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Via Electronic Filing

PAGA Administrator
Labor & Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: PAGA Notice

PAGA Administrator:

Please allow this letter to serve as notice pursuant to California Labor Code § 2699, et seq. of Labor Code violations committed by Sunroad EC Auto, LLC dba BMW of El Cajon, Sunroad BCV Auto, Inc. dba BMW of El Cajon, Sunroad Automotive Shared Services, Inc., Uri Feldman, Dan Feldman, Taso Emanuel Theodorou, Karl Henry Winters, Matthew Claude Lowenstein, and Blake Lynn Fillmore (Respondents) against Gary Hartman (Claimant) and their other current and former employees. The facts and theories that support this claim are as follows:

Hartman worked as an Automotive Technician for Respondents from February 12, 2019 to the present. Hartman's job duties included diagnosing electrical problems, checking engine issues, replacing tires and conducting alignments. Hartman worked Monday through Friday, from 8:00 a.m. to 5:00 p.m. From about the year 2020 through 2022, Hartman worked one Saturday per month, and would be off on the following Monday. From January 1, 2020 to January 15, 2021, Hartman's base hourly rate was \$26 per hour. From January 16, 2021 to February 15, 2021, Hartman's base hourly rate was \$28 per hour. From February 16, 2021 to November 30, 2022, Hartman's base hourly rate was \$33. From October 1, 2022 to the present, Hartman's base hourly rate has been minimum wage. At all times during his employment, Hartman's hourly flag rate was \$36.

Failure to Pay Minimum Wage

"The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Lab. Code § 1197; IWC Wage Order Nos. 1–2001 to 16–2001, § 4; 8 Cal Code Regs §§ 11010-11160, § 4. Compensable work time is defined by the applicable wage order as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11010 (2) (G).

Due to Respondent's company-wide scheduling practices and policies, employees were forced to forego meal periods and/or have their meal periods interrupted by work, and were not relieved of all duties for unpaid meal periods in order to meet their deadlines and handle their workloads. Respondent did not pay minimum wages for the time employees continued to perform their duties during their meal periods.

To the extent that the off-the-clock hours worked by employees did not qualify for overtime premium payment, Respondent did not pay at least minimum wages for those hours employees worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, Respondent regularly failed to pay at least minimum wages to employees for all of the hours they worked. Respondent's failure to pay employees minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Between 2020 and 2022, Hartman was directed to clock in for only four hours per day even though he worked a full 8-10 hour shift. Respondents engaged in this same practice with respect to its other technicians as well, requiring them to clock in for only 4 hours per day, despite that they worked 8-10 shifts.

Failure to Pay Overtime

"Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Lab. Code § 510; IWC Wage Order Nos. 1–2001 to 16–2001, § 3; IWC Wage Order No. 17–2001, § 4; 8 Cal Code Regs §§ 11010–11160, § 3; 8 Cal Code Regs § 11170, § 4. Labor Code § 1198 makes it unlawful to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code § 1198 requires that "the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

Employees were not paid overtime premiums for all of the hours they worked in excess of 8 hours in a day, in excess of 12 hours in a day, and/or in excess of 40 hours in a week. Respondent had, and continues to have, a company-wide policy of failing to implement any policies to authorize and permit employees to take compliant meal periods and, instead, engaged in a practice of discouraging and impeding employees from taking meal periods by assigning them a heavy workload and understaffing its facilities. Therefore, there were no other employees available to relieve employees of their duties so as to allow them to take their meal periods.

As a result of company-wide understaffing of its facilities, employees were not always permitted and authorized to take uninterrupted 30-minute meal periods during shifts to

which they were entitled to receive a meal period. Claimants contend that employees regularly worked through meal periods and had meal periods interrupted by supervisors and by work to meet expected targets.

Respondent knew or should have known that, as a result of its policies and practices, employees were performing some of their assigned duties off-the-clock and/or during unpaid meal periods, and were suffered or permitted to perform work for which they were not paid. Because employees worked shifts in excess of 8 hours a day or more and 40 hours a week or more, much of this off-the-clock work qualified for overtime premium pay. Therefore, employees were not paid overtime wages for all of the overtime hours they actually worked. To the extent employees worked shifts in excess of 12 hours a day, or in excess of 8 hours on the seventh consecutive day of a work in a workweek, they were not paid double time wages for all overtime hours they actually worked.

