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Attorneys for Plaintiff,
NASHAT BOKTOR on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

NASHAT BOKTOR, an individual, on behalf
of himself, all aggrieved employees, and the
State of California as a Private Attorneys
General,

Plaintiff,

vs.

VAG TNRCA, LLC, a California limited
liability company and DOES 1-50, inclusive,

Defendant.

Case No.: **23STCV22967**

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 et seq.**

Plaintiff NASHAT BOKTOR brings this PAGA representative action complaint on behalf
of himself, all aggrieved employees, and the State of California as a Private Attorneys General,
and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff NASHAT BOKTOR worked as an employee for Defendant VAG TNRCA,
LLC and Does 1-50 (collectively "Defendant"). Defendant operates automobile dealerships in
California. Plaintiff NASHAT BOKTOR worked for Defendant as an employee on an hourly, non-

1 exempt basis as a car salesperson from August 2019 until May 2023. Plaintiff brings this action
2 pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*,
3 on a representative basis. All current and former hourly nonexempt employees of Defendant in
4 California within one year of serving notice on the LWDA to the present are aggrieved employees.

5 2. Defendant failed to comply with California Labor Code requirements due to erroneous,
6 willful and intentional employment practices and policies. Plaintiff brings this representative
7 action on behalf of himself, all other similarly situated aggrieved employees, and the State of
8 California, based upon the claims articulated below. Plaintiff provided notice of his claims
9 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
10 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
11 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
12 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
13 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

14 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
15 worked, including overtime hours worked; (2) failing to pay minimum wage; (3) failing to pay
16 split pay; (4) failing to provide reporting time pay; (5) failing to pay wages due upon termination;
17 (6) failing to provide rest breaks; (7) failing to provide uninterrupted meal breaks; (8) failing to
18 reimburse for required business expenses; (9) failing to provide suitable seating; (10) failing to
19 provide accurate itemized wage statements and maintain accurate records. Defendant is therefore
20 liable for civil penalties under the Cal. Labor Code, including the Private Attorney General Act
21 (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

22 THE PARTIES

23 4. Plaintiff NASHAT BOKTOR is a resident of the State of California and worked for
24 Defendant from August 2019 until May 2023.

25 5. Defendant VAG TNRCA, LLC is a California limited liability company authorized to
26 do business and doing business in California with the capacity to sue and to be sued, and doing
27 business, in the county of Los Angeles, State of California.
28

6. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendant is legally responsible for the wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff will amend this complaint when their true names and capabilities are ascertained.

7. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees of the representative class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

8. Venue is proper in this judicial district because Defendant conducts business in this county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees in this case that arose in this county.

9. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

10. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendant is qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 11. During the relevant time-period, Defendant committed various violations of the
3 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
4 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

5 12. This representative action represents over one hundred current and former aggrieved
6 employees.

7 13. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
8 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
9 numerous Labor Code sections, as set forth more fully below.

10 14. Plaintiff and all current and former hourly nonexempt employees in California within
11 one year of filing this action to the present are aggrieved employees within the meaning of Labor
12 Code 2699, *et seq.* (See Labor code §2699(c).)

13 15. Defendant, and each of them, has committed the following violations of the California
14 Labor Code:

15 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

16 (Cal. Labor Code §§204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194, 1197,
17 1197.1, 1198, 2698 *et seq.*, IWC Wage Orders)

18 16. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 17. The IWC Wage Orders define “hours worked” as “the time during which an employee
21 is subject to the control of an including all the time the employee is suffered or permitted to work,
22 whether or not required to do so.” Defendant has been engaged in many unlawful employment
23 practices which resulted in underpayment for hours worked each pay period as described below.

24 18. Plaintiff explains that he and aggrieved employees were frequently underpaid on wage
25 statements, which sometimes did not include all commission wages they were entitled to. On
26 numerous occasions he brought these discrepancies to his managers and he was sometimes paid
27 out the underpaid wages at a later date. Commission payments on accessories and other devices
28 were also sometimes excluded from wages.

1 19. Additionally, during pay periods when employees did not earn commissions and earned
2 hourly wages, they were underpaid for regular and overtime hours worked due to Defendant's
3 unlawful timekeeping practices, which include shaving time from employee time records and
4 requiring off the clock work.

