

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michelle Williams Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROSALIE WAYMAN, as an individual and
on behalf of all other aggrieved employees,

Plaintiff,

vs.

TERRY YORK MOTOR CARS, LTD., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No. 20STCV22528

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Rosalie Wayman (“Plaintiff”), on behalf of herself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Defendants Terry York
3 Motor Cars, Ltd., a California Corporation; and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all other aggrieved employees, hereby brings this
7 representative action for recovery of civil penalties under California Labor Code §§ 2698 *et seq.*

8 2. This Court has jurisdiction over Defendants because, upon information and belief,
9 Defendants are citizens of California, Defendants have sufficient minimum contacts in California,
10 or otherwise intentionally avail themselves to the California market so as to render the exercise
11 of jurisdiction over them by the California courts consistent with the traditional notions of fair
12 play and substantial justice.

13 **VENUE**

14 3. Venue as to each Defendant is proper in this judicial district pursuant to California
15 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
16 complained of herein occurred in the County of Los Angeles. Further, at all times relevant herein
17 Plaintiff was employed by Defendants within the County of Los Angeles.

18 **PARTIES**

19 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
20 Plaintiff was, and currently is, a California resident, residing in the County of Los Angeles.
21 During the one year immediately preceding Plaintiff’s giving of the required notice under the
22 PAGA, and within the statute of limitations periods applicable to the cause of action pled herein,
23 Plaintiff was employed by Defendants as an hourly non-exempt employee.

24 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
25 year preceding Plaintiff’s giving of the required notice under the PAGA and continuing to the
26 present, Defendants did (and do) business by operating the Land Rover Encino car dealership in
27 Encino, California, and employed Plaintiff and other similarly-situated hourly non-exempt
28 employees within the County of Los Angeles and, therefore, were (and are) doing business in the

County of Los Angeles and the State of California.

6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were licensed to do business in California and the County of Los Angeles, and were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 17).

7. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Representative Action Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as defined in Paragraph 17) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 17).

9. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

10. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the Aggrieved Employees (as defined in Paragraph 17).

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12. Furthermore, while working on a commission-only basis, Plaintiff and aggrieved employees worked shifts in excess of 3.5 hours, and were not provided with a paid rest period for every 4-hour period worked, or major fraction thereof, because Defendants' commission compensation plans failed to separately compensate Plaintiff and aggrieved employees for required rest periods. See *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017); *Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did not separately compensate drivers for their rest periods."). As a result, Plaintiff and aggrieved employees were not provided with compensated rest periods or rest periods compensated at the correct rate of pay as required by Industrial Welfare Commission Wage Order 4, § 12(A).

14. Plaintiff and other aggrieved employees also routinely worked in excess of 8.0 hours per workday and/or 40.0 hours per workweek, but did not receive overtime compensation

1 equal to one and one-half times their regular rate of pay for working overtime hours. Specifically,
2 Defendants paid Plaintiff and other aggrieved employees commission earnings, and other forms
3 of non-discretionary pay that are not excludable from the regular rate of pay (hereinafter the
4 aforementioned forms of pay are referred to as “Incentive Pay”). Despite Defendants’ payment
5 of Incentive Pay to Plaintiff and other aggrieved employees, Defendants failed to properly
6 calculate the regular rate of pay, thereby causing Plaintiff and aggrieved employees to be
7 underpaid all required overtime wages. Furthermore, Plaintiff and other aggrieved employees
8 were not paid all overtime wages owed because Defendants failed to include the value of non-
9 productive time when calculating the regular rate of pay for overtime purposes.

10 15. Defendants also failed to reimburse Plaintiff and aggrieved employees for use of
11 their personal cellular phones for a variety of work activities, including, but not limited to,
12 communicating with customers. Plaintiff and aggrieved employees were required to use their
13 personal cellular phones for such work activities; however, Plaintiff and aggrieved employees
14 were never reimbursed for their cellular phone expenses.

15 16. As a result of Defendants’ failure to pay all minimum and overtime wages, rest
16 period premium wages, and meal period premium wages, Defendants maintained inaccurate
17 payroll records and issued inaccurate wage statements to Plaintiff and aggrieved employees.
18 Furthermore, Defendants issued facially non-compliant wage statements to Plaintiff and
19 aggrieved employees that failed to accurately list all hourly rates and corresponding hours worked
20 at each rate of pay in violation of Labor Code § 226(a)(9). Specifically, the wage statements
21 issued by Defendants to Plaintiff and aggrieved employees failed to list the hourly rates and
22 corresponding hours for “Overtime.” For instance, during the pay period beginning on January
23 16, 2020, and ending on January 31, 2020, the wage statement that Defendants furnished to
24 Plaintiff failed to list any overtime rate that corresponded to the overtime hours she worked during
25 that pay period.

26 17. Based on the foregoing, Plaintiff seeks to represent herself and other aggrieved
27 employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code
28 violations discussed herein.

FIRST CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

18. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

19. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation; and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to Plaintiff and aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197;
- b. Failing to authorize and permit all legally required rest periods and failing to separately compensate Plaintiff and aggrieved employees for required rest periods in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- c. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to Plaintiff and aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512, 558, and 1198;

- d. Failing to pay Plaintiff and aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- e. Failing to reimburse Plaintiff and aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff and aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to pay Plaintiff and aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code § 1174.

20. On or about April 8, 2020, Plaintiff notified Defendants Terry York Motor Cars, Ltd., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 19 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

21. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself, other aggrieved employees, and the State of California, against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure

1 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
2 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
3 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
4 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
5 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
6 pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
7 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
8 violation and \$200 for each subsequent violation per employee per pay period for those violations
9 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code
10 violations identified in Paragraph 19 (a)-(h);

11 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
12 2699(g) and Code of Civil Procedure § 1021.5; and

13 3. For such other and further relief the Court may deem just and proper.

14
15 Dated: June 15, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

16
17 By:



18 Paul K. Haines
19 Sean M. Blakely
Attorneys for Plaintiff