

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Rafael Ongkeko

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TODD SHAK, as an individual and on behalf
of all other aggrieved employees,

Plaintiff,

vs.

CN MOTOR COMPANY LLC, a California
Corporation; and DOES 1 through 100,

Defendants.

Case No. 20STCV46721

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Todd Shak ("Plaintiff"), on behalf of himself and all other aggrieved employees,
2 hereby brings this Representative Action Complaint against Defendant CN Motor Company LLC,
3 a California Corporation; and DOES 1 to 100, inclusive (collectively "Defendants"), and on
4 information and belief alleges as follows:

5 **JURISDICTION**

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

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

14 **VENUE**

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

19 **PARTIES**

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

25 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
26 year preceding Plaintiff's giving of the required notice under the PAGA and continuing to the
27 present, Defendants did (and do) business by operating an automotive dealership, and employed
28 Plaintiff and other similarly-situated hourly non-exempt employees within the County of Los

1 Angeles and, therefore, were (and are) doing business in the County of Los Angeles and the State
2 of California.

3 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
4 herein, Defendants were licensed to do business in California and the County of Los Angeles, and
5 were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 19).

6 7. Plaintiff does not know the true names or capacities, whether individual, partner,
7 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
9 amend this Representative Action Complaint when such true names and capacities are discovered.
10 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,
11 whether individual, partners, or corporate, were responsible in some manner for the acts and
12 omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as
13 defined in Paragraph 19) to be subject to the unlawful employment practices, wrongs, injuries,
14 and damages complained of herein.

15 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
17 defined in Paragraph 19).

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

25 10. At all times mentioned herein, Defendants, and each of them, were members of
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the

Aggrieved Employees (as defined in Paragraph 19).

REPRESENTATIVE ACTION ALLEGATIONS

11. Defendants own and operate Santa Monica Ford, an automotive retailer in Santa Monica, California. Plaintiff worked for Defendants as a non-exempt “Sales Manager” from approximately 2016 until on or about March 13, 2020. During Plaintiff’s employment with Defendants, Plaintiff and aggrieved employees were paid on a commission basis, whereby they were paid a commission 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, hours spent waiting for customers and attending sales 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 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, full 30-minute first meal periods commencing before the conclusion of the fifth hour of work in violation of Labor Code § 512 and Wage Order 4, § 11(A). Specifically, due to work demands imposed by Defendants, Plaintiff and other aggrieved employees were regularly not provided with any first meal period. On those occasions when Plaintiff and other aggrieved employees were not provided with any first meal period, upon information and belief, Defendants implemented a practice of manually inputting a compliant meal period irrespective of whether such a meal period was taken. Further, on other occasions, Plaintiff and aggrieved

employees were provided with a first meal period that was less than 30 minutes due to work demands imposed by Defendants. Plaintiff and aggrieved employees were also not provided with a second meal period during shifts in excess of 10.0 hours due to Defendants' meal period policies/practices which fail to provide a second meal period for shifts over 10.0 hours. On those occasions when Defendants failed to provide Plaintiff and other aggrieved employees all legally-compliant meal periods to which they were entitled, upon information and belief, Defendants failed to compensate employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

14. Plaintiff and other aggrieved employees also routinely worked in excess of 8 hours per workday and/or 40 hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Defendants paid Plaintiff and other aggrieved employees commission earnings, bonuses, and other forms of non-discretionary pay that are not excludable from the regular rate of pay (hereinafter the aforementioned forms of pay are referred to as "Incentive Pay"). Despite Defendants' payment of Incentive Pay to Plaintiff and other aggrieved employees, Defendants failed to properly calculate the regular rate of pay, thereby causing Plaintiff and aggrieved employees to be underpaid all required overtime wages. Further, Plaintiff and other aggrieved employees were not paid all overtime wages owed because Defendants failed to include the value of non-productive time when calculating the regular rate of pay for overtime purposes.

15. Additionally, Defendants failed to pay Plaintiff and other aggrieved employees with all accrued vacation wages earned at the time of termination. Although Plaintiff separated from his employment with Defendants on or about March 13, 2020, Defendants failed to pay Plaintiff all accrued vacation wages. Upon information and belief, Defendants implemented a policy and/or practice of failing to pay its employees with all accrued vacation wages earned at the time of separation in violation of Labor Code § 227.3.

16. Defendants also failed to reimburse Plaintiff and aggrieved employees for the use of their personal cellular phones for a variety of work activities. Specifically, Defendants required Plaintiff and aggrieved employees to download several applications to their personal cellular

1 phones, including but not limited to FordDirect CRM, AutoHub, DealerGard, and FordPass, in
2 order to perform their work duties for Defendants. Further, Plaintiff and aggrieved employees
3 were required to use their personal cellular phones to communicate with coworkers and/or
4 supervisors. Plaintiff and aggrieved employees were required to use their personal cellular phones
5 for such work activities; however, Plaintiff and aggrieved employees were never reimbursed for
6 their personal cellular phone expenses.

7 17. As a result of Defendants' failure to pay all minimum and overtime wages, rest
8 period premium wages, and meal period premium wages, Defendants maintained inaccurate
9 payroll records and issued inaccurate wage statements to Plaintiff and aggrieved employees.

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

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

16 **FIRST CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **(AGAINST ALL DEFENDANTS)**

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

21 21. Defendants have committed several Labor Code violations against Plaintiff and
22 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor
23 Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
24 representative action against Defendants to recover the civil penalties due to Plaintiff, other
25 aggrieved employees, and the State of California according to proof, including, but not limited
26 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
27 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
28 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 pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- d. 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;
- e. Failing to pay Plaintiff and other aggrieved employees all vacation wages earned at the time of separation from employment in violation of Labor Code § 227.3;
- f. Failing to reimburse Plaintiff and aggrieved employees for all necessary business expenses in violation of Labor Code §§ 2802 and 2804;
- g. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- h. Failing to timely pay all final wages, including, but not limited to, minimum and overtime wages, rest period premium wages, and meal period premium wages, due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201, 202,

and 203;

i. 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

j. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

22. On or about September 29, 2020, Plaintiff notified Defendant CN Motor Company LLC 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 21 (a)-(j). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

23. Plaintiff was compelled to retain the services of counsel to file this court action to protect his 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 he is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself 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

1 pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
2 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
3 violation and \$200 for each subsequent violation per employee per pay period for those violations
4 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code
5 violations identified in Paragraph 21 (a)-(j);

6 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
7 2699(g) and Code of Civil Procedure § 1021.5; and

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

9
10 Dated: December 7, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

11
12 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff