

HAIG B. KAZANDJIAN LAWYERS, APC

Haig B. Kazandjian, Esq. Bar No.: 278622

haig@hbklawyers.com

Cathy Gonzalez, Esq., Bar No.: 310625

cathy@hbklawyers.com

Kevin Crough, Esq., Bar No.: 323904

kevin@hbklawyers.com

801 North Brand Boulevard, Suite 970

Glendale, California 91203

Telephone: 1-818-696-2306

Facsimile: 1-818-696-2307

Attorneys for Plaintiff FREDERICK WILLIAMS
on behalf of himself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

30-2020-01175950-CU-OE-CJC

Assigned for All Purposes

FREDERICK WILLIAMS, an individual, on)
behalf of himself and all other aggrieved)
employees)

Case No.

Judge Deborah Servino

Plaintiff,

**COMPLAINT FOR ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE § 2698, ET SEQ.**

vs.

Violation of California Labor Code § 2698, et
seq. (California Labor Code Private Attorneys
General Act of 2004)

BDS National Retail Solutions, LLC; BDS)
Marketing, LLC; and DOES 1 through 100,)
inclusive,)

Defendants.

Plaintiff FREDERICK WILLIAMS (hereinafter, "REPRESENTATIVE PLAINTIFF"
"PLAINTIFF" or "WILLIAMS") alleges as follows:

PARTIES

1. REPRESENTATIVE PLAINTIFF is an individual who resides in California and
was employed by BDS National Retail Solutions, LLC and BDS Marketing, LLC (hereinafter

referred to as “DEFENDANTS,” or “the Company”) from on or about May 2018 to approximately January 2020.

2. REPRESENTATIVE PLAINTIFF is informed and believes, and based on such information and belief, alleges that at all times mentioned herein, DEFENDANTS BDS National Retail Solutions, LLC and BDS Marketing, LLC are foreign limited liability companies, licensed to do business and actually doing business in the State of California. Thus, DEFENDANTS are subject to the applicable California laws as alleged in this action.

3. REPRESENTATIVE PLAINTIFF is unaware of the true names and capacities, whether corporate, individual, or otherwise, of DEFENDANTS named as DOES 1 through 100, inclusive. Pursuant to California Code of Civil Procedure section 474, REPRESENTATIVE PLAINTIFF will seek leave of court to amend this complaint to state said DEFENDANTS’ true names and capacities when the same have been ascertained. REPRESENTATIVE PLAINTIFF is informed and believes, and based on such information and belief alleges, that said fictitiously-named DEFENDANTS are responsible in some manner for the injuries and damages to REPRESENTATIVE PLAINTIFF and the other aggrieved employees as further alleged herein.

4. This is only a Private Attorney General Action Complaint, pursuant to California Labor Code section 2699 et seq., on behalf of REPRESENTATIVE PLAINTIFF and all other persons similarly situated who worked for DEFENDANTS in any of their California locations as non-exempt, hourly employees (herein collectively identified as “other aggrieved employees”) for:

- (i) Failure to provide employment records in violation of Labor Code sections 226;
- (ii) failure to pay overtime and double time in violation of Labor Code sections 510 and the applicable Wage Orders;
- (iii) failure to provide rest and meal periods in violation of Labor Code sections 226.7, 512(a), and the applicable Wage Orders;
- (iv) failure to pay minimum wage in violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and the applicable Wage Orders;

- 1 (v) failure to keep accurate payroll records and provide itemized wage statements in
2 violation of Labor Code sections 226(a), 1174(d), 1174.5, 1198, and the applicable
3 Wage Orders;
- 4 (vi) failure to pay all wages earned on time in violation of Labor Code section 204;
- 5 (vii) failure to pay all wages earned upon discharge or resignation in violation of Labor
6 Code sections 201, 202, and 203;
- 7 (viii) failure to provide basic information at the time of hiring and when employment
8 changes occur in violation of Labor Code section 2810.5(a)(1)(A)-(C) (Wage Theft
9 Prevention Act).
- 10 (ix) failure to reimburse necessary, business-related expenses in violation of Labor Code
11 sections 2800 and 2802; and
- 12 (x) failure to provide notice of paid sick time and accrual in violation of Labor Code
13 section 246.

14 **VENUE AND JURISDICTION**

15 5. Venue is proper under California Code of Civil Procedure section 395 and under
16 California Government Code section 12965(b), in that DEFENDANTS headquarters are located in
17 the County of Orange.

18 **STATEMENT OF FACTS**

19 6. REPRESENTATIVE PLAINTIFF was hired by DEFENDANTS as an installer on
20 or about May 25, 2018. REPRESENTATIVE PLAINTIFF worked for DEFENDANTS up until on
21 or about January 28, 2020 when PLAINTIFF was terminated.

