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9 Misagh Seyyedi and aggrieved employees

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

Misagh Seyyedi, an individual,

Plaintiff,

v.

Sunroad Auto Shared Services, Inc., Sunroad
BCV Auto, Inc. d/b/a/ BMW of El Cajon, and
DOES 1 to 20,

Defendants.

) CASE NO. 25CU015355C

) **COMPLAINT**

) 1. CIVIL PENALTIES UNDER THE
) PRIVATE ATTORNEYS GENERAL ACT –
) LABOR CODE SECTION 2699, ET SEQ.

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PRELIMINARY ALLEGATIONS

1. Misagh Seyyedi (hereafter, "Plaintiff") is an individual and a resident of San Diego County.

2. Sunroad Auto Shared Services, Inc. is a California Corporation that is and was at all times relevant doing business in and had substantial ties to the County of San Diego.

3. Sunroad BCV Auto, Inc. d/b/a BMW of El Cajon is a California Corporation that is and was at all times relevant doing business in and had substantial ties to the County of San Diego.

4. DOES 1 through 20 are individuals and entities who are responsible in some manner for the claims and injuries alleged by Plaintiff in this Complaint. Plaintiff is presently ignorant of the names and identities of DOES 1 through 20, but will amend this complaint to allege the same upon receipt of that information.

5. Sunroad Auto Shared Services, Inc., Sunroad BCV Auto, Inc. d/b/a BMW of El Cajon, and DOES 1 through 20 are hereafter referred to collectively as "Defendants."

6. Plaintiff, on behalf of himself and acting for the interests of other current and former employees (cumulatively "Plaintiffs" or "Aggrieved Employees"), hereby alleges against the named Defendants the following:

7. Plaintiffs bring this representative action against Defendants to recover civil penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code Section 2698, *et seq.*, on behalf of the State of California, themselves, and all other Aggrieved Employees of Defendants seeking only PAGA civil penalties (no wages and no individualized relief), reasonable attorneys' fees, and costs.

8. Plaintiffs are Defendants' current and former employees in California who worked from one year before the submission of the PAGA notice through the date of trial in this matter.

9. As set forth in more detail below, Defendants caused Plaintiffs to suffer from the unlawful policies and practices implemented and enforced by the Defendants, and when Plaintiffs complained or reported the unlawful policies and practices, Defendants retaliated against Plaintiffs, in some cases terminating their employment.

10. Plaintiff is informed and believes that each of the defendants was the agent or employee of each of the other defendants and acted in the scope of its agency or employment.

11. This representative action filed pursuant to PAGA, §§ 2698, 2699 generally consists of the following group:

All current or former employees who worked for the Defendants in the state of California from one year before the PAGA submission to the date of final judgment in this action.

12. All members of the represented group will be referred to as the “Aggrieved Employees.”

13. The “Representative Period” means from **one year before the PAGA submission through the date of final judgment in this action.**

REPRESENTATIVE NATURE OF CLAIMS

14. Plaintiff is informed and believes that the facts and violations of law detailed herein are representative in nature and have been perpetrated on all aggrieved employees of Employer in the State of California. Plaintiff asserts the claims described herein on a representative basis on behalf of himself and all other aggrieved employees of Employer in the State of California.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. As required by Labor Code Section 2699.3, on or about January 7, 2025, Plaintiff notified Defendants and the Labor and Workforce Development Agency of the State of California of the allegations contained herein and of his intention to initiate a civil action.

16. More than 65 days have elapsed since Plaintiff notified the LWDA of his allegations and his intention to initiate a civil action.

17. The LWDA has not given notice it intends to investigate or otherwise assume jurisdiction over this matter. Thus, Plaintiff has exhausted his administrative remedies and may initiate this civil action

JURISDICTION AND VENUE

18. Pursuant to Article VI, § 10 of the California Constitution, subject matter jurisdiction is proper in the Superior Court of California, County of San Diego, State of California because Plaintiffs allege claims arising under California law.

1 19. This Court has jurisdiction over the Defendants because each is an association, corporation,
2 business entity, or individual that conducts business in the State of California, County of San
3 Diego.

4 20. Pursuant to § 395 of the California Code of Civil Procedure, venue is proper in the Superior
5 Court of California for the County of San Diego because this is where Defendant employed
6 Plaintiff and engaged in the wrongdoing described herein.

7 **FACTUAL ALLEGATIONS**

8 21. Defendants own and operate an automotive dealership in the City of El Cajon in the
9 County of San Diego.

10 22. Plaintiff was employed by Defendants as car salesman from approximately May of
11 2023 to on or about April 19, 2024.

12 23. Plaintiff would directly report to Matthew Daymaude, Defendants' General Sales Manager.

13 24. Plaintiff was hired with a rate of pay of \$16.30/hour + commission.

14 25. The commission structure was outlined in a "Sales Associate Commission Plan"
15 (hereinafter referred to as "Commission Plan").