Between 2020 and 2022, Hartman was directed to clock in for only four hours per day even though he worked a full 8-10 hour shift. Respondents engaged in this same practice with respect to its other technicians as well, requiring them to clock in for only 4 hours per day, despite that they worked 8-10 shifts. Because employees worked shifts in excess of 8 hours a day or more and 40 hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Respondent's failure to pay employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code §§ 510 and 1198.

Failure to Provide Uninterrupted Meal Periods

"An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived." Lab. Code § 512; IWC Wage Order Nos. 1-2001 to 16-2001, § 11; IWC Wage Order No. 17-2001, § 9; 8 Cal Code Regs §§ 11010-11160, § 11; 8 Cal Code Regs § 11170, § 9.

"An employer shall not require an employee to work during a meal ... period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission If an employer fails to provide an employee a meal ... period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate

of compensation for each workday that the meal ... period is not provided.” Lab. Code § 226.7 (b) & (c).

At all relevant times, Respondent's employees regularly worked more than five hours per day, and were thereby entitled to take uninterrupted 30-minute meal periods on each day of work.

At all relevant times herein, Respondent had, and continue to have, a company-wide policy and/or practice of understaffing its locations while simultaneously assigning demanding workloads, which had the combined effect of preventing employees from taking all timely, uninterrupted meal periods to which they were entitled. Therefore, there were no other employees available to relieve employees of their duties so as to allow them to take their meal periods. As a result of Respondent's policies and/or practices, employees had to work through some or all of their meal periods, have their meal periods interrupted to return to work, and/or wait extended periods of time before taking meal periods.

Respondent engaged in a systematic, company-wide practice and/or policy of not paying meal period premiums for employees, regardless of whether they were able to take a compliant meal break, in violation of the applicable IWC Wage Order and Labor Code sections 226.7 and 512 (a). As a result, Respondent failed to provide employees compliant meal periods in violation of California Labor Code §§ 226.7 and 512 and failed to pay the full meal period premiums due.

Respondents regularly asked technicians to work through their one-hour lunch breaks so that they could service waiter vehicles. Hartman's Supervisor, Alex, would usually hand him waiter vehicles at 11:30 a.m., 30 minutes before his scheduled meal period. However, it typically took 60-90 minutes to complete service on the waiter vehicles, which resulted in Hartman missing his scheduled 12:00 p.m. lunch break. On those occasions that he missed his meal period, Hartman would clock out for a one-hour lunch sometime after completing service on the waiter vehicle, usually after 1:00 p.m. However, on several occasions, management would move Hartman's clock-in time backwards so as to make it appear that he took his meal period within the first five hours of work. Respondents engaged in the same practice with respect to its other technicians, regularly requiring them to take waiter vehicles a short time before their scheduled meal period, causing them to miss their regularly scheduled meal periods. And when technicians clocked out for lunch more than 5 hours after the start of their shift, management would move the clock-out time backwards so as to make it appear that technicians took their meal period within 5 hours of the start of their shift. This practice is in violation of California Labor Code §§ 512 and 226.7; IWC Wage Order Nos. 1–2001 to 16–2001, § 11; IWC Wage Order No. 17–2001, § 9; 8 Cal Code Regs §§ 11010–11160, § 11; 8 Cal Code Regs § 11170, § 9.

Failure to Provide Uninterrupted Rest Periods

Employees must be given 10-minute net rest periods for every 4 hours of work, to be taken in the middle of each 4-hour period insofar as practicable. However, a rest period need not be provided for employees whose total daily work is less than 3.5 hours. Thus, employees are entitled to one 10-minute net rest period for shifts from 3.5 to 6 hours in length, two for shifts of more than 6 hours up to 10 hours, and three for shifts of more than 10 hours up to 14 hours, and so on. *Brinker Restaurant Corp. v Superior Court*, 53 Cal.4th 1004, 1029 (2012); IWC Wage Order Nos. 1–2001 to 16–2001, § 12; § 8 Cal Code Regs §§ 11010-11160, § 12. No employer may require an employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission. Lab. Code §§ 226.7.

Respondent's company-wide policy and practice of understaffing while simultaneously assigning demanding workloads, prevented employees from being relieved of all duty in order to take compliant rest periods.