22 7. While employed with DEFENDANTS, REPRESENTATIVE PLAINTIFF and other
23 aggrieved employees who worked for DEFENDANTS in California locations, which include other
24 aggrieved employees that PLAINTIFF seeks to represent in this action, working as non-exempt,
25 hourly employees (herein collectively identified as “aggrieved employees”) were regularly required
26 to work off-the-clock, and during their rest and meal periods.

27 8. California Labor Code 226 provides that employers must comply with a request for
28 records of hours worked and wages paid within 21 days. Labor Code 432 further provides that

1 employees are entitled to all documents they signed relating to the obtaining or holding of
2 employment. Labor Code 1198.5 additionally provides that employees are entitled to inspect and
3 obtain a copy of their personnel records upon request.

4 9. Despite such requests having been continually made by REPRESENTATIVE
5 PLAINTIFF through counsel, and receipt of same by DEFENDANTS, DEFENDANTS have failed
6 to timely provide all documents to which he is entitled.

7 10. DEFENDANTS failed to pay REPRESENTATIVE PLAINTIFF and the other
8 aggrieved employees' overtime in accordance with California law when they worked in excess of
9 eight (8) hours in a day and/or 40 hours within a workweek.

10 11. DEFENDANTS also failed to pay REPRESENTATIVE PLAINTIFF and the other
11 aggrieved employees' double time in accordance with California law when they worked in excess
12 of 12 hours in a workday.

13 12. DEFENDANTS failed to provide REPRESENTATIVE PLAINTIFF and other
14 aggrieved employees with meal periods in accordance with Labor Code Sections 512(a) and 226.7,
15 as aggrieved employees were often not afforded an opportunity to take an off-duty meal period of
16 at least 30 minutes within the first five (5) hours of their shift, because of understaffing, inadequate
17 coverage, unreasonably high workload and expectations, and/or other actions, inactions, or
18 decisions made by and within the sole control and discretion of DEFENDANTS

19 13. Additionally, when REPRESENTATIVE PLAINTIFF and the other aggrieved
20 employees worked in excess of 10 hours in a day, they were not offered an opportunity to take a
21 second meal period in accordance with Labor Code section 512(a).

22 14. DEFENDANTS failed to pay REPRESENTATIVE PLAINTIFF and the other
23 aggrieved employees a premium payment pursuant to Labor Code section 226.7 when it failed to
24 provide its employees with legally adequate meal periods as described above.

25 15. DEFENDANTS also failed to provide REPRESENTATIVE PLAINTIFF and the
26 other aggrieved employees with a 10-minute rest break for every four (4) hours of work, or every
27 major fraction thereof, as employees were forced to work extended periods without rest breaks due
28 to understaffing, inadequate coverage, unreasonably high workload and expectations, and/or other

1 actions, inactions, or decisions made by and within the sole control and discretion of
2 DEFENDANTS

3 16. DEFENDANTS failed to provide REPRESENTATIVE PLAINTIFF and the other
4 aggrieved employees a premium payment pursuant to Labor Code section 226.7 when it failed to
5 provide its employees with legally adequate rest breaks.

6 17. Additionally, REPRESENTATIVE PLAINTIFF and other aggrieved employees
7 were not provided a premium wage pursuant to Labor Code section 226.7 for their legally
8 inadequate meal and rest periods when as they were not relieved of all duties and responsibilities
9 for the respective time periods as required by the law.

10 18. DEFENDANTS' failure to properly pay REPRESENTATIVE PLAINTIFF and
11 other aggrieved employees for all hours worked in these instances violates Labor Code sections
12 226.7, 512(a), 1198 and the applicable Wage Orders.

13 19. REPRESENTATIVE PLAINTIFF and other aggrieved employees were often
14 required to work off-the-clock before their shifts started, after their shifts were completed, and
15 during their meal and rest periods. During this off-the-clock time and these so-called "working
16 lunches", employees were required by DEFENDANTS to finish work tasks that they did not have
17 time to finish during their shift because of understaffing, inadequate coverage, unreasonably high
18 workload and expectations, and/or other actions, inactions, or decisions made by and within the
19 sole control and discretion of DEFENDANTS.

20 20. DEFENDANTS, being aware of these occurrences, nevertheless still deducted 30
21 minutes from REPRESENTATIVE PLAINTIFF and the other aggrieved employees' pay on days
22 that they were required to continue working without a legal meal period. DEFENDANTS altered
23 and adjusted time-sheets and time-cards in order to obfuscate this fact causing further injury to
24 REPRESENTATIVE PLAINTIFF and the other aggrieved employees.

25 21. DEFENDANTS required REPRESENTATIVE PLAINTIFF and other aggrieved
26 employees to work without appropriate compensation, including the payment of at least minimum
27 wage, for such work time as described above in violation of Labor Code sections 1182.12, 1194,
28 1197, 1197.1, and the applicable Wage Orders.

