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Via Online Filing	**Via Certified Mail**
http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html	Conant Auto Retail, San Diego, Inc 5910 Mission Gorge Road San Diego, CA 92120

Subject: *Nelson Rodriguez v. Conant Auto Retail, San Diego, Inc*

Dear Representative:

This office represents Nelson Rodriguez ("Plaintiff") in connection with Labor Code violation claims related to their employment with Conant Auto Retail, San Diego, Inc ("Employer"). Employer can be contacted at:

Conant Auto Retail, San Diego, Inc
5910 Mission Gorge Road
San Diego, CA 92120

Plaintiff has personally suffered each of the Labor Code violations alleged in this letter while employed by Employer within the applicable one-year statute of limitations period. As such, Plaintiff intends to seek PAGA penalties on behalf of himself and all other non-exempt employees of Employer employed in California and who were subjected to any or all of the Labor Code violations referenced herein during the PAGA Period (together with Plaintiff, "Aggrieved Employees"). The PAGA Period begins one year prior to the date of this letter and, because the violations alleged herein are ongoing, the PAGA Period extends beyond the date of this letter.

In response to Labor Code violations alleged below, PAGA provides Employer with specific options to mitigate potential penalties:

Taking All Reasonable Steps to Be in Compliance:

Employer can reduce potential penalties to 15% of the maximum by demonstrating it has already taken all reasonable steps to be in compliance with all Labor Code provisions identified in this notice prior to receiving it. If Employer believes it has already taken all reasonable steps to be in compliance with all Labor Code provisions identified in this notice, Employer is encouraged to contact our office to set forth all reasonable steps taken.

If all reasonable steps are taken to be in compliance with all Labor Code provisions identified in this notice within 60 days after receiving it, penalties may be reduced to 30% of the maximum. If Employer intends to take all reasonable steps to be in compliance with all Labor Code provisions identified in this notice, Employer is encouraged to engage in good faith meet-and-confer discussions with our office regarding the alleged violations. Failure to do so may support a finding that all reasonable steps were not taken to comply with the Labor Code provisions identified herein.

Curing Violations:

For certain violations, Employer has the opportunity to fully cure the alleged violations to further reduce penalties or even avoid penalties altogether. Once again, we strongly encourage Employer to promptly initiate meet-and-confer discussions with our office as part of any compliance or cure efforts. Failure to do so may result in a cure that is insufficient.

Employer must notify both our office and the Labor and Workforce Development Agency (LWDA) of any steps taken towards compliance or any attempts to cure. Not only does this approach demonstrate a good faith attempt to come into compliance, but failure to do so could potentially support a finding that Employer's conduct was malicious, fraudulent, or oppressive, thereby leading to increased penalties pursuant to Labor Code section 2699(f)(2)(B).

All communications regarding this matter should be directed to:

Frontier Law Center
6200 Canoga Ave, Suite 470
Woodland Hills, CA 91367

This letter is sent pursuant to the requirements of Labor Code section 2699.3. The Labor Code violations being alleged are as follows:

<u>Off-the-Clock Work and Unpaid Wage Violations</u>

Labor Code section 1194, 1197, and 1198 require employers to pay employees for all hours worked at no less than the minimum wage and at overtime rates when applicable.

Employer failed to pay the Aggrieved Employees for all hours worked because the Aggrieved Employees were required to perform compensable work after clocking out. Specifically, Employer required the Aggrieved Employees to clock out for meal periods while continuing to work on customer deals. Management specifically advised Plaintiff to "clock out early to prevent hourly wages from exceeding commission totals," demonstrating the knowing and willful nature of this violation. This practice resulted in unpaid wages for all hours worked off the clock.

Civil Penalties Applicable to Unpaid Wage Violations

As a result of the above minimum wage violations, Employer is subject to the civil penalties listed in Labor Code sections 1197.1 and 2699.

<u>Failure to Maintain Accurate Time Records</u>

Labor Code section 1174(d) requires employers to maintain accurate records of all hours worked by employees.

Employer violated this requirement by requiring the Aggrieved Employees to clock out for meal periods while continuing to work, causing the recorded time to systematically underreport the actual hours worked. This inaccuracy in time records is not incidental but rather a direct result of Employer's off-the-clock work policy.

Civil Penalties Applicable to Time Record Violations

As a result of the above time record violations, Employer is subject to the civil penalties listed in Labor Code section 2699.

<u>Meal Break Violations</u>

Labor Code section 512 and the applicable Wage Order provides that 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, or more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Meal periods must be uninterrupted, and the employee must be relieved of all duty.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided.

The Aggrieved Employees' meal breaks were regularly interrupted due to Employer's policies regarding work demands. Additionally, when Plaintiff worked shifts exceeding ten hours, he was not provided a second 30-minute meal period and was not permitted to take or record a second meal period. Employer's failure to provide required second meal periods constitutes a systematic violation affecting all Aggrieved Employees who worked shifts longer than ten hours.

Premium pay for missed meal breaks must be paid at the employees' regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021)). The regular rate of pay includes all remunerations, including shift differentials, incentive pay, and other non-discretionary bonuses. Here, the Aggrieved Employees did not receive premium pay for missed meal breaks.

On Duty Meal Breaks

An employer provides compliant meal breaks to its employees "if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break." (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012)).

Here, the Aggrieved Employees were frequently required to remain on duty handling customer deals while clocked out for meal periods.

Meal Breaks Were Impeded / Discouraged

Not only must an employer affirmatively relieve its employees of all duty during their meal breaks, it also must not "impede or discourage" its employees from taking compliant meal breaks. (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012)).

Here, Employer impeded or discouraged its employees from taking compliant meal breaks by requiring Plaintiff and the Aggrieved Employees to clock out while continuing to work with customers.

Civil Penalties Applicable to Meal Break Violations

As a result of the above meal break violations, Employer is subject to the civil penalties listed in Labor Code sections 558 and 2699.

Rest Break Violations

Labor Code section 226.7 and the applicable Wage Order requires employers to authorize and permit its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof. Employees must be relieved of all duties during their rest breaks.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant rest break was not provided.

The Aggrieved Employees' rest breaks were regularly missed because Employer failed to authorize and permit rest breaks; Employer's policies and Plaintiff's workload and continuous customer and deal demands regularly prevented Plaintiff from taking uninterrupted rest breaks. Plaintiff experienced days when he worked the entire day without eating, drinking water, or using the restroom.

Premium pay for missed rest breaks must be paid at the employees' regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021)). The regular rate of pay includes all remunerations, including shift differentials, incentive pay, and other non-discretionary bonuses. Here, the Aggrieved Employees did not receive premium pay for missed rest breaks.

On Call / On Duty Rest Breaks

The Aggrieved Employees were required to remain on call and generally on duty during their rest breaks. Courts have repeatedly held that employers may not impose any limits on rest breaks. (*Augustus v. ABM Sec. Servs., Inc*., 2 Cal. 5th 257, 269 (2016) (an employer cannot "satisfy its obligation to relieve employees from duties and employer control during rest periods when the employer [] requires its employees to remain on call")). Thus, Employer violated the Labor Code by requiring the Aggrieved Employees to remain on call and on duty during their rest breaks.

Civil Penalties Applicable to Rest Break Violations

As a result of the above rest break violations, Employer is subject to the civil penalties listed in Labor Code section 2699.

Failure to Pay All Earned Commissions and Bonuses

Labor Code sections 200 and 204 define "wages" to include earned commissions and bonuses, and require that all such wages be paid timely. Under section 204, wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Here, Employer failed to pay Plaintiff and the Aggrieved Employees all earned commission and bonus wages. Specifically, Employer omitted credit and payment for specific sales transactions; sales transactions regularly disappeared from commission statements, including aftermarket product sales, deliberately miscredited deals by paying the wrong salesperson for sales made by other employees, and displayed bonuses on paystubs without actually paying those bonuses to employees.

Civil Penalties Applicable to Commission and Bonus Payment Violations

As a result of the above commission and bonus payment violations, Employer is subject to the civil penalties listed in Labor Code sections 210, 1197.1, and 2699.

Unlawful Deductions and Recoupment

Labor Code sections 221 through 224 prohibit employers from making deductions from wages or requiring employees to return earned wages.

Here, Employer made or threatened unlawful deductions and chargebacks by treating Plaintiff's and the Aggrieved Employees' commissions as recoverable "advances" and authorizing recoupment from future wages and even final pay, including accrued vacation, for alleged overpayments or outstanding draws.

This practice violates the fundamental principle that earned wages belong to the employee.

Commission Agreement Noncompliance

Labor Code section 2751 requires employers to provide employees with a written commission agreement at the time of hire and to obtain the employee's signature on it.

Employer violated this requirement by failing to provide commission terms at hire; Employer did not provide or obtain a compliant written commission agreement and provide a signed copy to Plaintiff. Plaintiff later obtained the pay plan from a coworker.

Civil Penalties Applicable to Commission and Bonus Payment Violations

As a result of the above commission and bonus payment violations, Employer is subject to the civil penalties listed in Labor Code sections 210, 1197.1, and 2699.

Wage Statement Violations

Labor Code section 226 requires an employer to provide wage statements to its employees which include, among other things, gross and net wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate, all deductions, all applicable hourly rates in effect during the pay period and corresponding hours worked, all deductions, and the inclusive dates of the pay period. Employer failed to provide wage statements which accurately reflected this information.

Civil Penalties Applicable to Wage Statement Violations

As a result of the wage statement violations detailed above, Employer is subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Waiting Time Penalties

Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee's resignation. When an employer fails to comply with the above, the employee is entitled to the equivalent of a day's wage at their regular rate of pay for each day the employer is late, for up to 30 days. (Labor Code section 203). Employer failed to pay all wages owed at the conclusion of the Aggrieved Employees' employment.

Civil Penalties Applicable to Waiting Time Penalties

Because of Employer's failure to pay all wages at the conclusion of employment and to pay the resulting waiting time penalties, Employer is subject to the civil penalties listed in Labor Code section 2699.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional facts or theories of liability, they expressly reserve the right to revise these facts and/or add any new claims by amending and/or supplementing this letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Sincerely,

/s/

Mike Rachmann