

July 31, 2020

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
PAGAFilings@dir.ca.gov

Re: Private Attorneys General Act of 2004 Notice

Employee: Crystal Miller

**Employer: CNO Financial Group, Inc.; Bankers Life and Casualty Company;
Colonial Penn Life Insurance Company**

To Whom It May Concern:

We represent Crystal Miller (“Plaintiff”), a former employee of Bankers Life and Casualty Company and Colonial Penn Life Insurance Company. Bankers Life and Casualty Company and Colonial Penn Life Insurance Company are subsidiaries of CNO Financial Group, Inc. (collectively “Defendants”). Plaintiff performed work for Defendants as a W-2 unit field trainer and as a 1099 sales agent. We intend to file a Private Attorneys General Act (“PAGA”) complaint against Defendants on behalf of Plaintiff and all other similarly situated, current and former employees, including insurance agents, career field agents, policy agents, and sales agents who were misclassified as independent contractors (collectively “agents”), and unit field trainers who were classified as employees (“trainers”), who perform work for Defendants in California (collectively the “Aggrieved Employees”). Pursuant to California Labor Code § 2699.3, we hereby provide notice of our client’s intent to bring claims under California Labor Code § 2699(a) and (f).

Plaintiff and Aggrieved Employees are current and former employees, including trainers and agents, who perform work for Defendants in California. Plaintiff intends to file a complaint against Defendants on behalf of herself and all other current and former employees who perform work for Defendants in California, who are denied proper payment of all wages, including minimum wage and overtime, meal and rest periods and premium pay therefrom, and reimbursement for necessary business expenses. Plaintiff alleges that Defendants willfully misclassify their agents as “independent contractors” instead of employees in violation of California Labor Code § 226.8 to avoid California’s wage and hour laws. Plaintiff also alleges that Defendants willfully deny their trainers the statutory wage protections to which they are entitled. Plaintiff alleges violations pursuant to California Labor Code § 1194 (failure to pay minimum wage); § 510 (failure to pay overtime wage); § 204 (failure to compensate for all hours worked); §§ 226.7 (failure to provide rest periods); §§ 201-203, 225.5 and 256 (failure to timely pay all



wages owed during employment and following separation from employment); § 226 (failure to provide timely and itemized wage statements); § 2802 (failure to reimburse for necessary business expenditures); and California Business and Professions Code §§ 17200, et seq. (engaging in unfair business practices).

Plaintiff intends to state causes of action pursuant to California Labor Code §§ 2699(a) and (f) for civil penalties for violating the various California Labor Code provisions enumerated above. Pursuant to Section 2699(a), Plaintiff will seek civil penalties pursuant to each provision of the Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, including but not limited to those Labor Code provisions referenced above, as well as Sections 225.5, 226.3, 256, and 558 of the California Labor Code. To the extent a provision of the Labor Code does not provide for a civil penalty, Plaintiff will seek civil penalties pursuant to California Labor Code Section 2699(f). Defendants, at all relevant times, were employers who violated the rights of Plaintiff and other Aggrieved Employees by violating various sections of the California Labor Code as outlined in this letter.

Bankers Life and Casualty Company is an insurance provider. Per its website, it offers a broad portfolio of life and health insurance designed for individuals that are retired or near retirement. Bankers Life and Casualty Company is an Illinois company registered to do business in California. It is a subsidiary of CNO Financial Group, Inc.

Colonial Penn Life Insurance Company is a life insurance provider. Per its website, it offers life insurance products for individuals ages 18-85. Colonial Penn Life Insurance Company is a Pennsylvania company registered to do business in California. It is a subsidiary of CNO Financial Group, Inc.