5 20. Off the Clock Work. Plaintiff and aggrieved employees were called into weekly
6 meetings on Fridays at 8 am which they were instructed not to clock in for. All employees were
7 required to attend these meetings regardless of whether or what time they had a shift scheduled for
8 that day. Plaintiff recalls clocking in for one such meeting and having his manager later delete the
9 time from his timecard. This resulted in reporting time and split shift violations as detailed below,
10 as well as underreported and underpaid wages, including overtime wages. Plaintiff and aggrieved
11 employees were also required to perform other tasks off the clock for which they were not
12 compensated.

13 21. Work Performed During Unpaid Meal Periods. As more fully set forth below,
14 Defendant failed to permit Plaintiff and others to take timely, off-duty meal breaks of "not less
15 than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and
16 512. Plaintiff and aggrieved employees often had meal periods interrupted with work but were not
17 permitted to report this time worked on their timecards.

18 22. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay
19 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant to
20 Labor Code §204(a). Defendant failed to pay all wages earned to employees as a result of the
21 unlawful employment policies and practices discussed herein. As a result of these practices,
22 Plaintiff and aggrieved employees were underpaid for hours worked, including overtime and
23 penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.
24 Due to this failure, Defendant is liable under Labor Code §210 for failure to pay wages as required
25 by law.

1 **Failure to Pay Minimum Wage**

2 (Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

3 23. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 24. Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer
6 to suffer or permit a California employee to work without paying wages at the proper minimum
7 wage for all time worked as required by the applicable IWC Wage Order.

8 25. Defendant failed to pay Plaintiff and aggrieved employees for all hours worked as a
9 result of Defendant's practices described above. Based on Defendant's unlawful conduct described
10 above, and because Plaintiff and the aggrieved employees were paid at or near minimum wage,
11 Defendant's failure to pay for all hours worked, including overtime, resulted in a payment of less
12 than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and
13 the Wage Order. Additionally, employees receive zero pay for time spent working off the clock
14 which is also a violation of the labor code. Defendant is liable for civil penalties pursuant to Labor
15 Code §§558 and 2699 *et seq.*

16 **Failure to Pay Split Shift Pay**

17 (Cal. Labor Code §§1198 and 2698 *et seq.*)

18 26. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 27. Labor Code §1198 prohibits the employers from subjecting employees to "conditions
21 of labor prohibited by the order." Wage Order 5-2001 (4C), codified at 8 C.C.R. § 11070(4C),
22 requires that, "[w]hen an employee works a split shift, one (1) hour's pay at the minimum wage
23 shall be paid in addition to the minimum wage for that workday, except when the employee resides
24 at the place of employment."

25 28. Here, Defendant required Plaintiff and coworkers to attend weekly meetings yet when
26 these meetings for which employees were not to clock in for. If an employee worked a shift that
27 same day and was required to report back to work for that shift, the employee was not paid a split
28 shift premium as required.

1 29. Plaintiff and aggrieved employees work frequent split shifts but do not receive split
2 shift pay in the corresponding pay period.

3 30. Moreover, as a derivative claim, Plaintiff alleges that pay statements were inaccurate
4 as they failed to indicate required split shift wages, thus failing the requirements of Labor Code
5 §226(a) and liable under 226.3. Defendant is further liable for civil penalties pursuant to Cal. Labor
6 Code §2698 *et. seq.*

7 **Failure to Provide Reporting Time Pay**

8 (Cal. Labor Code §§1198, Wage Order)

9 31. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
10 incorporate said paragraphs herein by reference.

11 32. Pursuant to the Subsection 5(A) of the Applicable Wage Orders, an employee is entitled
12 to reporting time pay if that employee is required to report to work and does report but is not put
13 to work or is furnished less than half of said employee's usual or schedule workday. The amount
14 of reporting time that must be paid "is half the usual or scheduled day's work, but in no event for
15 less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay..." *Id.*

16 33. The reporting time provision of the Applicable Wage Orders were meant to safeguard
17 against unpredictable work schedules that understandably take a toll on affected employees.
18 Without the security of definite work schedules, employees are forced to make childcare
19 arrangements, eldercare arrangements, encounter obstacles in pursuing their education, experience
20 adverse financial effects, and deal with the stress and strain on their family life. Defendant required
21 employees to attend weekly meetings but instructed employees not to clock in for these meetings.
22 These meetings often took 60-90 minutes and employees received zero pay for this time. Plaintiff
23 and aggrieved employees who did not receive half of their usual or scheduled days' work should
24 have been paid reporting time pay for the required attendance at these weekly meetings.