1 22. California Labor Code section 226(a) provides that every employer shall furnish to
2 each of its employees an accurate, itemized wage statement in writing, showing, among other
3 things, all applicable hourly rates in effect during the pay period and the corresponding correct
4 number of hours worked at each hourly rate by the employee.

5 23. DEFENDANTS' wage statements fail to comply with this section of the Labor
6 Code as they list the incorrect rates of pay and the incorrect number of hours worked at each rate of
7 pay. The number of hours that the employees actually spent working for DEFENDANTS, which
8 are listed on the pay stubs, are incorrect because of, among other things, DEFENDANTS failure to
9 properly compensate its employees for all of the time that they spent working under their
10 employer's control.

11 24. DEFENDANTS wage statements list incorrect rates of pay and earnings. Thus, the
12 total earnings and the overtime hours listed on the employee's pay stubs are incorrect. The number
13 of hours that the employees actually spent working for DEFENDANTS that is listed on the wage
14 statement is also incorrect because of the Companies' failure to record and compensate its
15 employees for all of the time that they are under its control, including, but not limited to, time that
16 REPRESENTATIVE PLAINTIFF and the other aggrieved employees spent complying with
17 DEFENDANTS required "working lunches" and off-the-clock work, and when DEFENDANTS
18 deducted 30-minutes for meal periods that were not legally compliant.

19 25. REPRESENTATIVE PLAINTIFF and all aggrieved employees who worked for
20 DEFENDANTS did not receive all wages earned on time as defined by California Labor Code
21 section 204. As a consequence of DEFENDANTS failures as described above,
22 REPRESENTATIVE PLAINTIFF and other aggrieved employees did not receive, among other
23 things, their straight time, overtime, or double time pay, minimum wages for off-the-clock work,
24 rest period premium wages, meal period premium wages.

25 26. REPRESENTATIVE PLAINTIFF and all aggrieved employees who were separated
26 from their employment with DEFENDANTS, to whom DEFENDANTS willfully failed to pay for
27 all hours worked as described herein, are also entitled to up to thirty days of wages pursuant to
28 California Labor Code sections 201, 202, and 203.

1 27. DEFENDANTS failed to provide REPRESENTATIVE PLAINTIFF and the other
2 aggrieved employees with basic information at the time of hiring and when changes occurred to
3 their employment, including, rate of pay (including overtime), whether employee would be paid
4 hourly, salary, piece rate, or by shift, day, week, commission, or otherwise, and information
5 regarding allowances, such as for as meals and lodging, and information regarding the right to
6 accrue and use paid sick leave and the legal protections for employee when so doing.

7 28. DEFENDANTS directed REPRESENTATIVE PLAINTIFF and other aggrieved
8 employees to incur personal expenses on behalf of DEFENDANTS while performing their
9 respective job duties. Such personal expenses include, but are not limited to: use of personal cell
10 phone, travel expenses, and parking expenses. Without incurring these expenses,
11 REPRESENTATIVE PLAINTIFF and other aggrieved employees would not be able to accomplish
12 their job duties. DEFENDANTS failed to indemnify REPRESENTATIVE PLAINTIFF and other
13 aggrieved for all of these necessary expenditures.

14 29. DEFENDANTS failed to provide to REPRESENTATIVE PLAINTIFF and other
15 aggrieved employees who worked for them for more than 30 days with written notice setting the
16 amount of sick leave available, or paid time off in lieu thereof, on either their itemized wage
17 statements or in a separate writing accompanying such statements.

18 30. REPRESENTATIVE PLAINTIFF filed a PAGA Notice on September 23, 2020, by
19 furnishing copies of their PAGA Notice to all named DEFENDANTS, as well as the California
20 LWDA. As of the date of the filing of this Complaint, at least 65-days after Plaintiffs initial PAGA
21 Notice, PLAINTIFF has not received correspondence from the LWDA regarding its intent to
22 investigate PLAINTIFF's claims. Therefore, PLAINTIFF has satisfied the administrative
23 prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against
24 DEFENDANTS, including civil penalties, excluding unpaid and underpaid wages, per California
25 Labor Code section 558 against DEFENDANTS, in addition to penalties for violations of
26 California Labor Code sections 201, 202, 203, 204, 206, 226(a), 226.7, 246, 510, 512(a), 1174(d),
27 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2802 and 2810.5, plus costs/expenses and attorneys'
28 fees. Attached hereto as **Exhibit A** is a true and correct copy of the PAGA Notice.

1 **FIRST CAUSE OF ACTION**

2 **(VIOLATION OF LABOR CODE § 2698, *ET SEQ.*)**

3 **(By REPRESENTATIVE PLAINTIFF Against DEFENDANT(S) and Does 1 through 10,**
4 **inclusive)**

5 31. REPRESENTATIVE PLAINTIFF incorporates by reference the allegations
6 contained in each of the preceding paragraphs and each and every part thereof with the same force
7 and effect as though fully set forth herein.

8 32. PAGA expressly establishes that any provisions of the California Labor Code which
9 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
10 divisions, commissions, boards, agencies or employees for a violation of the California Labor
11 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
12 himself or herself, and other current or former employees.

13 33. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
14 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized
15 to exercise the same discretion, subject to the same limitations and conditions, to assess a civil
16 penalty.

17 34. REPRESENTATIVE PLAINTIFF and the other hourly-paid or non-exempt
18 employees, are “aggrieved employees” within the meaning of California Labor Code section
19 2699(c) as they are all current or former employees of DEFENDANTS, and one or more of the
20 alleged violations was committed against them.

21 **Failure to Provide Employment Records**

22 35. DEFENDANTS’ failure to provide REPRESENTATIVE PLAINTIFF with his
23 employment records constitutes unlawful and/or unfair activity and is prohibited by California
24 Labor Code 226, 432, and 1198.5.

25 **Failure to Pay Overtime / Double Time**

26 36. DEFENDANTS’ failure to pay legally required overtime and double time wages to
27 REPRESENTATIVE PLAINTIFF and the other aggrieved employees is in violation of the Wage
28 Orders and constitutes unlawful and/or unfair activity prohibited by California Labor Code sections

1 510 and 1198.

2 **Failure to Provide Meal and Rest Periods**

3 37. DEFENDANTS' failure to provide legally required meal and rest periods to
4 REPRESENTATIVE PLAINTIFF and the other aggrieved employees constitutes unlawful and/or
5 unfair activity prohibited by California Labor Code sections 226.7, 512(a), and the applicable
6 Wage Orders.

7 **Failure to Pay Minimum Wages**

8 38. DEFENDANTS' failure to pay legally required minimum wages to
9 REPRESENTATIVE PLAINTIFF and the other aggrieved employees constitutes unlawful and/or
10 unfair activity prohibited by California Labor Code sections 1182.12, 1194, 1197, 1197.1, and the
11 applicable Wage Orders.

12 **Failure to Keep Accurate and Provide Itemized Wage Statements**

13 39. DEFENDANTS' failure to keep accurate and provide itemized wage statements to
14 Plaintiff and the other aggrieved employees constitutes unlawful and/or unfair activity prohibited
15 by California Labor Code section 226(a), 1174(d), 1174.5 and 1198.

16 **Failure to Timely Pay Wages During Employment**

17 40. DEFENDANTS' failure to timely pay wages to REPRESENTATIVE PLAINTIFF
18 and the other aggrieved employees during their employment constitutes unlawful and/or unfair
19 activity prohibited by California Labor Code section 204.

20 **Failure to Timely Pay Wages Upon Termination**

21 41. DEFENDANTS' failure to timely pay wages to REPRESENTATIVE PLAINTIFF
22 and the other aggrieved employees upon termination constitutes unlawful and/or unfair activity
23 prohibited by California Labor Code sections 201, 202, and 203.

24 **Failure to Provide Information Required by the Wage Theft Prevention Act**

25 42. DEFENDANTS' failure to provide basic information to REPRESENTATIVE
26 PLAINTIFF and the other aggrieved employees related to the conditions of their pay and their
27 rights regarding sick leave constitutes unlawful and/or unfair activity prohibited by California
28 Labor Code section 2810.5(a)(1)(A)-(C).

1 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

2 43. DEFENDANTS' failure to reimburse REPRESENTATIVE PLAINTIFF and the
3 other aggrieved employees for necessary business-related expenses and costs constitutes unlawful
4 and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

5 **Failure to Provide Notice of Paid Sick Time and Accrual**

6 44. DEFENDANTS' failure to provide REPRESENTATIVE PLAINTIFF and the other
7 aggrieved employees that works for DEFENDANTS for more than 30 days with written notice
8 setting the amount of sick leave available (or paid time off in lieu thereof) for use in their itemized
9 wage statements or in a separate writing accompanying such statements constitutes unlawful and/or
10 unfair activity prohibited by California Labor Code section 246.

11 45. Pursuant to California Labor Code section 2699, REPRESENTATIVE PLAINTIFF,
12 individually, and on behalf of all aggrieved employees, requests and is entitled to recover from
13 DEFENDANTS and each of them, business expenses, unpaid wages, and/or untimely wages
14 according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section
15 218.5, as well as all statutory penalties against DEFENDANTS, and each of them, including but
16 not limited to:

17 a. Penalties under California Labor Code section 2699 in the amount of a
18 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation,
19 and two hundred dollars (\$200) for each aggrieved employee per pay period for each
20 subsequent violation;

21 b. Penalties under California Code of Regulations Title 8 section 11010, et seq.
22 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the
23 initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay
24 period for each subsequent violation;

25 c. Penalties under California Labor Code section 210 in addition to, and
26 entirely independent and apart from, any other penalties provided in the California Labor
27 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay
28 period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee

1 per pay period for each subsequent violation; and

2 d. Any and all additional penalties and sums as provided by the California
3 Labor Code and/or other statutes, including, but not limited to, penalties pursuant to
4 California Labor Code 558(a).