Defendants hire insurance agents, career field agents, policy agents, sales agents, and unit field trainers throughout the state of California. Plaintiff worked for Defendants as a W-2 unit field trainer from April 2018 until August 2019. The primary job duties of unit field trainers comprise providing ongoing training and guidance to agents through coaching and feedback. While Defendants correctly classify their trainers as employees, Defendants fail to provide them with the statutory wage protections to which they are entitled. Despite Defendants contracting to pay trainers an annual salary, Defendants pay trainers less than the statutory minimum wage. Plaintiff reports that she was paid as little as \$750 over the course of a four-month period for her work as a trainer. Furthermore, Defendants misrepresent the percentage of overriding commissions trainers earn.

Trainers work for Defendants for an average of 8 or more hours per day, 5 to 6 days per week. Plaintiff regularly worked more than 40 hours in a workweek. Trainers are not paid for all hours worked, including minimum wage and overtime, for these extensive hours worked daily and weekly. Trainers are also denied meal and rest breaks, as well as premium pay therefrom. Furthermore, trainers are not compensated for their necessary business expenses, such as their computers, telephones, mileage, and office supplies.



Plaintiff also worked for Defendants as a 1099 sales agent from July 2018 until August 2019. Agents have a number of duties and responsibilities when conducting work for Defendants, including but not limited to calling potential clients over the telephone, knocking on potential clients' doors to try to sell Defendants' products, and visiting clients via appointments to sign them up for Medicare supplements and/or life insurance. Defendants willfully and knowingly misclassify their agents as independent contractors.

Defendants substantially control the manner and means of agents' day-to-day work. Defendants direct agents on which customers to contact, proscribe the policy terms that can be sold and at what price, direct agents to check in with managers at the end of each day, and monitor their progress throughout the day based on a schedule set by Defendants. More specifically, agents are required to participate in Defendants' meetings every day at 8am, for one to one and one-half hours. Agents are also required to attend day-long meetings once per month, which often required travel to other offices. Agents are required to stay at work at least until 5pm, but often later on Mondays and Thursdays, when Defendants expect agents to make at least 250 calls to prospective clients from a list of individuals that Defendants provide. On Tuesdays, Wednesdays, and Fridays, Defendants task agents with making calls, visiting clients with appointments, and knocking on individuals' doors to try to make future appointments. Again, Defendants provide the list of individuals with whom to make contact.

When contact is made, agents must closely follow a script provided by Defendants throughout their discussions with the potential clients. Further, Defendants require that agents download an application on their personal telephones so that Defendants can track the calls made. At the end of each day, agents must check in with their managers to report that they are leaving. While working for Defendants, agents are not employed with any other business that performs similar work. Based on the structure of their workday, it is evident that Defendants had the right to control agents, did in fact control agents, and that the work agents perform for Defendants is core and essential to Defendants' business.

Agents work for Defendants for an average of 8 or more hours per day, 5 to 6 days per week. Plaintiff regularly worked more than 40 hours in a workweek. Despite this, Defendants compensated Plaintiff based only on commission. Agents are not paid for all hours worked, including minimum wage and overtime, for these extensive hours worked daily and weekly. Agents are also denied meal and rest breaks, and premium pay therefrom. Further, Defendants subject Agents to meetings of 6 to 8 hours, at least once per month, and at least a one hour meeting each day, without compensating them for this time. Agents are also not compensated for their necessary business expenses, such as their computers, telephones, mileage, and office supplies.

Additionally, Plaintiff and the Aggrieved Employees experience a number of derivative issues from these wage and hour practices, including but not limited to receiving incorrect wage statements and not receiving all pay owing to them during and at the end of their employment.

Plaintiff is represented by Schneider Wallace Cottrell Konecky LLP ("SWCK"), a law firm based in Emeryville, California. SWCK has extensive experience in the successful litigation and resolution of employment and representative actions nationwide. A description of the work,



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Page 4 of 4

mission, and credentials of the firms can be found at www.schneiderwallace.com. Plaintiff and her counsel are committed to zealously pursuing redress on behalf of the State of California and all other similarly situated employees for the violations and civil penalties set forth above.

Sincerely,

SCHNEIDER WALLACE
COTTRELL KONECKY LLP

CAROLYN H. COTTRELL
Attorney at Law

CC via certified mail:

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