

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Holly Fujie

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RIHAM MEGALLY, as an individual and on
behalf of all other aggrieved employees,

Plaintiff,

vs.

CARWELL, LLC, dba Mercedes-Benz of
South Bay, a Delaware Limited Liability
Company; and DOES 1 through 100,

Defendants.

Case No. 21STCV04424

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Riham Megally (“Plaintiff”), on behalf of herself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Defendants Carwell,
3 LLC, dba Mercedes-Benz of South Bay, a Delaware Limited Liability Company; and DOES 1 to
4 100, inclusive (collectively “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 have sufficient minimum contacts in California, or otherwise intentionally avail
10 themselves to the California market so as to render the exercise of jurisdiction over them by the
11 California courts consistent with the traditional notions of fair play and substantial justice.

12 **VENUE**

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

17 **PARTIES**

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

23 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
24 year plus 178 days preceding Plaintiff’s giving of the required notice under the PAGA and
25 continuing to the present, Defendants did (and do) business by operating car dealerships in
26 Southern California, and employed Plaintiff and other similarly-situated hourly non-exempt
27 employees within the County of Los Angeles and, therefore, were (and are) doing business in the
28 County of Los Angeles and the State of California.

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

4 7. Plaintiff does not know the true names or capacities, whether individual, partner,
5 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
6 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
7 amend this Representative Action Complaint when such true names and capacities are discovered.
8 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,
9 whether individual, partners, or corporate, were responsible in some manner for the acts and
10 omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as
11 defined in Paragraph 18) to be subject to the unlawful employment practices, wrongs, injuries,
12 and damages complained of herein.

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

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

23 10. At all times mentioned herein, Defendants, and each of them, were members of
24 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
25 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
26 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
27 Aggrieved Employees (as defined in Paragraph 19).

28 11. Pursuant to California Judicial Emergency Rule 9, statutes of limitations of more

1 than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020.
2 Accordingly, “aggrieved employees” refers to all of Defendants’ California non-exempt
3 employees who worked for Defendants at any time in the one-year plus 178 days preceding
4 Plaintiff’s giving of the required notice under the PAGA and continuing to the present.

5 **REPRESENTATIVE ACTION ALLEGATIONS**

6 12. Defendants own and operate several car dealerships in Southern California
7 including, but not limited to, Mercedes Benz of South Bay, and Land Rover South Bay. Plaintiff
8 worked at Defendants’ Mercedes Benz of South Bay car dealership as a non-exempt Sales
9 Associate until approximately June 2, 2020.

10 13. During Plaintiff and other aggrieved employees’ employment with Defendants,
11 Plaintiff and other aggrieved employees were paid pursuant to a commission pay plan whereby
12 Plaintiff and other aggrieved employees were paid a commission per vehicle sold or leased.
13 Plaintiff, and other aggrieved employees recorded their actual hours worked, however, were only
14 paid hourly wages if their earned commissions did not exceed their hourly wages in a pay period.
15 While paid on a commission-only basis, Defendants failed to separately compensate Plaintiff and
16 other aggrieved employees for all time spent working on tasks which were not compensated on a
17 commission-only basis, including, but not limited to, hours spent waiting for customers, attending
18 meetings, taking cars to be washed, picking up cars from other dealerships, and trainings (i.e.,
19 non-productive time). As a result, Plaintiff and other aggrieved employees were not paid at least
20 the minimum wage for all hours worked.

21 14. While working on a commission-only basis, Plaintiff and aggrieved employees
22 worked shifts in excess of 3.5 hours, and were not always provided with a paid rest period for
23 every 4-hour period worked, or major fraction thereof, due to Defendants’ commission
24 compensation plan, which failed to separately compensate Plaintiff and aggrieved employees for
25 all required rest periods at the correct rate of pay. See *Vaquero v. Stoneledge Furniture LLC*, 9
26 Cal.App.5th 98 (2017); *Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013) (“There is no dispute
27 that Safeway’s activity-based compensation system did not separately compensate drivers for
28 their rest periods.”). Upon information and belief, for at least a portion of the relevant time period,

1 Defendants failed to properly pay Plaintiff and other aggrieved employees for paid rest periods at
2 the correct rate of pay as required by Industrial Welfare Commission Wage Order 4 § 12(A).