25 **Failure to Pay Wages Due Upon Termination**

26 (Cal. Labor Code §§201, 202, 203, 256 and 2698 *et seq.*)

27 34. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
28 incorporate said paragraphs herein by reference.

1 35. An employee who is discharged must be paid all of his or her wages immediately at
2 the time of termination. (Labor Code Sections 201 and 227.3.) Defendant knowingly and willfully
3 failed to pay all compensation due and owing to aggrieved employees at the time employment
4 terminated. Defendant willfully failed to pay employees who are no longer employed by it all
5 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
6 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as
7 waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to
8 Cal. Lab. Code § 2698 *et. seq.*

9 **Failure to Provide Rest Breaks**

10 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

11 36. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 37. Defendant has failed to maintain a compliant rest period policy and practice that
14 provides its employees with off-duty rest periods as required by California law. Plaintiff reports
15 that he and his coworkers almost always missed rest periods as a result of Defendant's staffing and
16 business practices, and that rest breaks were not scheduled into daily shifts.

17 38. Rest periods were either less than ten minutes, not provided, interrupted or late, "on
18 duty," or not scheduled before and after a meal period for shifts greater than six hours, as
19 prescribed by California law because Defendant: (1) did not account for all hours worked that were
20 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
21 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
22 inform and train employees about when, where and how to take timely and uninterrupted ten-
23 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
24 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting
25 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
26 break policy.
27
28

39. In instances where Defendant paid commission employees for time owed for paid but untaken rest periods, Defendant paid these rest period payments at the employee's base rate of pay instead of at the regular rate of pay, resulting in significant underpaid wages.

40. Defendant did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). When breaks were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant violated the Wage Order, Defendant is liable under Labor Code §1198. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

41. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

42. During Plaintiff's employment, Defendant failed to maintain a compliant meal period policy and practice. Defendant failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may 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..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

43. Plaintiff and aggrieved employees experienced frequent meal period violations yet never received meal period penalty pay.

44. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium

1 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
2 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
3 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal
4 periods; and/or (5) because management at various levels, affecting all hourly, non-exempt
5 employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Plaintiff
6 and aggrieved employees were not paid a premium payment, paid as an hour's wage when meal
7 periods were not given to them in compliance with California law.

8 **Failure to Reimburse For Required Business Expenses**

9 (Cal. Lab. Code §§1198, 2802, 2699 *et seq.*)

10 45. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
11 incorporate said paragraphs herein by reference.

12 46. Labor Code §2802 requires employers to indemnify employees for necessary
13 expenditures or losses incurred by employees in direct consequence of discharge of duties. Here,
14 Plaintiff and aggrieved employees were required to use their personal cell phones for work
15 purposes constantly, including communicating with customers, but only received \$5 per pay period
16 in reimbursement, which is not nearly sufficient. Plaintiff explains that he and other salespersons
17 were required to purchase Uber rides for customers and were not reimbursed for these costs.

18 **Failure to Provide Suitable Seating**

19 (Cal. Lab. Code §§1198 and IWC Wage Orders)

20 47. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
21 incorporate said paragraphs herein by reference.

22 48. Labor Code section 1198 states, in pertinent part, "The employment of any employee...
23 under conditions of labor prohibited by the [Wage Order] is unlawful."

24 49. The IWC Wage Orders provide that:

25 A. All working employees shall be provided with suitable seats when the nature of
26 the work reasonably permits the use of seats.

27 B. When employees are not engaged in the active duties of their employment and
28 the nature of the work requires standing, an adequate number of suitable seats

1 shall be placed in reasonable proximity to the work area and employees shall
2 be permitted to use such seats when it does not interfere with the performance
3 of their duties.

4 50. At all relevant times, Defendant failed to provide Plaintiff and aggrieved employees
5 with suitable seating during their employment as required by section 14 of the applicable Wage
6 Order. Plaintiff and other aggrieved employees were not provided with adequate seating when they
7 were working in positions and performing required tasks, such as placing follow up calls and
8 sending follow up messages to customers, which can reasonably and successfully be accomplished
9 while seated.

10 **Failure to Provide Accurate Itemized Wage Statements and**
11 **Maintain Accurate Records**

12 (Cal. Lab. Code §§226, 1174, 1174.5, 2699 *et seq.*)

13 51. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
14 incorporate said paragraphs herein by reference.

