

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

SHAUNNA BOREHAM, *on behalf of herself
and all others similarly situated,*

Plaintiff,

v.

DANA MOTORS, LTD. and JAMES
COGNETTA,

Defendants.

**CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Index No. _____

Plaintiff Shaunna Boreham, on behalf of herself and all others similarly-situated, by and through her attorneys Kakalec Law PLLC, as and for her Complaint, alleges as follows:

Preliminary Statement

1. Plaintiff Shaunna Boreham (“Ms. Boreham” or “Plaintiff”) was employed by Dana Motors, Ltd (“Dana Motors”) and James Cognition (“Cognition”) from 2010 until March of 2019. Dana Motors, a car dealership located in Staten Island, New York, sells, finances, and services both new and pre-owned Ford vehicles.
2. Beginning in approximately May 2010, Ms. Boreham worked as an automotive salesperson at the Dana Motor dealership and was employed by Defendants. For the duration of her employment as an automotive salesperson for Defendants, Ms. Boreham was not paid in accordance with state law.

3. Ms. Boreham was paid on a weekly basis, and her income included commission pay. During the period from before November 2013 until approximately the end of 2016, Ms. Boreham was paid a flat amount, ranging from \$150 to \$250 per week, plus commissions earned for that week. However, when Ms. Boreham did not earn any commission during a particular work week, she only received the flat rate for that week, regardless of how many hours she worked.
4. The other automotive salespeople at the company were paid in the same manner as Ms. Boreham. As a result, there were many weeks when Ms. Boreham, and the other automotive salespeople at the company who were paid by the same method, did not earn the minimum wage required under New York Labor Law.
5. In addition, during this time period and later -- after Defendants changed their pay method around early 2017 -- Ms. Boreham and the other automotive salespeople did not earn overtime at time and a half of the applicable state minimum wage for every hour worked above 40 in a work week, as is required by law. This was true even though Ms. Boreham and the other automotive salespeople regularly worked more than forty hours in a week.
6. Ms. Boreham and the other automotive salespeople were also subject to illegal, non-reimbursed deductions (such as the \$150 charge for a company uniform coat) and did not receive required pay disclosures under state law.
7. Ms. Boreham now brings this action on behalf of herself and other Dana Motors salespeople, claiming that she and other Dana Motors salespeople were not paid as required under state law between November 26, 2013 and the present.

Jurisdiction and Venue

8. This Court has jurisdiction over this action pursuant to CPLR § 301 because the parties to this action are domiciled in New York State.
9. The acts and/or omissions giving rise to the causes of action alleged herein occurred in Richmond County.
10. Defendant Dana Motors is based in Richmond County and Defendants employed Plaintiff and the other automotive dealers in Richmond County, New York.
11. Plaintiff is a natural person domiciled in Richmond County, New York.
12. Venue is proper under § CPLR 503(a).

Parties

13. Plaintiff Shaunna Boreham is a resident of Staten Island, New York who worked at Dana Motors between 2010 and 2019.
14. Dana Motors is a New York company which has its principal place of business in Staten Island, New York.
15. Dana Motors, also known as Dana Ford Lincoln, is a car dealer selling new and used cars.
16. Upon information and belief, Defendant James Cognetta is the owner and Chief Operating Officer of Dana Motors.
17. Upon information and belief, Defendant Cognetta resides in New Jersey.
18. At all times relevant to this action, Dana Motors and Cognetta jointly employed the Plaintiff and the other automotive salespeople.

19. At all times relevant to this action, Defendants were an “employer” of Plaintiff and other automotive salespeople within the meaning of the New York Labor Law.
20. At all times relevant to this action, Plaintiff and the other automotive salespeople were “employees” of Defendants within the meaning of the New York Labor Law.
21. At all times relevant to this action, Defendants “employed” Plaintiff and the other automotive salespeople within the meaning of the New York Labor Law.

Factual Allegations

22. Plaintiff came to work for Defendant Dana Motors in 2010. She first worked as a product specialist, but in around May of 2010 she began working as an automotive salesperson, a position she held until she left her employment with Dana Motors in March of 2019.
23. When she first began working as an automotive salesperson for Dana Motors in 2010, Ms. Boreham was paid a flat fee in an amount of usually ranging from \$150 to \$250 per week, regardless of how many hours she worked. She would also receive commissions if any were owed for that week.
24. However, if no commissions were owed for a week during this time period, Ms. Boreham would only receive the flat fee as pay for the week.
25. During those weeks when she did not receive any commission, Ms. Boreham was paid well below the state and federal minimum wage for the hours that she worked.

26. Other automotive salespeople at Dana Motors were also paid with a flat rate, and also often were paid less than the applicable minimum wage.
27. Ms. Boreham regularly worked long hours at the car dealership. She often worked more than 40 hours in a work week.
28. During the weeks in which she worked more than 40 hours, however, Ms. Boreham was not paid overtime at a rate of one and half times the applicable minimum wage, as required by law.
29. Defendants also failed to pay Plaintiff her paycheck for her last week of work.
30. The other automotive salespeople employed by Defendants also were not paid overtime as required by law.
31. Defendant failed to furnish Plaintiff and the other automotive salespeople, at the time they began working for Dana Motors or any time thereafter, with written notice of their wage rates, manner of payment, regular pay dates, or any of the other information required by New York Labor Law 195(1).
32. Defendant also never furnished Plaintiff and the other automotive salespeople with statements with each payment of wages that accurately specified the dates covered by payment, the rate of pay, and other information required by New York Labor Law 195(3).
33. Defendants made deductions from the wages of Plaintiffs and the other automotive salespeople for uniforms, or required Plaintiffs and automotive salespeople to purchase uniforms by separate payment. The costs of the deductions were significant; a uniform coat, for example, cost approximately \$150.

34. Defendants also required Plaintiff and the automotive salespeople to purchase iPads for use in their employment. The cost of the iPads were deducted from the salespeople's wages.
35. The purchases or deductions were not in accordance with the provision of any law, rule, or regulation, and were not authorized in writing by the Plaintiff or the other automotive salespeople.
36. These purchases or deductions were for the benefit of Defendants and not for the benefit of the Plaintiff and the other automotive salespeople.
37. Defendants' failure to pay Plaintiff and the other automotive salespeople as required by New York Labor Law was willful and intentional.
38. Defendants knew that their failure to pay Plaintiff and the other automotive salespeople was prohibited by New York Labor Law, or they showed willful disregard as to whether its actions were so prohibited.
39. Defendant Cогnetta had the power to establish, and did establish – directly or through his agent(s) – the terms of Plaintiff's employment and the terms of the other automotive salespeople's employment.
40. Defendant Cогnetta, directly or indirectly, determined the salary to be paid to Plaintiff and to the other automotive salespeople.
41. Defendant Cогnetta had the power to hire and fire employees of Dana Motors, and he exercised that power, whether directly or through his agent(s).
42. Defendant Cогnetta had the power to control the day-to-day functions of Dana Motors, and did control the day-to-day operations of Dana Motors. He worked in the dealership on a daily basis.

43. Defendant Cognetta, directly or indirectly, managed, supervised, and directed the business and operations of Dana Motors.
44. During the course of their employment, the Plaintiff the other automotive salespeople handled, sold, or otherwise worked on items that were produced for movement in interstate commerce.
45. Defendants undertook all of the actions and omissions alleged above either directly or through their agents who were authorized to undertake such actions and omissions.

Class Action Allegations

46. Pursuant to Article of the New York Civil Practice Law and Rules, Plaintiff brings this action as class action, on behalf of all individuals who were employed by Defendants as automotive salespeople within six years before filing of the complaint (the “automotive salespeople”).
47. Excluded from the class are the legal representatives, officers, directors, assigns, and successors or Dana Motors; any individual who at any time during the class period has had a controlling interest in Dana Motors; the Judge(s) to whom this case is assigned and any member of the Judges’ immediate family; and all persons who submit timely and otherwise proper requests for exclusion from the Class.
48. The proposed Class is ascertainable in that its members can be identified and located using information contained in Defendants’ payroll and personnel records.

Numerosity

49. Upon information and belief, the size of the Class is at least 75 employees or former employees of Defendants.

50. The members of the Class are sufficiently numerous that joinder of all members is impractical.
51. Plaintiff is currently unaware of the identities of all of the employees who would be members of the Class, but this information is readily ascertainable from Defendants' records. Defendants should therefore be required to provide Plaintiff with a list – including last known addresses, telephone numbers, and email addresses if known – of all individuals who worked as automotive salespeople for Defendant between November 26, 2013 and the present.

Existence and Predominance of Common Questions

52. Common questions of law and fact exist as to Plaintiff and all members of the Class and predominate over questions affecting only individual Class members.
53. These common questions include:
- a) Whether Defendants employed the automotive salespeople within the meaning of New York Labor Law;
 - b) What are and were the policies, practices, programs, procedures, and protocols Defendants regarding the compensation of the automotive salespeople;
 - c) Whether the automotive salespeople were paid minimum wage as required by New York Labor Law;
 - d) Whether the automotive salespeople were paid overtime as required by the New York Labor Law, including its attendant regulations;
 - e) Whether Defendants took illegal deductions in violation of New York Labor Law § 193, 198(b);

- f) Whether Plaintiff and the salespeople were given written notices of pay rate and other information as required by New York Labor Law § 195(1);
- g) Whether Plaintiffs were given pay statements as required by New York Labor Law § 195(3);
- h) Whether Defendants timely paid Plaintiff and the automotive salespeople their earned wages and commissions;
- i) Whether Defendants' policy of failing to pay Plaintiff and the other automotive salespeople was willful or with reckless regard of the law; and
- j) The nature and extent of class-wide injury and the measure of damages for those injuries.

Typicality

- 54. Members of the proposed New York Labor Law class have all been subject to the same unlawful practices of Defendants, and their claims arise out of these same practices.
- 55. Plaintiff and the automotive salespeople have the same statutory rights under the New York Labor Law, and are all non-exempt employees within the meaning of the New York Labor Law.
- 56. Plaintiff and the automotive salespeople suffered similar types of damages.
- 57. Plaintiff's claims are typical of the claims of the Class because, among other things, Plaintiff was an automotive salesperson who worked for Defendants and suffered the same labor law violations as other automotive salespeople.
- 58. Plaintiff's interests are co-extensive with the interests of the Class members; Plaintiff has no interest adverse to the Class members.

59. Defendants acted or refused to act on grounds generally applicable to the Class, therefore making final injunctive relief and declaratory relief appropriate as to the Class as a whole.

Adequacy

60. Plaintiff will fairly and adequately represent the interests of the class members. Her interests do not conflict with the interests of the members of the Class she seeks to represent.
61. Plaintiff understands that, as class representative, she assumes a responsibility to the class to represent its interests fairly and adequately.
62. Plaintiff has retained counsel experienced in prosecuting class actions and in employment matters. There is no reason why Plaintiff and her counsel will not vigorously pursue this matter.

Superiority

63. A class action is superior to other available means for the fair and efficient adjudication of the claims at issue herein.
64. The damages suffered by each individual Class member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the litigation necessitated by Defendants' conduct.
65. Further, it would be difficult for members of the Class to effectively individually obtain redress for the wrongs done to them. If individual actions were to be brought by each member of the Class, the result would be a multiplicity of actions, creating hardships for members of the Class, the Court, and the Defendants.

66. Individualized litigation also presents a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the Court system.
67. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.
68. This case does not present individualized factual or legal issues which would render a class action difficult.

Claims for Relief

I. New York Labor Law (Minimum Wage)

69. The Plaintiff realleges and incorporates by reference the foregoing allegations as if set forth fully here.
70. Defendants failed to pay minimum wage to Plaintiff and the automotive salespeople for every hour that they worked, in violation of New York Labor Law § 652 and its implementing regulations, 12 N.Y.C.R.R. §142-2.1 et seq.
71. Defendants' failure to pay the required wages as set forth above was willful and intentional within the meaning of New York Labor Law §§ 198 and 663.
72. At all relevant times, Defendants have operated under common policies, plans, and practices of willfully failing and refusing to pay the automotive salespeople the wages required under the New York State Minimum Wage Act and its supporting regulations.
73. Plaintiff and the automotive salespeople are entitled to their unpaid wages as mandated by New York Labor Law, plus an additional 100 percent, as a

consequence of the Defendants' unlawful actions and omissions, in accordance with New York Labor Law §§ 198 and 663.

74. Plaintiff and the automotive salespeople also seek, and are entitled to, attorneys' fees incurred by their counsel, costs of Court, and interest.

II. New York Labor Law (Overtime)

75. The Plaintiff realleges and incorporates by reference the foregoing allegations as if set forth fully here.

76. Defendants failed to Plaintiff and the automotive salespeople the overtime wages they were entitled to under New York Labor Law and its implementing regulations.

77. Defendants' failure to pay the required wages as set forth above was willful and intentional within the meaning of New York Labor Law §§ 198 and 663.

78. Plaintiff and the automotive salespeople are entitled to their unpaid overtime wages as mandated by New York Labor Law, plus an additional 100 percent, as a consequence of the Defendants' unlawful actions and omissions, in accordance with New York Labor Law §§ 198 and 663.

79. Plaintiff and the automotive salespeople also seek, and are entitled to, attorneys' fees incurred by their counsel, costs of Court, and interest.

III. New York Labor Law (Illegal Deductions)

80. The Plaintiff realleges and incorporates by reference the foregoing allegations as if set forth fully here.

81. Throughout the period from November 26, 2013 through the present, Defendants routinely made improper deductions or from the wages and/or commissions of the Plaintiff and the other automotive salespeople.
82. The deductions made by Defendants did not benefit the Plaintiff and the other automotive salespeople, but were for the benefit of Defendants. The deductions were not permitted by statute and, upon information and belief, were not all authorized in writing.
83. The deductions were in violation of New York Labor Law § 193.
84. For Defendants' violation of New York Labor Law § 193, Plaintiff and the automotive salespeople are entitled to damages in the amount of all improper deductions.
85. Plaintiff and the salespeople also seek, and are entitled to, attorneys' fees incurred by their counsel, costs of Court, and interest.
- IV. New York Labor Law (Wage Notice and Wage Statement Violations)
86. The Plaintiff realleges and incorporates by reference the foregoing allegations as if set forth fully here.
87. Defendants failed to furnish Plaintiff and the automotive salespeople, at the time of their hiring or thereafter, with notices containing their rates of pay and other information as required by New York Labor Law § 195(1).
88. For Defendants' violation of New York Labor Law § 195(1), Plaintiff and the automotive salespeople are each entitled to statutory damages for each work day or work week in which this violation occurred or continued to occur, in an amount not to exceed \$5,000 per Class member.

89. Defendants also failed to furnish Plaintiff and the automotive salespeople with accurate wage statements with every payment of wages which provided all of the information required under New York Labor Law § 195(3).
90. For Defendants' violation of New York Labor Law § 195(3), Plaintiff and the automotive salespeople are entitled to statutory damages for each work day or work week in which the violation continued to occur, in an amount not to exceed \$5,000 per Class member, pursuant to New York Labor Law §198(1-d).
91. Plaintiff and the salespeople also seek, and are entitled to, attorneys' fees incurred by their counsel, costs of Court, and interest.

Demand for Jury Trial

Plaintiff demands a trial by jury as to all issues so triable.

WHEREFORE, Plaintiff requests that this Court enter an Order:

- a. assuming jurisdiction over this action;
- b. certifying this case as a class action on behalf of the proposed class, naming Plaintiff as Class Representative, and appointing Plaintiff's attorneys as Class Counsel;
- c. declaring that Defendants violated New York Labor Law;
- d. permanently enjoining Defendants from further violations of New York Labor Law;
- e. granting judgment to Plaintiff and the automotive salespeople on their New York Labor Law claims and awarding them their unpaid wages and damages as provided for by statute;

- f. Awarding Plaintiff and the automotive salespeople prejudgment and postjudgment interest as allowed by law;
- g. Awarding Plaintiff and the automotive salespeople their costs and reasonable attorneys' fees; and
- h. Granting such further relief as the Court finds just.

DATED: Brooklyn, New York
November 26, 2019

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