5 46. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
6 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
7 Workforce Development Agency for the enforcement of labor laws and education of employers
8 and employees about their rights and responsibilities and twenty-five percent (25%) to the
9 aggrieved employees.

10 47. Further, REPRESENTATIVE PLAINTIFF is entitled to seek and recover
11 reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and
12 2699 and any other applicable statute.

13 THEREFORE, REPRESENTATIVE PLAINTIFF and the individuals he seeks to represent
14 request relief as described below:

15 **PRAYER**

16 THEREFORE, REPRESENTATIVE PLAINTIFF prays for judgment against
17 DEFENDANTS, and Does 1 through 100, and each of them, as follows:

18 1. Statutory attorneys' fees and costs under PAGA and California Code of Civil
19 Procedure Section 1021.5;

20 2. Statutory penalties pursuant to California Labor Code sections 2699(a), (f) and (g)
21 and 558 plus costs/expenses and attorneys' fees for violation of California Labor Code sections
22 201, 202, 203, 204, 206, 226(a), 226.7, 246, 510, 512(a), 1174(d), 1174.5, 1182.12, 1194, 1197,
23 1197.1, 1198, 2802 and 2810.5; and

24 3. Costs of suit; and

25 4. Such further relief as the Court deems just and proper.

26 //

27 //

Dated: December 23, 2020

HAIG B. KAZANDJIAN LAWYERS, APC.

/s/ Cathy Gonzalez

By: _____

Haig B. Kazandjian, Esq.,
Cathy Gonzalez, Esq.,
Kevin Crough, Esq.,
Attorneys for Plaintiff FREDERICK
WILLIAMS on behalf of himself and all
others similarly situated

EXHIBIT A

**HAIG B.
KAZANDJIAN**
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September 23, 2020

BY U.S. CERTIFIED MAIL

California Labor & Workforce Development Agency

Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

BDS National Retail Solutions, LLC

Courtesy of:

A Scott Ruygrok, Esq.

Attorney for EMPLOYERS

Jackson Lewis P.C.

200 Spectrum Center Dr. Suite 500

Irvine, CA 92618

BDS Marketing, LLC

Courtesy of:

A Scott Ruygrok, Esq.

Attorney for EMPLOYERS

Jackson Lewis P.C.

200 Spectrum Center Dr. Suite 500

Irvine, CA 92618

Adam Rhea

Courtesy of:

A Scott Ruygrok, Esq.

Attorney for EMPLOYERS

Jackson Lewis P.C.

200 Spectrum Center Dr. Suite 500

Irvine, CA 92618

**Re: Notice of Labor Law Violations, California Labor Code Section 2698 Et. Seq. to
BDS National Retail Solutions, LLC; BDS Marketing, LLC; Adam Rhea**

Dear Labor and Workforce Development Agency Representative,

We are writing on behalf of Mr. FREDERICK WILLIAMS ("EMPLOYEE") who seeks penalties from BDS National Retail Solutions, LLC, BDS Marketing, LLC (collectively, "EMPLOYERS"), and Adam Rhea (hereinafter, "AGENT") on his own behalf, on behalf of the State of California, and on behalf of all others similarly situated for violations of the California

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Labor Code and applicable wage law, including but not limited to: California Labor Code sections 201, 202, 203, 204, 206, 226(a), 226.7, 246, 510, 512(a), 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1 1198, 2802, and 2810.5.

EMPLOYEE intends to seek civil penalties, attorney's fees, costs, and any and all other available relief for violations of the California Labor Code made recoverable under sections 2698, *et seq.*, the Labor Code Private Attorney General Act of 2004 ("PAGA"). EMPLOYEE seeks relief on his own behalf, on behalf of the State of California, and on behalf of all others who were employed by EMPLOYERS, each who suffered one or more Labor Code violations specifically enumerated in the Private Attorney General Act ("aggrieved employees"). This letter is sent in compliance with and pursuant to the reporting requirements of California Labor Code section 2699.3.

Factual Background

EMPLOYERS employed EMPLOYEE as an hourly-paid, non-exempt employee its Irvine, California location from approximately May 25, 2018 through on or about January 2020 when he was informed that his employment was terminated. EMPLOYEE received his last paycheck on or about October 2019. While employed by EMPLOYERS, EMPLOYEE worked as an Installer, putting together market stalls and presentations for EMPLOYERS products.

EMPLOYEE is informed, believes, and thereupon alleges that EMPLOYERS are CALIFORNIA corporations, registered to do business and doing business in California. EMPLOYERS provide installation of product displays in major retailers across the country. EMPLOYERS have approximately three locations, in Ohio, California, and New York.

EMPLOYEE is informed, believes, and thereupon alleges that AGENT is an officer and/or agent of the above entity. Acting in that capacity, at all relevant times AGENT oversaw, managed, and/or was otherwise personally responsible for employee compliance with California Labor Code 558 and 558.1. This includes, but is not limited to, employee use – or lack of use – of the ADP timekeeping system.

EMPLOYEE is informed, believes, and thereupon alleges that at all relevant times, the above-named EMPLOYER(S) instituted and implemented standard practices and procedures for all hourly and/or non-exempt employees in California. This includes, but is not limited to, using ADP for payroll processing, dissemination of wage statements, oversight and approval of rest breaks, meal breaks, and timekeeping among other things.

EMPLOYEE seeks penalties on behalf of the State of California and all current and former hourly-paid, non-exempt employees (EMPLOYEE approximates EMPLOYERS employ 7,000 "aggrieved employees") who worked for EMPLOYERS during the relevant time period pursuant to California Labor Code section 2698, *et. seq.*, the Labor Code Private Attorneys

**HAIG B.
KAZANDJIAN**
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General Act of 2004 ("PAGA"). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same.

The facts¹ of the aforementioned violations of the California wage-and-hour laws include, but are not limited to, the facts referenced herein.

Violation of Labor Code 510, 1198, and Wage Orders (Overtime and Double Time)

California Labor Code sections 510 and 1198 and the applicable Wage Orders require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a week at the rate of at least time-and-one-half (1.5) times their regular rate of pay ("overtime") for time such worked, and two (2) times their regular rate of pay ("double time") for such hours worked in excess of twelve (12) hours in a day. "Regular rate" includes all remuneration, including non-discretionary bonuses and incentives.

During the relevant time period, EMPLOYEE and other aggrieved employees regularly worked in excess of eight (8), and in excess twelve (12), hours in a workday and/or forty (40) hours in a workweek.

EMPLOYERS willfully failed to pay EMPLOYEE and other hourly-paid, non-exempt employees the wages to which they were entitled. EMPLOYERS routinely required this work to be performed before and/or after scheduled shifts, and/or during off-the-clock meal breaks, and/or during rest breaks.

Attached hereto as "Exhibit A" are examples of such violations.

Exhibit A shows that EMPLOYERS records indicate EMPLOYEE worked for *exactly* 17 hours of regular time, *exactly* four (4) hours of overtime, and *exactly* 1.5 hours of double-time during the relevant pay period. Such round, whole, exact numbers simply do not result if the employer is actually tracking the time that employee spent working.

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f)-(g).

Violation of Labor Code 226.7, 512(a), 1198, and Wage Orders (Rest and Meal Breaks)

California Labor Code sections 226.7, 512(a), 1198 and the applicable Wage Orders require employers to pay employees one (1) additional hour of pay at the employees' regular rate for each work day that a meal or rest period was not provided. Additionally, employers cannot

¹ EMPLOYEE reserves the right to present and/or reference further evidence as it is discovered.

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require, cause, or permit an employee to work more than five (5) hours per day without providing an uninterrupted meal break. If an employee works over ten (10) hours in a workday, employers are required to either provide a second, uninterrupted thirty (30) minute meal break or pay employees an additional one (1) hour of pay at the employees' regular rate. No employer shall require an employee to work during any rest period. Rest periods are based on the total hours worked in a day, at ten (10) minutes per four (4) hours or major fraction thereof.

EMPLOYERS failed to provide EMPLOYEE and other aggrieved employees with the required rest and meal break periods. EMPLOYEE and other aggrieved employees were routinely required to work through these periods instead, because of understaffing, inadequate coverage, unreasonably high workload and expectations, and/or other actions, inactions, or decisions made by and within the sole control and discretion of EMPLOYERS.

EMPLOYEE and other aggrieved employees worked shifts in excess of five (5) hours without a meal break, and worked shifts of ten (10) hours or more without a second meal break, due to understaffing, inadequate coverage, unreasonably high workload and expectations, and/or other actions, inactions, or decisions made by and within the sole control and discretion of EMPLOYERS.

EMPLOYEE alleges that any purported appearance of meal and rest break compliance is because EMPLOYERS systematically and routinely clocked out for and/or otherwise altered the timekeeping records of EMPLOYEE and other aggrieved employees in an attempt to hide the aforementioned infractions. EMPLOYERS, knowingly and contrary to law and public policy, employed a tactic of clocking-out employees for rest and/or meal periods that were never taken and/or otherwise falsifying or altering timekeeping records.

EMPLOYERS knew, or should have known, that their behavior caused EMPLOYEE and other aggrieved employees to work through the above-described meal and/or rest periods. As a company-wide policy, EMPLOYERS still chose not to pay meal and rest period premiums required by law.

Attached hereto as "Exhibit A" are examples of such violations.

Exhibit also shows that EMPLOYER records indicate EMPLOYEE received no meal or rest break periods during the relevant pay period. However, EMPLOYEE worked through many of their meal and rest breaks during the relevant pay period, took many late lunches during this period, and missed many second meal break periods.