15 52. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
16 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
17 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
18 aggrieved employees, and the records maintained by Defendant, have not accurately reflected
19 actual total hours worked, meal and rest period penalties, split shift premiums, reporting time pay,
20 expense reimbursements, and wages earned.

21 53. Such failures caused injury to Plaintiff and others, by, among other things, impeding
22 them from knowing the total hours worked and the amount of wages to which they are and were
23 entitled. Defendant is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

24 54. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved
25 employees to sign employment related contracts and documents that contained unlawful terms of
26 employment.
27
28

1 **FIRST CAUSE OF ACTION**

2 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**

3 **(California Labor Code §2698 *et seq.*)**

4 55. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
5 incorporate said paragraphs herein by reference.

6 56. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant
7 during the applicable statutory period and suffered one or more of the Labor Code violations set
8 forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and
9 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
10 attorneys’ fees and costs.

11 57. Plaintiff seeks to recover the PAGA civil penalties through a representative action
12 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
13 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

14 58. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
15 Code provisions:

- 16 a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal.
17 Labor Code §§204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194,
18 1197, 1197.1, 1198, 2698 *et seq.*, IWC Wage Orders);
- 19 b. Failure to Pay Minimum Wage (Cal. Labor Code §§200, 218.5, 226, 558, 1194,
20 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*);
- 21 c. Failure to Pay Split Shift Pay (Cal. Labor Code §§1198 and 2698 *et seq.*);
- 22 d. Failure to Provide Reporting Time Pay (Cal. Labor Code §§1198, Wage Order)
- 23 e. Failure to Pay Wages Due Upon Termination (Cal. Labor Code §§201, 202, 203,
24 256 and 2698 *et seq.*)
- 25 f. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198,
26 2698 *et seq.*)
- 27 g. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512,
28 558, 1198, 2699 *et seq.*)

1 h. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §§1198,
2 2802, 2699 *et seq.*)

3 i. Failure to Provide Suitable Seating (Cal. Labor Code §§1198 and IWC Wage
4 Orders)

5 j. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate
6 Records (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*).

7 59. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
8 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
9 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
10 employee for each subsequent violation of Labor Code §226(a).

11 60. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
12 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
13 for each underpaid employee for each pay period for which the employee was underpaid, and one
14 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
15 for which the employee was underpaid.

16 61. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
17 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
18 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
19 a civil penalty is not specifically provided.

20 62. Plaintiff and the other current and former employees of Defendant are aggrieved
21 employees. They were or are employed by Defendant, and each of them, and the violations alleged
22 herein were committed against them. Plaintiff brings this action on behalf of himself and all other
23 current and former aggrieved employees.

24 63. At the time of each violation, Defendant employed one or more employees.

25 64. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of
26 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
27 determined at trial, pre-judgment interest, costs and attorneys' fees.
28

65. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency (“LWDA”) and served by certified mail upon Defendant, Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions that Defendant has violated. The LWDA did not respond to Plaintiff’s Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue his PAGA claims in this action on behalf of aggrieved employees and the State of California.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for judgement against Defendant as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys’ fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;
4. Pre-judgement and post-judgement interest as provided by law; and
5. Such other and further relief that the Court may deem just and proper.

DATED: September 21 2023

KOUL LAW FIRM


BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff NASHAT BOKTOR, and all
aggrieved employees

EXHIBIT 1



Nazo@Koullaw.com

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3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

July 14, 2023

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

VAG TNRCA, LLC
14747 N. Northsight Blvd. Ste. 111
Scottsdale, AZ 85260

VAG TNRCA, LLC
19550 Nordhoff Street
Northridge, CA 91324

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Nashat Boktor
Employer: VAG TNRCA, LLC

Dear Sir or Madam:

Claimant Nashat Boktor has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent him, and all other aggrieved employees, for wage and hour claims against his former employer, VAG TNRCA, LLC (hereafter “Employer”).

Employer operates automobile dealerships in California. Claimant worked for Employer as an hourly, non-exempt car salesperson from August 2019 until May 2023.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, IWC Wage Orders)

The IWC Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period as described below.

Claimant explains that he and aggrieved employees were frequently underpaid on wage statements, which sometimes did not include all commission wages they were entitled to. On numerous occasions he brought these discrepancies to his managers and he was sometimes paid out the underpaid wages at a later date. Commission payments on accessories and other devices were also sometimes excluded from wages.

