



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

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', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.
Attorneys for Claimant