Pursuant to the foregoing, EMPLOYERS violated California Labor Code sections 226.7, 512, and 1198. EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, and/or 2699(a), (f)-(g), and any and all other applicable law.

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Violation of Labor Code 1182.12, 1194, 1197, 1197.1, and 1198 (Minimum Wage)

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay the minimum wage as set by the IWC.

Due to the company-wide failures of EMPLOYERS, EMPLOYEE and other aggrieved employees were forced to work off-the-clock, and/or during rest breaks, and/or during meal breaks. EMPLOYERS failed to pay EMPLOYEE and other aggrieved employee's minimum wage for this time and/or falsified timekeeping records to hide this fact.

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1, and/or 2699(a), (f)-(g), and any and all other applicable law.

Violation of Labor Code 226(a), 1174(d), and 1198 (Accurate Employment Records)

California Labor Code 226(a) requires employers to create and provide to employees true and accurate employment records. California Labor Code section 226(e) provides that if an employer fails to provide an employee with same, the employee is entitled to recover the greater of all actual damages, or \$50.00 for an initial infraction, and \$100 per employee for each subsequent violation in any pay period. California Labor Code 226.3 imposes civil penalties on any employer in violation of section 226(a) at \$250 per employee violation in an initial citation, and \$1,000 per employee for each subsequent violation.

California Labor Code 1174(d) requires employers to keep payroll records showing hours worked, and wages paid to and/or number of piece-rate units earned, for all employees. California Labor Code section 1174.5 subjects employers to a \$500 penalty for failing to maintain same.

California Labor Code section 1198 provides that maximum hours and standard conditions of labor are fixed by the Labor Commissioner in the applicable Wage Orders. Pursuant to the applicable Wage Order, employers must keep accurate records of when employees begin and end each work period and each meal period.

EMPLOYERS knowingly provided employees with records that do not meet the statutory requirements of truth and accuracy, because, EMPLOYERS failed to truthfully and accurately document, among other things, employees rest breaks, meal breaks and off-the-clock work. Accordingly, EMPLOYERS did not list the correct amount of gross or net wages earned by EMPLOYEE and other aggrieved employees.

The statements in question are deficient in many other ways, including, but not limited to: failure to list total hours worked, failing to list applicable hourly rates and the numbers of hours worked at each rate, failure to list piece-rate units earned and the applicable piece-rate, failure to

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list deductions, failure to track sick leave, failure to list the employee and SSN/EID properly, failure to list the full legal name and address of the employer, failure to list inclusive dates for which employees are paid, failure to provide employees with the ability to easily access wage statements and get hard copies at no expense to the employee, and/or failure to state all hours worked as a result of off-the-clock work.

EMPLOYERS willfully failed to maintain accurate payroll records for EMPLOYEE and other aggrieved employees as a result of EMPLOYERS failure to accurately record employees rest breaks, meal breaks, and off-the-clock work.

EMPLOYERS failed to accurately keep records of start and stop times for meal periods and/or work shifts. EMPLOYERS' failure makes it impossible for EMPLOYEE and other aggrieved employees to accurately determine the extent of their underpayment, thereby causing further injuries to each of them.

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g), and any and all other applicable law.

Violation of Labor Code 204 (All Wages Paid on Time)

California Labor Code section 204 requires that all wages earned, other than those due upon termination, be paid on time as defined by the statute.

EMPLOYERS failed to pay EMPLOYEE and other aggrieved employees all wages due to them, including, but not limited to: overtime, minimum wages, rest period premium wages, meal period premium wages, and/or reporting time pay within the statutorily required time period.

As discussed above, Exhibit A shows that EMPLOYER records indicate EMPLOYEE was not paid for their actual hours worked. Instead, EMPLOYEE was subjected to EMPLOYERS illegal rounding practices and policies. In addition, EMPLOYEE did not receive premium payments when he worked through his rest and meal breaks during the relevant pay period.

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210, and/or 2699(a), (f)-(g), and any and all other applicable law.

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Violation of Labor Code 201, 202, and 203 (Timely Payment Upon Discharge or Resignation)

California Labor Code sections 201, 202, and 203 provide that employees who are terminated are due all wages earned immediately. Employees who resign their employment without 72-hour notice are due all wages earned in 72 hours. Employees who resign their employment giving 72-hour notice are entitled to all wages earned at the time their resignation becomes effective.

EMPLOYERS willfully failed to timely pay EMPLOYEE and other aggrieved employees who are no longer employed by EMPLOYERS all wages earned, including, but not limited to: overtime, minimum wages, rest period premium wages, meal period premium wages, accrued time off, and/or reporting time pay.

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g), and any and all other applicable law.

Violation of Labor Code 2810.5(a)(1)(A)-(C) (Wage Theft Prevention Act)

Codified in California Labor Code section 2810.5, California's Wage Theft Protection Act requires employers to provide employees with basic information at the time of hiring and when changes occur to their employment. The Wage Theft Protection Act provides that an employee must be furnished with written notice of, at the time of hiring; rate of pay (including overtime), whether paid by hour, salary, piece-rate, shift, day, week, commission, or otherwise, and allowances claimed such as meal or lodging. This notice must include a statement that the employee can accrue and use sick leave, has the right to request and use paid sick leave, may not be terminated or retaliated against for requesting or using paid sick leave, and has the right to file a complaint against any employer who does so retaliate.

EMPLOYERS failed to furnish EMPLOYEE and other aggrieved employees with such written notices as required.

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g), and any and all other applicable law.

Violation of Labor Code 2802 (Reimbursement of Necessary Expenditures)

California Labor Code Section 2802 requires that an employer indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties.

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EMPLOYEE and other aggrieved employees were directed and expected to incur personal expenses on behalf of EMPLOYERS while performing their job duties. Such personal expenses include, but are not limited to: use of personal cell phone, travel expenses, and parking expenses. EMPLOYEE and the other aggrieved employees would not have been able to successfully accomplish their job duties absent incurring these personal expenses. EMPLOYER(S) failed to indemnify EMPLOYEE and other aggrieved employees for all necessary expenditures or losses accordingly.

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g), and any and all other applicable law.

Violation of Labor Code 246 (Notice of Paid Sick Time and Accrual)

California Labor Code section 246 provides that an employee who works for the same employer for more than 30 days is entitled to paid sick days. Paid sick leave is to accrue at a rate not less than one hour per every 30 hours worked, such accrual beginning at the commencement of employment. Employers must provide employees with written notice setting the amount of sick leave available (or paid time off in lieu thereof) for use on either itemized wage statements (as described in Labor Code section 226) or in a separate writing accompanying such wage statements.

EMPLOYERS failed to provide EMPLOYEE and other aggrieved employees with such information and/or paid sick time and/or paid time off in lieu thereof in accordance with the statute.

California Labor Code 558(a) (Civil Penalties)

California Labor Code section 558(a) provides that any employer, including individuals acting on behalf of employers, that violates, or causes to be violated, a section of the Labor Code or any applicable Wage Orders are subject to the following penalties;

- \$50 for any initial violation for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages;
- \$100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount to recover unpaid wages;

Labor Code section 558(c) provides that the penalties in this section are in addition to any other civil penalty.

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EMPLOYERS was and is an employer, and AGENT, acting on behalf thereof, violated EMPLOYEE and other aggrieved employees' rights by violating, or causing to be violated, various sections of this code as described throughout this notice letter.

Conclusion

Pursuant to the foregoing, EMPLOYEE seeks remedies set forth in Labor Code section 558 for themselves, the State of California, and all other aggrieved employees. Pursuant to California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and 558, EMPLOYEE, acting in the public interest as Private Attorney General, seeks the applicable penalties for themselves, all other aggrieved employees, and the State of California against EMPLOYERS for violations of Labor Code sections, including, but not limited to: 201, 202, 203, 204, 206, 226(a), 226.7, 246, 510, 512(a), 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1 1198, 2802, and 2810.5, and any and all other applicable law.

If you have questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very truly yours,

Haig B. Kazandjian Lawyers, APC



Haig B. Kazandjian, Esq.
Cathy Gonzalez, Esq.
Kevin P. Crough, Esq.

EXHIBIT A

Pay Summary: 2019 - 42 - 1

BDS National Retail	Period Beginning Date 9/29/2019	Pay Date 10/18/2019	Co. 3L9	Clock	Home Dept CS-MIB
Frederick Williams 2230 S Patterson Blvd unit 24 Dayton, OH 45409	Period Ending Date 10/12/2019	WGPS Advance Pay Date	File # 919192	Number 00420128	

Gross Pay				\$ 693.39
Regular	Rate: 15.0000	Hours: 17.00		\$ 255.00
DAILY DBL (field 3)	Rate: 15.0000	Hours: 1.50		\$ 19.85
DAILY OT (field 3)	Rate: 15.0000	Hours: 4.00		\$ 26.46
PER DIEM (field 3)				\$ 100.00
TRAVEL PAY (field 3)	Rate: 15.0000	Hours: 24.34		\$ 292.08

Total Hours Worked: 41.34

Basis of Pay: HOURLY

Taxes		\$ 93.01
Federal Income Tax		\$ 31.64
Social Security		\$ 42.99
Medicare		\$ 10.05
State Worked In: California	Code: CA	\$ 1.40
SUI/SDI: California (Taxing)	Code: 75	\$ 6.93

Deductions		\$ 55.16
DEV - Personal Device		\$ -0.17
K - 401K		\$ 69.33
TOP - TOLL PRK		\$ -14.00

Take Home		\$ 545.22
CHECKING 2		\$ 545.22

Other Details

Memos

K		6.94
X		693.39