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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF PLACER

COURTNEY M. GUETSCHOW, as an
individual and on behalf of all other aggrieved
employees,

Plaintiff,

vs.

JOHN L. SULLIVAN CHEVROLET, INC., a
California corporation; JOHN L. SULLIVAN
ENTERPRISES, INC, a California
corporation; JOHN L. SULLIVAN
INVESTMENTS, INC., a California
corporation; JOHN L. SULLIVAN DODGE
CHRYSLER, INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No. S-CV-0045792

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

Plaintiff Courtney M. Guetschow ("Plaintiff"), on behalf of herself and all other aggrieved employees, hereby brings this Representative Action Complaint against Defendants John L. Sullivan Chevrolet, Inc., a California corporation; John L. Sullivan Enterprises, Inc, a California corporation; John L. Sullivan Investments, Inc., a California corporation; John L. Sullivan Dodge Chrysler, Inc., a California corporation; and DOES 1 to 100, inclusive (collectively "Defendants"), and on information and belief alleges as follows:

JURISDICTION

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

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

VENUE

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

PARTIES

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

5. Plaintiff is informed and believes, and based thereon alleges, that during the one year preceding Plaintiff's giving of the required notice under the PAGA and continuing to the present, Defendants did (and do) business by owning and operating several automotive retailers

1 in California, and employed Plaintiff and other similarly-situated hourly non-exempt employees
2 within the County of Placer and, therefore, were (and are) doing business in the County of Placer
3 and the State of California.

4 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
5 herein, Defendants were licensed to do business in California and the County of Placer, and were
6 the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 16).

7 7. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Representative Action Complaint when such true names and capacities are discovered.
11 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,
12 whether individual, partners, or corporate, were responsible in some manner for the acts and
13 omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as
14 defined in Paragraph 16) to be subject to the unlawful employment practices, wrongs, injuries,
15 and damages complained of herein.

16 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
18 defined in Paragraph 16).

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

26 10. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 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 16).

REPRESENTATIVE ACTION ALLEGATIONS

11. Defendants own and operate several automotive retailers in California including John L. Sullivan Chevrolet, Roseville Toyota, Roseville Kia, John L. Sullivan Dodge, and Livermore Toyota. Plaintiff worked for Defendants as a non-exempt “Service Advisor” from on or about October 28, 2015, until approximately March 3, 2020. During Plaintiff’s employment with Defendants, Plaintiff and aggrieved employees were paid on a commission basis, whereby they were paid a commission per sale generated for maintenance services, repairs, or per vehicle sold or leased. While paid on a commission basis, Plaintiff and aggrieved employees were not separately compensated for time spent working on tasks which were not compensated on a commission basis, including for example, time spent in between customers, and attending mandatory meetings (i.e., non-productive time). As a result, Plaintiff and aggrieved employees were not paid at least the minimum wage for all hours worked.

12. Further, 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 plan failed to separately compensate Plaintiff and aggrieved employees for required rest periods at the correct rate of pay. 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).

13. In addition, Defendants routinely failed to provide Plaintiff and aggrieved employees with timely, uninterrupted, full 30-minute first meal periods commencing before the conclusion of the fifth hour of work in violation of Labor Code § 512. Furthermore, Defendants’ meal period policies/practices failed to provide employees with a second meal period for shifts in

1 excess of 10.0 hours. Upon information and belief, for at least a portion of the liability period,
2 Defendants failed to pay all meal period premiums.

3 14. As a result of Defendants' failure to pay all minimum wages, rest period premium
4 wages, and meal period premium wages, Defendants maintained inaccurate payroll records, and
5 issued inaccurate wage statements to Plaintiff and aggrieved employees. Further, Defendants
6 issued facially non-compliant wage statements to Plaintiff and aggrieved employees that failed to
7 list all hourly rates and corresponding hours worked at each rate in violation of Labor Code §
8 226(a)(9). Specifically, the wage statements issued by Defendants to Plaintiff and aggrieved
9 employees fail to list the hourly rate for their respective "Regular" and "Overtime" rates of pay.
10 Moreover, the wage statements issued by Defendants to Plaintiff and other aggrieved employees
11 fail to list the hourly rate and corresponding hours for separate rest period compensation.

12 15. As a further result of Defendants' failure to pay all minimum wages, rest period
13 premium wages, and meal period premium wages, Defendants failed to pay all wages owed to
14 Plaintiff and aggrieved employees upon their separation of employment with Defendants.

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

18 **FIRST CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT**

20 **(AGAINST ALL DEFENDANTS)**

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

23 18. Defendants have committed several Labor Code violations against Plaintiff and
24 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor
25 Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this
26 representative action against Defendants to recover the civil penalties due to Plaintiff, other
27 aggrieved employees, and the State of California according to proof, including, but not limited
28 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 other 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/or failing to separately compensate Plaintiff and other aggrieved employees for required rest periods at the correct rate of pay, 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 other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- e. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201, 202, and 203;
- f. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

19. On or about June 29, 2020, Plaintiff notified Defendants John L. Sullivan

Chevrolet, Inc.; John L. Sullivan Enterprises, Inc; John L. Sullivan Investments, Inc.; John L. Sullivan Dodge Chrysler, Inc.; 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 18 (a)-(g). 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.

20. 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 and for all others on whose behalf this suit is brought 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 to pay each employee and \$200 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 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 Labor Code violations identified in Paragraph 18 (a)-(g);

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

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

4
5 Dated: September 3, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

6
7 By:



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Sean M. Blakely
Attorneys for Plaintiff