Employees missed their rest breaks, would be required to take them late, or would have their rest breaks interrupted. Employees were prevented from being relieved of all duty in order to take compliant rest periods and instead would be required to continue working.

Employees worked shifts in excess of 3 ½ hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled.

Respondent has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized or permitted. Thus, Respondent denied employees rest periods and failed to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

Failure to Reimburse for Business Expenditures

"An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." Lab. Code § 2802.

All technicians and mechanics employed by Respondent are required to supply their own tools to perform their job duties because it fails to supply them with a sufficient quantity at their work locations. Most locations either have no toolbox at all, or if there is one, is not stocked with all tools necessary to perform their jobs. As such, technicians and mechanics are required to incur tool expenditures, which Respondent has not reimbursed. Respondent's

practice of failing to reimburse non-double minimum wage earning mechanics and technicians for the purchase of their hand tools and equipment is violation of Labor Code § 2802.

Throughout Hartman's employment, Respondents provided factory tools, but did not supply hand tools. Further, the factory tools available were insufficient for all employees to use. As such, Hartman, as well as the other technicians, supplied their own hand tools to perform their job duties. Hartman, as well as the other technicians, incurred costs for the purchase of these tools, and they were never reimbursed by Respondents, in violation of Labor Code § 2802.

Failure to Furnish Itemized Wage Statements and Maintain Accurate Pay Records

"An employer ... shall furnish to his or her employee ... an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer ... and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee" Lab. Code § 226 (a).

"Every employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number ... (3) Meal periods, split shift intervals and total daily hours worked shall also be recorded." IWC Wage Order 4-2001, section 7 (A) (1) & (3).

"Every person employing labor in this state shall: (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors. (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments." Lab. Code § 1174 (c) & (d).

"Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 ... shall be subject to a civil penalty of five hundred dollars (\$500)." Cal. Lab. Code § 1174.5.

"A copy of the statement and the record of the deductions shall be kept on file by the

employer for at least three years at the place of employment or at a central location within the State of California.” Cal. Lab. Code § 226 (a).

Claimant is informed and believes that Respondent fail to keep accurate information with respect to each employee including the full name, home address, occupation and social security number, meal periods, split shift intervals and total daily hours worked, the names and addresses of all employees employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.

As detailed above, Respondent failed to pay employees for all hours worked by virtue of uncompensated time worked during missed and/or incomplete meal periods, as well as frequently being asked to clock out after 4 hours of work, despite that they worked 8-10 shifts. As a result, their wage statements did not accurately reflect the total hours they worked or the corresponding number of hours worked at each hourly rate. This practice is in violation of Lab. Code § 226 (a).

Because Respondent failed to document and deducted time worked from employees’ wage statements and employment records for meal periods they did not actually receive, Respondent failed to document wages earned and meal period premiums that should have been paid. Thus, Respondent did not furnish wage statements to employees containing the correct amount of gross wages earned in violation of Labor Code § 226 (a) (1), accurate total hours worked in violation of Labor Code § 226 (a) (2), correct amount of net wages earned in violation of Labor Code § 226 (a) (5), or accurate number of hours worked at each corresponding hourly rate in violation of Labor Code § 226 (a) (9).

To the extent that Respondent paid any meal break premium and/or rest break premium payments, it failed to identify such payments on employees’ wage statements and employment records, and it otherwise failed to provide information on the wage statements sufficient to identify how many premium payments were paid during each pay period, the specific dates worked giving rise to the premium payments owed, or to determine whether such premium payments adequately and/or accurately compensated employees for any and all premiums owed.

At all relevant times, Respondent failed to keep accurate records of meal period start and stop times for employees in violation of Labor Code § 1198. Indeed, as mentioned above, Respondents engaged in a practice of altering meal period start and stop times when employees took late lunches in order to make it appear that they were taken within the first 5 hours of the start of the employee’s shift.

Actions under the Private Attorneys General Act (PAGA)

The Labor Code Private Attorneys General Act of 2004 provides that “any provision of

this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ... may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.” Lab. Code § 2699. Hartman is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699 (f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty.

Based upon the foregoing, Hartman seeks not only individual remedies under the Labor Code, but also all remedies available under the Private Attorney General Act of 2004, Lab. Code §§ 2698, et seq., including civil penalties on behalf of all aggrieved employees for the above Labor Code violations that Respondent committed against them.

Regards,



Gabriel J. Pimentel, Esq.