3 15. Moreover, Plaintiff and other aggrieved employees were not provided with all
4 required meal periods due to Defendants' meal period policies/practices, which failed to provide
5 timely 30-minute duty-free first meal periods (i.e., a first meal period commencing before the end
6 of the fifth hour of work). Specifically, Plaintiff and other aggrieved employees' meal periods
7 were often late, interrupted, and/or less than 30-minutes due to Defendants' policy/practice of
8 requiring employees to assist customers in a prompt fashion. Plaintiff and other aggrieved
9 employees would often take meal periods after the fifth hour of work because they were not able
10 to leave customers unattended. However, upon information and belief, Defendants would alter
11 employees' timecards to indicate a purportedly compliant meal period, even though first meal
12 periods were often late, interrupted, and/or less than 30 minutes. Furthermore, Defendants failed
13 to provide Plaintiff and other aggrieved employees a second meal period during shifts in excess
14 of 10.0 hours. Although Plaintiff and other aggrieved employees were not provided with all
15 legally-compliant meal periods to which they were entitled, Defendants failed to pay Plaintiff and
16 other aggrieved employees the required meal period premiums for each workday in which a meal
17 period violation occurred, as required by Labor Code § 226.7. Upon information and belief,
18 during at least a portion of the relevant time period, Defendants maintained no payroll code for
19 the payment of meal period premium payments as required by Labor Code § 226.7.

20 16. Defendants also failed to adequately reimburse Plaintiff and other aggrieved
21 employees for use of their personal cellular phone for a variety of work-related purposes,
22 including communicating with their coworkers, supervisors, and clients. Although Defendants
23 required Plaintiff and aggrieved employees to use their personal cellular phones for work related
24 activities, Defendants failed to adequately reimburse Plaintiff and other aggrieved employees for
25 all cellular phone expenses.

26 17. As a result of Defendants' failure to pay all minimum wages, rest period premium
27 wages, and meal period premium wages, Defendants maintained inaccurate payroll records and
28 issued inaccurate wage statements to Plaintiff and other aggrieved employees. Furthermore,

1 Defendants issued facially deficient wage statements to Plaintiff and other aggrieved employees
2 which failed to list all applicable rates of pay in effect during the pay period and the corresponding
3 number of hours worked at early hourly rate in violation of Labor Code § 226(a)(9).

4 18. As a further result of Defendants' failure to pay all minimum wages, rest period
5 premium wages, and meal period premium wages, Defendants failed to pay all wages owed to
6 Plaintiff and other aggrieved employees upon their separation of employment.

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

10 **FIRST CAUSE OF ACTION**

11 **PRIVATE ATTORNEYS GENERAL ACT**

12 **(AGAINST ALL DEFENDANTS)**

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

15 21. Defendants have committed several Labor Code violations against Plaintiff and
16 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor
17 Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this
18 representative action against Defendants to recover the civil penalties due to Plaintiff, other
19 aggrieved employees, and the State of California according to proof, including, but not limited
20 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
21 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
22 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
23 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
24 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
25 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
26 initial violation; and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
27 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
28 subsequent violation per employee per pay period for those violations of the Labor Code for

1 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 2 a. Failing to pay minimum wages for all hours worked to Plaintiff and other
3 aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2,
4 and 1197;
- 5 b. Failing to authorize and permit all legally required rest periods, and/or failing to
6 separately compensate Plaintiff and other aggrieved employees for required rest
7 periods at the correct rate of pay, in violation of Labor Code §§ 226.7, 516, 558,
8 and 1198;
- 9 c. Failing to provide all legally required meal periods, or to pay premium pay in lieu
10 thereof, to Plaintiff and other aggrieved employees at the regular rate of pay in
11 violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 12 d. Failing to reimburse Plaintiff and other aggrieved employees for all necessary
13 work expenses incurred in violation of Labor Code §§ 2802 and 2804;
- 14 e. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate,
15 itemized wage statements in violation of Labor Code § 226;
- 16 f. Failing to timely pay all final wages due to Plaintiff and other aggrieved
17 employees, including by not limited to minimum wages, rest period premium
18 wages, and meal period premium wages, in violation of Labor Code §§ 201, 202,
19 and 203;
- 20 g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
21 twice during each calendar month in violation of Labor Code § 204; and
- 22 h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
23 employees in violation of Labor Code § 1174.

24 22. On or about November 30, 2020, Plaintiff notified Defendant Carwell, LLC, dba
25 Mercedes-Benz of South Bay, via certified mail, and the California Labor and Workforce
26 Development Agency (“LWDA”) via its website, of Defendants’ violations of the California
27 Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code
28 § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 21

(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.

23. 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 21 (a)-(h);

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

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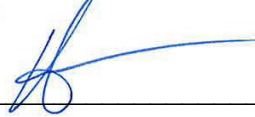
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1 3. For such other and further relief the Court may deem just and proper.

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3 Dated: February 4, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

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5 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff