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October 30, 2020

FILED THROUGH LWDA PAGA WEBSITE

Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: **Private Attorneys General Act Notice**
Huy Tran and other aggrieved current and former employees

PAGA Administrator:

We represent Huy Tran in connection with his claims against Wise Auto Group, Anthony Batarse, Inc., Lloyd A. Wise Motors Inc., Lloyd A Wise Corp., and other related entities (together, "Wise Auto Group") arising out of violations of numerous provisions of the California Labor Code and IWC Wage Order No. 4 and/or No. 7[1] at the following fourteen automobile dealerships (the "Dealerships"):

- Wise GMC of Vacaville
- Wise Dodge Chrysler Jeep of Vacaville
- Wise Golden State Nissan
- Wise Harley-Davidson of Yuba City
- Wise Hyundai of Vacaville
- Wise Infiniti of Marin
- Wise Kia of Vacaville
- Wise Mazda of Vacaville
- Wise Nissan of Sacramento
- Wise Nissan of Vacaville
- Wise Nissan of Yuba City
- Wise North Bay Nissan
- Wise Redwood Harley-Davidson
- Wise Vallejo Nissan

At least some of the Dealerships are owned, operated, and/or controlled, in whole or in part, by subsidiaries or other affiliated entities of Wise Auto Group. For example, on information and belief, Wise Kia of Vacaville is owned, operated, and/or controlled by

[1] Courts are divided as to which Wage Order applies to employees of establishments that both sell and service vehicles. Compare *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (applying Wage Order No. 4) and *Ontiveros v. Zamora* (E.D. Cal. Feb. 20, 2009) 2009 WL 425962 (same) with *Keyes Motors, Inc. v. DLSE* (I 987) 197 Cal.App.3d 557 (applying Wage Order No. 7). The two Orders are identical in all relevant respects; as such, they are referred to collectively herein as the "Wage Orders."

Anthony Batarse Inc. Mr. Tran is informed and believes that Wise Auto Group was his joint employers and are or were the joint employers of the other aggrieved employees who work or worked at each of the Dealerships.

Mr. Tran believes that Wise Auto Group controlled his and the other aggrieved employees' wages, working conditions and hours and suffers or permits employees to work at the Dealerships. Wise Auto Group website lists all of their locations and a single address for Wise Auto Group (www.wiseautogroup.com). On information and belief, the same employee handbook is used for all of the Dealerships; each dealership shares the same human resources department and is overseen by the same individuals at the same corporate office. Individual dealerships' management refer to Wise Auto Group as "corporate" and take their orders from it. In particular, Wise Auto Group promulgated a policy or practice prohibiting the payment of premium pay for missed or untimely meal breaks and rest breaks; requiring all employees to clock out for meal breaks by the end of the fifth hour of each shift, but requiring employees to continue working off the clock; and requiring employees who did not clock out because they did not get breaks to falsely certify after the fact that they did receive timely meal breaks when they knew employees did not.

Thus, Wise Auto Group, as joint employers, are liable for penalties arising out of violations committed against all of the aggrieved employees, whereas the individual subsidiaries are jointly and severally liable only for violations committed against employees employed at its dealerships.

This letter shall serve as written notice, pursuant to California Labor Code section 2699.3(a)(l), of Wise Auto Group's violations of the provisions of the Labor Code and Wage Orders set forth below.

Wise Auto Group employed Mr. Tran and the other aggrieved employees in non-exempt positions at the Dealerships. Specifically, Mr. Tran worked as a Service Advisor at Wise Kia of Vacaville (on or around December 2018 to December 2019) and Wise Nissan of Vacaville (on or around January 2020 to March 2020). He asserts that the violations described below were committed against the following categories of aggrieved employees at each and every Dealership: (1) service advisors and assistant managers; (2) automotive mechanics/technicians; (3) clerical/office workers (e.g., receptionists, warranty administrators, customer service representatives); and (4) salespeople.[2] Mr. Tran alleges that Wise Auto Group has engaged—and continues to engage—in a pattern of violations of paragraphs 3, 4, 7, 9, 11, and 12 of the Wage Orders and of numerous Labor Code sections, including 201, 202, 203, 204, 206, 221, 223, 224, 226, 226.7, 510, 512, 1194 et seq., and 1198. These violations subject Wise Auto Group to civil penalties and damages payable to aggrieved employees under the Labor Code.

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[2] Employees who work on commission, such as service advisors and salespeople, may be exempt from overtime pay requirements. However, even assuming (without conceding) that an overtime exemption applies, such employees are not exempt from any of the other Labor Code protections addressed herein, such as meal and rest break requirements.

In particular, Mr. Tran alleges that Wise Auto Group has violated the Labor Code by:

1) Failing to permit aggrieved employees to take timely, off-duty, 30-minute meal breaks for each five consecutive hours of work in violation of Labor Code sections 226.7 and 512 and Wage Order paragraph 11. Managers and corporate knew the press of business frequently prevented employees from taking off-duty, 30-minute meal breaks within their first five hours of work; these managers took no action to provide breaks and instead required the employees to continue working off the clock. Employees who failed to clock out on time were disciplined and/or required to fill out correction forms which knowingly falsely indicated that meal breaks were taken on time when they actually were not taken at all. Further, Wise Auto Group threatened and disciplined employees who refused to sign timecards or correction sheets they knew were false. Mr. Tran is informed and believes that these policies and practices were enforced at each of the Dealerships.

