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Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Toyota Motor Sales, U.S.A., Inc.
6565 Headquarters Dr.
Mailstop E3-3C
Plano, TX 75024-5965

Re: PAGA Notice Pursuant to California Labor Code §2699
 Claimant: Christopher Cruz
 Employers: Toyota Motor Sales, U.S.A., Inc.

Dear Sir or Madam:

Claimant Christopher Cruz has retained Nazo Koulloukian, Esq. and the KOUL LAW FIRM for wage and hour claims against his employer Toyota Motor Sales, U.S.A., Inc., (hereafter “Employer”). Claimant worked for Employer from May 2006 to March 2023.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay Wages, including Overtime Wages

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*,

IWC Wage Orders 7 & 12)

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and his coworkers do not receive payment for all hours worked, the result is that they are earning less than the statutory minimum wages for time spent off the clock and all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period.

Off-the-Clock Hours Worked

Employer requires its hourly employees to go through various levels of gates and security where they are required to use a personalized badge to enter through gates, buildings, and other entryways and past security guards, all prior to clocking in. Employers operate large facilities and although there is a timeclock by the security station that is relatively near the entry to the facility, employees are not permitted to clock in at the security station. They are required to walk through the large facility and to their own work area where they are finally permitted to clock in, which is up to a 15-minute walk each way from the security entrance, and even further from the first gate they are required to use their badge at to enter the facility.

Employees were also required to go through security to enter and walk to their own department’s time clock when returning from unpaid lunch periods which further contributed to unpaid hours worked.

Failure to Include Nondiscretionary Bonuses in Regular Rate

Claimant and aggrieved employees received additional pay including nondiscretionary semi-annual bonuses but Employer failed to include the additional pay in the “regular rate” of pay for purposes of calculating overtime. Claimant and aggrieved employees worked frequent overtime so this failure to pay overtime at the regular rate resulted in numerous underpaid hours worked.

When employees earning minimum wage do not receive payment for all hours worked, including off-the-clock and overtime hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked, in violation of Labor Code §1197.

Failure to Pay All Wages Owed Twice Per Month

Employer is required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed

twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 et seq.)

Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Additionally, employees receive zero pay for time spent working off the clock which is also a violation of the labor code. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 et seq., Wage Order)

Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11 of the Wage Order provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

In this case, Claimant and his coworkers frequently experienced noncompliant meal periods because of the extensive walk and wait time associated with the clock-in procedure described above. Employees would also sometimes be called or texted while on meal periods and many employees felt pressure to respond, interrupting their meal periods.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer did not account for all hours worked that were unaccounted for on their timecard and further because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy.

The Wage Orders require employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, "the employment of any employee... under conditions of labor prohibited by the order is unlawful." Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code

§§226.7 and 512. Employer never paid penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2350, 2441, 2698 et seq., 3457, 6712)

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. Claimant explains that he and his coworkers frequently experienced noncompliant rest periods because of time spent walking from the work area to the break area. Employees were also sometimes contacted via calls or text, or in person, while on rest periods.

Employer failed to pay Claimant and similarly situated employees the premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. Rest period violations occurred, however no rest period penalty pay is listed on any paystubs. Pursuant to Labor Code §1198, "the employment of any employee... under conditions of labor prohibited by the order is unlawful." Accordingly, because Employer violated Wage Order provisions requiring rest breaks, Employer violated §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under Cal. Labor Code §§ 558 and 2698 *et. seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 et seq.)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time their employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.

Additionally, Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages

owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Safe Working Conditions
(Cal. Labor Code §1198, Wage Order)

Employer's workplaces would get unsafely hot due to Employer's lack of adequate climate control facilities.

The Wage Orders require:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

Claimant explains that it would often get unbearably hot in the facility and that Employer had inadequate climate control to address the heat issue. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful
(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that "every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety

Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Employers employed their employees under unsafe conditions violative of Cal-OSHA regulations and the Health and Safety Code. In addition to the unsafely hot work environment discussed above, after Employer installed solar panels on the roof, the workplace began to experience severe roof leaks and employees would be required to continue working as usual walking and driving their equipment through large water puddles which would cause accidents. The leaks were never addressed, and this safety issue has persisted.

As a result of these practices, Employers have violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlined above. Employers are liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Claimant and aggrieved employees were required to purchase many items for work purposes for which they were never fully reimbursed, including required apparel to be purchased from Employer's online store. Employees received a \$150 annual apparel allowance which was not sufficient to purchase the required work uniform and Claimant and his coworkers spent their own money purchasing clothing from the required company website.

Claimant and aggrieved employees were also required to use their cell phones at work. Employees working in positions that observed quality issues were required to use their personal phones to take photos of the quality issues. Employer's failure to fully reimburse for any of these expenses renders Employer liable for PAGA penalties for each pay period wherein a violation occurred.

Paystub and Record Keeping Violations

(Cal. Lab. Code §§226, 1174, 2698 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174. Based on and as a result of the above-mentioned Labor Code violations, Employers maintained and issued inaccurate wage statements, failing to include required hours and overtime hours worked and misrepresenting actual regular hours worked on the final wage statement. Employer further failed to include meal and rest period penalties, and accurate itemized business expenses, thus failing the requirements of Labor Code §226(a). Such failures caused injury to Claimant and others, by, among other things, impeding them from

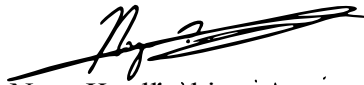
knowing the total hours worked and the amount of wages, penalties, and reimbursements to which they are and were entitled.

Claimant will seek penalties as permitted under Labor Code §226 for himself and other aggrieved employees for each violation. Further, claimant will seek recovery of civil penalties under Labor Code §226.3, and PAGA, Labor Code §2698, *et seq.*, on behalf of the LWDA against the Employer if authorized to file a representative action on behalf of the State of California for Employers' paystub violations.

Conclusion

Employers have violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'N. Koulloukian', written over a horizontal line.

Nazo Koulloukian
KOUL LAW FIRM
Attorneys for Claimant