



PAYNE NGUYEN LLP

SEPTEMBER 3, 2021

VIA ONLINE FILING

Labor and Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
PAGAFilings@dir.ca.gov

RE: Jose Sandoval v. RHN Inc. DBA Nissani Bros Nissan, et al.

Dear Representative:

This office represents Jose Sandoval ("**Mr. Sandoval**") with respect to his claims under the California Labor Code against RHN Inc. DBA Nissani Bros Nissan ("**Employer**"). This letter is being sent simultaneously to Employer by certified mail.

Employer employed Mr. Sandoval from approximately March 2017 to April 2020, as an hourly, non-exempt employee Mr. Sandoval was employed as at Employer's location in Culver City, California. Employer is a car dealership.

Mr. Sandoval intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 ("**PAGA**"). Mr. Sandoval is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of Employer ("**Aggrieved Employees**"). This letter is being sent in compliance with California Labor Code section 2699.3.

Employer terminated Mr. Sandoval in direct retaliation for his complaints to Employer regarding Employer's failure to provide him and Aggrieved Employees with accurate time records and for failing to pay him and Aggrieved Employees minimum wages, overtime, and failing to provide him and Aggrieved Employees with timely meal and rest breaks. Employer terminated Mr. Sandoval in direct response to his complaints.

Further as detailed below, Employer violated several of California's wage and hour laws during Mr. Sandoval's employment, including but not limited to violations of California Labor Code sections 98.6, 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1102.5, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the Industrial Welfare Commission Wage Orders ("IWC Wage Order") including *inter alia*, IWC Wage Order No. 7. The claims made on behalf of Mr. Sandoval and Aggrieved Employees are based upon the following facts and theories:



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1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Mr. Sandoval and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employer regularly required Mr. Sandoval and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Sandoval and Aggrieved Employees to respond to Employer and work-related requests and perform work while clocked out for purported meal breaks. Mr. Sandoval and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Sandoval and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Mr. Sandoval and Aggrieved Employees to perform work off-the-clock without compensation, Employer also utilized time rounding practices that resulted in the systematic underpayment of wages to Mr. Sandoval and Aggrieved Employees, including minimum wages, straight time wages and overtime wages. Employer also failed to accurately record the actual time worked by Mr. Sandoval and Aggrieved Employees, which resulted in a failure to pay Mr. Sandoval and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages, and overtime wages. Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Mr. Sandoval and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employer has failed to pay Mr. Sandoval and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order No. 7 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Mr. Sandoval and Aggrieved Employees will therefore seek unpaid wages; PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 7; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; compensation pursuant to Labor Code Section 1194; and attorneys' fees and costs.



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2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employer failed to provide Mr. Sandoval and Aggrieved Employees with legally-compliant 30-minute meal periods. Mr. Sandoval and Aggrieved Employees were required by Employer to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Mr. Sandoval and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Mr. Sandoval and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Mr. Sandoval and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Sandoval and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Mr. Sandoval and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Mr. Sandoval and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Sandoval and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Mr. Sandoval and other Aggrieved Employees remain on-call and respond to work-related requests at all times, including during meal periods, which included telephone calls and in-person verbal interruptions; and (7) Employer's policy and culture prevented Mr. Sandoval and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees right to receive timely, uninterrupted, and duty-free meal periods.

Mr. Sandoval and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 7 and California Labor Code sections 226.7(a), 512(a) and 1198.

Mr. Sandoval and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 7; penalties pursuant to California Labor Code California Labor Code sections 558 and 1199; and attorneys' fees and costs.



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3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employer failed to authorize and permit Mr. Sandoval and Aggrieved Employees to take legally-compliant 10-minute rest periods. Employer required Mr. Sandoval and Aggrieved Employees to work through rest periods. Mr. Sandoval and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Sandoval and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Sandoval and Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Sandoval and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Mr. Sandoval and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Mr. Sandoval and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Sandoval and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Mr. Sandoval and other Aggrieved Employees remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to telephone calls and in-person verbal interruptions; and (7) Employer's policy and culture prevented Mr. Sandoval and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees right to receive rest periods.

Mr. Sandoval and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 7 and California Labor Code sections 226.7(a), and 1198.

Mr. Sandoval and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 7; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.



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4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

As to each pay period, Employer has failed to timely pay all wages earned because Mr. Sandoval and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).

Mr. Sandoval and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Mr. Sandoval and Aggrieved Employees never included the actual hours worked, the actual gross wages earned, the correct rates of pay, and meal and rest premiums owed. Accordingly, Employer violated California Labor Code section 226(a).