Additionally, during pay periods when employees did not earn commissions and earned hourly wages, they were underpaid for regular and overtime hours worked due to Employer’s unlawful timekeeping practices, which include shaving time from employee time records and requiring off the clock work.

Off the Clock Work

Claimant and aggrieved employees were called into weekly meetings on Fridays at 8 am which they were instructed not to clock in for. All employees were required to attend these meetings regardless of whether or what time they had a shift scheduled for that day. Claimant recalls clocking in for one such meeting and having his manager later delete the time from his timecard. This resulted in reporting time and split shift violations as detailed below, as well as underreported and underpaid wages, including overtime wages.

Employees were also required to perform other tasks off the clock for which they were not compensated.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Claimant and aggrieved employees often had meal periods interrupted with work but were not permitted to report this time worked on their timecards.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 et seq.)

Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Additionally, employees receive zero pay for time spent working off the clock which is also a violation of the labor code. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Split Shift Pay

(Cal. Lab. Code §§1198 and 2698 *et seq.*)

Labor Code §1198 prohibits the employers from subjecting employees to "conditions of labor prohibited by the order." Wage Order 5-2001 (4C), codified at 8 C.C.R. § 11070(4C), requires that, "[w]hen an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment."

Here, Employer required Claimant and coworkers to attend weekly meetings yet when these meetings for which employees were not to clock in for. If an employee worked a shift that same day and was required to report back to work for that shift, the employee was not paid a split shift premium as required.

Claimant and aggrieved employees work frequent split shifts but do not receive split

shift pay in the corresponding pay period.

Moreover, as a derivative claim, Claimant alleges that pay statements were inaccurate as they failed to indicate required split shift wages, thus failing the requirements of Labor Code §226(a) and liable under 226.3. Employer is further liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Reporting Time Pay

(Cal Labor Code § 1198, Wage Order)

Pursuant to the Subsection 5(A) of the Applicable Wage Orders, an employee is entitled to reporting time pay if that employee is required to report to work and does report but is not put to work or is furnished less than half of said employee's usual or schedule workday. The amount of reporting time that must be paid "is half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay..." *Id.*

The reporting time provision of the Applicable Wage Orders were meant to safeguard against unpredictable work schedules that understandably take a toll on affected employees. Without the security of definite work schedules, employees are forced to make childcare arrangements, eldercare arrangements, encounter obstacles in pursuing their education, experience adverse financial effects, and deal with the stress and strain on their family life. Employer required employees to attend weekly meetings but instructed employees not to clock in for these meetings. These meetings often took 60-90 minutes and employees received zero pay for this time. Employees who did not receive half of their usual or scheduled days' work should have been paid reporting time pay for the required attendance at these weekly meetings.

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages immediately at the time of termination. (Labor Code Sections 201 and 227.3.) Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq.

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that he and his coworkers almost always missed rest periods as a result of Employer's staffing and business practices, and that rest breaks were not scheduled into daily shifts.

Rest periods were either less than ten minutes, not provided, interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

In instances where Employer paid commission employees for time owed for paid but untaken rest periods, Employer paid these rest period payments at the employee's base rate of pay instead of at the regular rate of pay, resulting in significant underpaid wages.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 et seq.

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may 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..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during

any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11(A) of the Wage Orders provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.” Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees experienced frequent meal period violations yet never received meal period penalty pay.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour’s wage when meal periods were not given to them in compliance with California law.

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Claimant and aggrieved employees were required to use their personal cell phones for work purposes constantly, including communicating with customers, but only received \$5 per pay period in reimbursement, which is not nearly sufficient. Claimant explains that he and other salespersons were required to purchase Uber rides for customers and were not reimbursed for these costs.

Failure To Provide Suitable Seating

(Lab. Code section 1198 and IWC Wage Orders)

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

The IWC Wage Orders provide that:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 14 of the applicable Wage Order. Claimant and other aggrieved employees were not provided with adequate seating when they were working in positions and performing required tasks, such as placing follow up calls and sending follow up messages to customers, which can reasonably and successfully be accomplished while seated.

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual total hours worked, meal and rest period penalties, split shift premiums, reporting time pay, expense reimbursements, and wages earned.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq*.

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'N. Koulloukian', written over a horizontal line.

Nazo Koulloukian, Esq.
Attorneys for Claimant