”.

6. Defendant Bill Seidle’s Nissan, Inc., individually and together with the related entities described above is a “person” and an “employer” within the meaning of the 29 U.S.C. §203 (a) and (d) and is hereinafter referred to as the “Employer”. Moreover, this same “Employer” (the entire “Bill Seidle Automotive Group Miami, FL” or “Bill Seidle Dealerships

of Florida”), each individually or together, is an enterprise engaged in commerce within the meaning of 29 U.S.C. §203(s).

7. Jurisdiction is conferred upon this Court by 28 U.S.C. §1337, and by 29 U.S.C. §216(b). The Employer is, and at all times material to this action was, an organization which sells and/or markets and/or transports services and/or goods to customers in Florida. Upon information and belief, the annual gross revenue of the Employer was at all times material to this action in excess of \$500,000.00 per annum.

8. By reason of the foregoing, the Employer is, and at all times material to this action was, an enterprise engaged in commerce or in the production of goods for commerce as defined in Sections 3(r) and 3(s) of the FLSA, 29 U.S.C., §§ 203(r) and 203(s).

CLASS ALLEGATIONS

9. The named Plaintiffs are similarly situated to an untold number of other salespersons who work or have worked for the Employer during any part of the past three years at any of the related automobile dealerships operating under the ambit of the “Bill Seidle Automotive Group Miami, FL” or “Bill Seidle Dealerships of Florida”.

10. Each of the named Plaintiffs and those similarly situated work or worked under a “commissions-only” pay plan which allows for bi-weekly draws against future commissions. This draw is paid on a bi-weekly basis, based upon a forty (40) hour workweek, and is calculated by multiplying exactly eighty (80) hours supposedly worked during a given bi-weekly pay period, times the minimum wage rate applicable during a given pay period. This bi-weekly draw period will be referred to hereinafter as the “Draw Period”.

11. Although the “draw” against future commissions is based upon supposed forty (40) hour workweeks, the named and represented Plaintiffs were routinely scheduled to work,

and actually did work, well in excess of forty hours per workweek. In this manner, the actual rate of compensation begins to drop below the required minimum wage rate with every moment they work in excess of forty hours during each workweek for which the “draw” amount is calculated.

12. In addition to the bi-weekly “draw”, on a monthly basis the Employer also calculates and pays out commission compensation to salespersons based upon the commissions earned during the month, depending upon the number of automobiles actually sold by a given employee during that period. This monthly period of commission calculation and compensation is hereinafter referred to as the “Settlement Period”.

13. On numerous occasions during the period of time covered by this Complaint -- particularly since the commencement of the current national economic downturn or recession -- salespersons employed by this Employer have generated fewer sales than are necessary to cover even the amount of the “draws” taken (already below minimum wage rates, as explained in ¶¶10-11, above) during each corresponding “Draw Period” occurring within a given “Settlement Period”. Accordingly, during these times, the Employer failed to pay even a minimum wage to the Plaintiffs during both each bi-weekly “Draw Period” and each monthly “Settlement Period” when the only compensation paid is the amount paid as a “draw”.

14. Additionally, during these times when the “draw” exceeds the commissions earned during a monthly “Settlement Period”, the amount of the “shortage” (i.e., the amount by which an employee’s “draw” exceeds “commissions”) is actually carried over by this Employer to the following monthly “Settlement Period” as money owed by the employee to the Employer.

ATTORNEY’S FEES

15. Plaintiffs have engaged the services of the undersigned attorneys and have agreed

to pay reasonable attorney's fees for their services.

ENTITLEMENT TO ATTORNEY'S FEES

16. Plaintiffs are entitled to an award of prevailing party attorney's fees pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 and other related authority.

COUNT I – VIOLATION OF THE FAIR LABOR STANDARDS ACT
(Failure to Pay Minimum Wages)

Plaintiffs reallege paragraphs 1 through 16 as if fully set forth herein.

17. At all times during their employment, the Plaintiffs were employees required to be paid a minimum hourly wage for every hour worked for the Employer.

18. Since on or about February, 2006 through the present (“the applicable period covered by this Complaint”), the Employer has violated the provisions of the FLSA, 29 U.S.C. §206 and §215(a)(2) by failing to pay the Plaintiffs and other similarly situated salespersons a minimum hourly wage during numerous applicable pay periods.

19. Attached to this Complaint as composite Exhibit “B” are two monthly “Settlement Period” calculations generated by the Employer for the named Plaintiff Victor Galban. These calculations illustrate how sales volumes for the consecutive months of September and October 2008, resulted not only in his receiving less than the applicable minimum wage for hours worked during at least those two entire “Settlement Periods”, but also how the Employer actually carried over the “shortages” of these below minimum wage periods to the following “Settlement Period” as amounts *owing to the Employer*.

20. The Employer knew or showed a reckless disregard for the provisions of the FLSA concerning the payment of minimum wages and remains owing the named Plaintiffs and other similarly situated employees a minimum wage for every hour worked during the three year

period preceding this lawsuit. Accordingly, both named and represented Plaintiffs are entitled to recover double damages.

JURY DEMAND

21. Plaintiffs, Victor Galban and Jose Quiros, and those similarly situated, demand trial by jury of all issues, claims and defenses in this action that are triable as of right by a jury.

WHEREFORE, Plaintiffs Victor Galban, Jose Quiros, and others similarly situated demand the following: payment of minimum wages for every hour worked by them and those similarly situated, or as much as is allowed by the Fair Labor Standards Act, whichever is greater, in an amount to be proven at the time of trial; an additional like amount as liquidated damages; an award of reasonable attorney's fees and costs, and; any and all such other relief which this Court may deem reasonable under the circumstances. Additionally, and as an element of damages, the Plaintiffs demand return of all "shortages" improperly applied by the Employer. Also, in the event that Plaintiffs do not recover liquidated damages as allowed, then Plaintiffs and those similarly situated demand an award of prejudgment interest as a lesser alternative to liquidated damages.

Dated: February 12, 2009

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