16 26. The Commission Plan provided a base commission rate determined by the number of closed
17 sales made; such that if Plaintiff sold 0-2 cars the base commission rate was 5%, 2.5-3 cars was
18 7%, 3.5-4 cars was 10%, 4.5-5 cars was 13.5%, and 5.5 cars or more was 18.5%.

19 27. The Commission Plan included a "Split Commissions" term at 4(c) which stated,
20 "Occasionally, it will be necessary to split the commission and the unit credit on the sale of a
21 vehicle. Management reserves the right to split all relevant commissions and unit credits by any
22 percentages it deems appropriate. The decision of the General Manager of the Dealership on the
23 division of commissions and unit credits is final. A split commission equals less than a full unit for
24 the purpose of a Closed Sale, but the Dealership can combine with the other Split Commissions to
25 result in full units. For example, two 50% Split Commissions equal a full unit, or one Closed Sale."

26 28. The Commission Plan's Split Term, term 4(c), is illusory and unenforceable.

27 29. Plaintiff was a non-exempt employee.

1 30. On or about August 2023, Plaintiff gave a tip to Defendants' human resources department
2 that Defendants' management level employees were engaging in fraud by inflating their sales
3 figures to BMW Manufacturing¹ in an effort to purchase BMW vehicles at a lower price per
4 vehicle. Plaintiff informed Defendants' management level employees that he did not feel
5 comfortable participating in the fraud scheme.

6 31. Defendants failed to take any corrective action based on Plaintiff's report.

7 32. On information and belief, Defendants disclosed to Plaintiff's immediate supervisor that
8 Plaintiff had informed Defendants' human resources department of the fraud scheme.

9 33. Plaintiff informed Defendants' human resources department that Plaintiff's immediate
10 supervisor was exhibiting discriminatory behavior and performing discriminatory acts against
11 Plaintiff as a direct result of Plaintiff's Persian descent.

12 34. Following Plaintiff's report to Defendants' human resources department of the
13 discriminatory behavior and acts, Defendants failed to take any corrective actions.

14 35. As a direct result of Defendants' failure to act, the discriminatory behavior and actions
15 continued against Plaintiff.

16 36. After Plaintiff notified Defendants' human resources department of the fraud scheme, and
17 after Plaintiff's report of discriminatory behavior and acts, Defendants began a pattern and
18 behavior of harassing Plaintiff by fabricating so called "violations of company" policy or
19 "unsatisfactory performance/behaviors".

20 37. Throughout Plaintiff's employment, Defendants failed to provide Plaintiff with required
21 rest breaks.

22 38. Throughout Plaintiff's employment, Defendants failed to provide Plaintiff with required
23 meal breaks.

24 39. On paper, Defendants would purportedly encourage rest and meal breaks, however, the day-
25 to-day behavior and acts of Defendants was to discourage Plaintiff and other employees from

26 _____
27 ¹ Plaintiff is informed and believes that BMW manufacturing is the entity that wholesaled
28 BMW vehicles to Defendants. Plaintiff will amend his complaint, if necessary, upon
confirmation of the correct name of the entity.

1 taking their meal and rest breaks.

2 40. The workplace culture crafted by Defendants was to encourage the *appearance* of
3 compliance with applicable laws and employee protections all the while, in *practice*, encouraging
4 and requiring employees to disregard their rights and the protections afforded to them by the
5 California Labor Code and applicable wage order.

6 41. Throughout Plaintiff's employment, Defendants would deprive Plaintiff of the commission
7 income he earned by splitting the unit credits for the sale of vehicles with individuals who were not
8 involved in the sale of the vehicle.

9 42. As a direct result, Plaintiff would not receive the full value of the commission for the sale of
10 the vehicle, and Plaintiff would not "move up" on the base commission rate structure, thereby not
11 only suffering a reduction in his commission amount on the sale in question but also suffering a
12 reduction in the commission percentage on his other sales.

13 43. As a direct result of Defendants' behavior, Plaintiff worked in excess of the hours he was
14 paid for on his checks and received less commission pay than what he earned, as a result of, at
15 minimum, the following:

- 16 a. Defendants failed to pay Plaintiff the full value of the commission for the sale of
17 vehicles and prevented Plaintiff from earning higher base commission rates.
- 18 b. Defendants failed to pay Plaintiff meal premiums for the days in which he was
19 not provided a meal break..
- 20 c. Defendants failed to pay Plaintiff rest break premiums for the days in which he
21 was not provided rest breaks.

22 44. Defendants owe Plaintiff one hour of wages for each day Plaintiff worked for Defendants as
23 a rest period premium under Labor Code Section 226.7 because Defendants failed to provide
24 Plaintiff a lawful rest period.

25 45. Additionally, Defendants owe Plaintiff one hour of wages for each day Plaintiff worked for
26 Defendants as a rest period premium under Labor Code Section 226.7 because Defendants failed to
27 provide Plaintiff a lawful rest period.

1 46. Lab. Code§ 1194 required Defendants to compensate Plaintiff at a rate of no less than
2 one-and-one-half times his regular rate of pay for all hours worked in excess of eight (8) hours
3 in each workday, and a rate of no less than twice her regular rate of pay for all hours worked in
4 excess of twelve (12) hours in a single workday.