Mr. Sandoval and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employer has failed to maintain accurate records relating to Mr. Sandoval and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employer violated IWC Wage Order No. 7 and California Labor Code sections 1198 and 1174(d).

Mr. Sandoval and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 7; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 7 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Mr. Sandoval and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, use of a personal cell phone.



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Accordingly, Employer violated IWC Order No. 7 and California Labor Code sections 2800 and 2802.

Mr. Sandoval and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 7; and attorneys' fees and costs.

8. FAILURE TO PAY VACATION TIME

Pursuant to California Labor Code section 227.3, ". . . whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served." During the relevant time period, Employer failed to pay Mr. Sandoval and other Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment. Accordingly, Employer has violated California Labor Code section 227.3.

Mr. Sandoval and Aggrieved Employees will therefore seek PAGA default penalties; California Labor Code section 227 penalties; and attorneys' fees and costs.

9. FAILURE TO PAY SICK TIME

Pursuant to California Labor Code sections 245.5 and 246(i), "[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employer's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with employee's payment of wages." Section 245.5 defined "paid sick days" as "time that is compensated at the same wage as the employee normally earns during regular work hours and is provided by an employer to an employee." Moreover, Labor Code section 246(l)(1) states that "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time." During the relevant time period, Employer failed to provide Mr. Sandoval and other Aggrieved Employees with the amount of sick leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage statements described in Section 226 that it issues to Mr. Sandoval and other Aggrieved Employees. Therefore, Employer has violated California Labor Code section 245.5.

Mr. Sandoval and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.



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10. FAILURE TO PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

Upon the termination of employment, Mr. Sandoval and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employer's practices of requiring Mr. Sandoval and Aggrieved Employees to work off-the-clock without compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employer failed to pay Mr. Sandoval and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employer also failed to pay and Aggrieved Employees for meal period premiums, and rest period premiums, and accrued vacation time they were owed, amongst other wages. Accordingly, Employer violated California Labor Code sections 201 and 202.

Mr. Sandoval and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

11. LABOR CODE 1102.5 RETALIATION

"An employer . . . shall not retaliate against an employee for disclosing information . . . to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." Cal. Lab. Code § 1102.5(b).

"In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section." Cal. Lab. Code § 1102.5(f).

As set forth above, Employer unlawfully retaliated against Mr. Sandoval when Employer terminated Mr. Sandoval's employment after Mr. Sandoval complained about violations under California's Labor Code.

Mr. Sandoval will seek the \$10,000 civil penalty for the violation referenced above. Mr. Sandoval will also seek attorneys' fees and costs pursuant to California Labor Code § 2699, subd. (g).

12. LABOR CODE 98.6 RETALIATION

"A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter . . . , or because the employee . . . made a written or oral complaint that he or she is owed unpaid wages" California Labor Code § 98.6(a).



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"In addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation." *Id.* at § 98.6(b)(3).

As set forth above, Employer unlawfully retaliated against Mr. Sandoval when Employer terminated Mr. Sandoval's employment after Mr. Sandoval complained about Employer's California Labor Code violations. Thus, Mr. Sandoval will seek the \$10,000 civil penalty for the violation. Mr. Sandoval will also seek attorneys' fees and costs pursuant to California Labor Code § 2699, subd. (g).

Therefore, on behalf of himself, the State of California and all Aggrieved Employees, Mr. Sandoval may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very Truly Yours,

Cody Payne, Esq.

Partner

Payne Nguyen LLP

Notice provided to Employer via Certified Mail (7019 0140 0000 9935 6679)

RHN Inc. DBA Nissani Bros Nissan
1775 Ximeneo Ave
Long Beach, CA 90804

Notice provided to Employer via Certified Mail (7019 0140 0000 9935 6686)

RHN Inc. DBA Nissani Bros Nissan
5750 Mesmer Avenue, Suite A
Culver City, CA 90230

Notice provided to Employer via Certified Mail (7019 0140 0000 9935 6693)

RHN Inc. DBA Nissani Bros Nissan
Hooman Nissani
10094 Cielo Drive
Beverly Hills, CA 90210



PAYNE NGUYEN LLP

Notice provided to Employer via Certified Mail (7019 0140 0000 9935 6709)

RHN Inc. DBA Nissani Bros Nissan

Duncan McCreary

11601 Wilshire Blvd, #500

Los Angeles, CA 90025