2) Failing to permit aggrieved employees to take a 10-minute rest break for each four hours of work, or major fraction thereof, in violation of Labor Code section 226.7 and Wage Order paragraph 12. Rest breaks were not provided. Wise Auto Group did not provide work schedules (and/or sufficient staff) to permit employees to take rest breaks. Management was aware that employees' workloads prevented them from taking breaks but did not take any action to relieve the employees from their duties.

3) Failing to pay service advisors and other commission employees separately for the rest periods they were able to take in violation of the Wage Order paragraph 4, as explained in *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98.

4) Failing to pay premium pay for missed or untimely meal breaks and for missed rest breaks, in violation of Labor Code sections 226.7 and 512. In many instances, Wise Auto Group pressured employees to clock out and keep working or to alter their time after the fact to show that meal breaks were taken on time when they were not taken at all. These practices and policies helped Wise Auto Group to avoid paying premium pay by destroying evidence of missed, untimely, and/or truncated meal breaks.

5) Requiring and/or knowingly suffering aggrieved employees to work "off the clock" and thereby failing to pay them for all hours worked, in violation of section 4(B) of the Wage Orders and Labor Code sections 204, 221, and 223. Employees routinely and at management's instruction clocked out or filled out time correction forms—to provide the appearance that they took meal breaks—but were required to continue working. The aggrieved employees were not compensated for off-the-clock work.

6) Failing to pay overtime for hours worked in excess of 8 (or, in some instances, 12) hours per day or for working 7 consecutive days in a work week in violation of Wage Order paragraph 3 and Labor Code section 510, 1194 et seq., and 1198. Service advisors and salespeople often worked very long hours, e.g., 10-13 hours per day. Mr. Tran is informed and believes that there were work weeks in which some of these employees did not earn sufficient commissions (or salary plus commissions) to qualify for the commissioned sales overtime exemption of paragraph 3(D) of the Wage Orders. That is, the employees did not earn

sufficient commissions that more than half their earnings came from commissions, and/or their total compensation did not exceed one and one-half times the minimum wage. The aggrieved service advisors and salespeople are entitled to overtime compensation for all pay periods in which they did not qualify for the exemption.

7) Failing to pay all earned wages (including overtime compensation, wages for off-the-clock work, premium pay for missed meal and rest breaks, and separate pay for the rest breaks of commission employees) at the time of termination or within 72 hours of resignation in violation of Labor Code sections 201, 202, 203, and 206. As described above, Wise Auto Group systematically failed and refused to pay all overtime compensation and premium pay owed to aggrieved employees; and required or knowingly permitted employees to perform work off the clock and without compensation. As such, the aggrieved employees' earned wages were not timely paid in full following their separation from Wise Auto Group.

8) Failing to pay all earned wages including overtime compensation, wages for off-the-clock work, premium pay for missed meal and rest breaks, and separate pay for the rest breaks of commission employees) at least twice a month[3] in violation of Labor Code section 204. By failing to properly compensate the aggrieved employees, as described above, Wise Auto Group violated this provision.

9) Failing to provide accurate, itemized statements of hours worked, wages, and deductions in violation of Wage Order paragraph 7 and Labor Code section 226. As described above, Wise Auto Group required employees to work off the clock (including but not limited to times when employees were required to clock out or fill out time correction forms to create false evidence of meal breaks). Thus, not all hours worked were documented on employees' wage statements. Additionally, the wage statements did not reflect premium pay owed to the employees for missed meal and rest breaks or overtime wages, or separate pay for commission employees' rest breaks.

This notice is based on the facts currently known to Mr. Tran and is made without prejudice to his right to seek all available remedies for any and all additional violations that may subsequently be discovered or identified.

Please advise this office within 60 days of the postmark date of this notice whether the Labor & Workforce Development Agency intends to investigate the above-noted Labor Code and Wage Order violations. Thank you for your prompt attention to this matter.

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[3] Note that, although section 204.l allows vehicle dealers to pay commissions just once a month, non-exempt employees who receive salaries in addition to commissions must receive the former twice a month. Thus, by failing to timely pay employees all earned wages, Wise Auto Group has violated section 204 with respect to its mechanics/technicians, clerical/office workers, and any service advisor and salespeople who received a salary. Cf. *Keyes Motors, Inc. v. DLSE* (1987) 197 Cal.App.3d 557,563 (to qualify as "commission wages" under section 204.1, payment must be based proportionately on the amount or value of goods or services sold).

Very truly yours,

Brian Conlon

Brian S. Conlon

cc: Wise Auto Group, Anthony Batarse, Inc., Lloyd A. Wise Motors Inc., and Lloyd A Wise Corp. (via certified mail)