5 47. On or about April 2024, Defendants caused Plaintiff to suffer shame, embarrassment,
6 and severe emotional distress by intentionally and recklessly blaming Plaintiff for the theft of a
7 watch. Defendants' acts were done in the presence of both customers and co-workers alike,
8 adding to the emotional distress suffered by Plaintiff.

9 48. On or about April 2024, Plaintiff notified Defendants that he did not receive the
10 commission that he should have received for the sale of a vehicle.

11 49. Defendants, referencing the Commission Plan's unenforceable Split Term, refused to
12 pay Plaintiff the commissions Plaintiff had earned.

13 50. On or about April 19, 2024, Defendants terminated Plaintiff's employment. The
14 discriminatory treatment Plaintiff suffered, the false allegations concerning the theft of a
15 watch, the fabrication of unsatisfactory performance reports, and ultimately the termination of
16 Plaintiff's employment were all motivated by the following:

- 17 a. Plaintiff's complaints about the inflation of sales figures to BMW
18 Manufacturing in an effort to purchase BMW vehicles at a lower price per
19 vehicle.
- 20 b. Plaintiff's complaints about the unlawful nonpayment of wages (including
21 underpayment of commissions);
- 22 c. Plaintiff's complaints about the discriminatory treatment Plaintiff suffered as
23 a result of his Persian ethnicity;

1 **FIRST CAUSE OF ACTION**

2 FOR CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT – LABOR
3 CODE SECTION 2699, ET SEQ.

4 **By Plaintiff Against All Defendants**

5 51. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
6 preceding and subsequent paragraphs as though fully set forth herein.

7 52. California Labor Code section 1102.5(b) prohibits an employer from retaliating against an
8 employee for disclosing information, “to a person with authority over the employee... if the
9 employee has reasonable cause to believe that the information discloses a violation of state or
10 federal statute, or a violation of or noncompliance with a local, state, or federal rule or
11 regulation...”

12 53. California Labor Code section 1102.5(c) states, “An employer, or any person acting on
13 behalf or the employer, shall not retaliate against an employee for refusing to participate in an
14 activity that would result in a violation of state or federal statute, or a violation of or
15 noncompliance with a local, state, or federal rule or regulation.”

16 54. Lab. Code § 1102.5(f) provides that “[i]n addition to other remedies available, an
17 employer is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per
18 employee for each violation of this section to be awarded to the employee who was retaliated
19 against...In assessing this penalty, the Labor Commissioner shall consider...”

20 55. California Labor Code Section 2699 provides in part that “[n]otwithstanding any other
21 provision of law, any provision of this code that provides for a civil penalty to be assessed and
22 collected by the Labor and Workforce Development Agency or any of its departments,
23 divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as
24 an alternative, be recovered through a civil action brought by an aggrieved employee on behalf
25 of the employee and other current or former employees against whom a violation of the same
26 provision was committed pursuant to the procedures specified in Section 2699.3.

27 56. Plaintiff brings this action as a Private Attorney General (on behalf of himself, the State
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of California, and all aggrieved employees who have suffered violations of Labor Code Section 1102.5 by Defendants) to collect the civil penalties specified in Labor Code Section 1102.5(f), as authorized by Labor Code Section 2699 and pursuant to the procedures specified in Labor Code Section 2699.3.

57. Plaintiff reported to Defendants a fraud scheme victimizing BMW manufacturing that was being performed by Plaintiff's immediate supervisors.

58. In response to Plaintiff's report, Defendants retaliated against Plaintiff.

59. Plaintiff suffered harm as a result of Defendants' retaliation.

60. On or about April 19, 2024, Defendants terminated Plaintiff's employment. The discriminatory treatment Plaintiff suffered, the false allegations concerning the theft of a watch, the fabrication of unsatisfactory performance reports, and ultimately the termination of Plaintiff's employment were all motivated by the following:

- a. Plaintiff's complaints about the inflation of sales figures to BMW Manufacturing in an effort to purchase BMW vehicles at a lower price per vehicle.
- b. Plaintiff's complaints about the unlawful nonpayment of wages (including underpayment of commissions);
- c. Plaintiff's complaints about the discriminatory treatment Plaintiff suffered as a result of his Persian ethnicity;

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief:

1. On behalf of all aggrieved employees in the State of California, civil penalties as specified in Labor Code Section 1102.5(f), as authorized by Labor Code Section 2699.
2. Attorney fees and costs where allowable by law including, without limitation, Lab. Code § 2698, et seq., Labor Code Section 1102.5, Code of Civil Procedure § 1021.5, and/or other applicable laws.
3. Costs.

1 4. Such other and further relief as the Court deems just and proper.
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3 Date: January 7, 2025

PANCER LAW CORPORATION

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6

/s/ Ian Pancer

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Ian Pancer
Attorney for Plaintiff
Misagh Seyyedi

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