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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN BERNARDINO

10 Kirstie Price and Kyle Hicks,

11 Plaintiffs,

12 vs.

13 Brady Worldwide Inc. dba Brady  
Corporation, AIO Acquisition, Inc. dba  
14 Personnel Concepts and DOES 1 to 100,  
inclusive,

15 Defendants.

CASE NO.: CIV SB 2129829

COMPLAINT FOR:

1. Failure to pay Minimum Wages (Cal. Lab. Code § 1194, 1194.2, 1197)
2. Failure to pay all Overtime Wages and Double Overtime Wages Based on all Requisite Work Hours in Violation of California law (Cal. Lab. Code §§ 510, 1194);
3. Failure to pay Premium Wages for Noncompliant Meal-and-Rest Periods (Cal. Lab. Code §§ 226.7, 512, Cal. IWC Wage Order 4-2001);
4. Failure to Timely pay all Wages due Upon Termination of Employment (Cal. Lab. Code §§ 201-203);
5. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code §§ 226, 1174, Cal. IWC Wage Order 4-2001);
6. Unpaid Wages, Earned Commission, PTO and Accrued Vacation Pay (Cal. Lab. Code §§ 201, 202, and 203);
7. Violation of the Unfair Competition Law (UCL) (Cal. Business & Professions Code §§ 17200, *et seq.*); and
8. Violation of the Private Attorneys General Act of 2004 (the "PAGA") (Cal. Labor Code Section 2698, *et seq.*).

DEMAND FOR JURY TRIAL

I.

# INTRODUCTION

2. The crux of this case is that Plaintiffs work or worked for Defendants as nonexempt sales representatives, entitling them to be paid for each hour worked, including all minimum wages, overtime compensation at the correct rate of pay, non-compliant meal-and-rest breaks, earned commissions, PTO and pay for accrued vacation, given accurate wage statements, and wages for all labor performed. However, and during the During the Statutory Period, Defendants failed to pay non-overtime and overtime wages, provide compliant meal-and-rest periods, earned commissions, PTO and pay for accrued vacation, provide accurate wage statements, and failed to pay Plaintiffs additional wages and penalties for said violations. As a result, Respondents violated, among other statutes and regulations, Labor Code §§ 200-203, 218, 226, 226.7, 510, 512, 558, 558.1, 1174(d), 1194, 1197, 1198, 1400, 2802 and provisions of Industrial Welfare Commission (“IWC”) Wage Order 4-2001 (“Wage Order 4”).

3. Plaintiffs bring this action to recover unpaid wages (minimum wages, overtime, double overtime and meal-and-rest premiums), restitution, interest, penalties, attorney's fees and costs for Defendants' systematic and uniform violation of the following California Labor Codes (Labor Code):

- a. Labor Code §§ 1194, 1194.2 and 1197 for failing to pay minimum wages;
- b. Labor Code §§ 510 and 1194 for failing to pay overtime wages and double overtime wages;
- c. Labor Code §§ 226.7 and 512 for denying required meal-and-rest breaks;
- d. Labor Code § 203 for failing to timely pay all wages due and owing;
- e. Labor Code § 226 for failing to provide accurate, itemized wage statements;
- f. Labor Code §§ 201, 202 and 203 for failure to pay unpaid wages, earned

commissions, PTO and accrued vacation pay;

g. Business & Professions Code (B&PC) § 17200, *et seq.* for violating California's Unfair Competition Law (UCL); and

h. Violation of the Private Attorneys General Act of 2004 (the "PAGA") (Cal. Labor Code Section 2698, *et seq.*).

4. The acts complained herein occurred, continue to occur, and will occur, at least in part, within the time period from four years preceding the filing of the initial complaint, up to and through the time of trial for this matter (the Statutory Period).

## II.

### JURISDICTION AND VENUE

5. San Bernardino County Superior Court has jurisdiction of this matter due to Defendants' violations of California law (e.g., Labor Code §§ 200, *et seq.*, 500, *et seq.*, B&PC § 17200, *et seq.*) and applicable IWC Wage Order(s).

6. San Bernardino County Superior Court also has jurisdiction of this matter because the monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the superior court and will be established at trial, according to proof.

7. There is no federal question at issue, as the issues herein are based solely on California statutes and IWC Wage Order(s). There is no diversity of parties, because Plaintiffs are informed and believes that Defendants and DOE Defendants are headquartered in City of Ontario, California and therefore their principal place of business is in California. There is also no basis for removal because Plaintiffs are residents and citizens of California.

8. Venue is proper in San Bernardino County Superior Court, pursuant to CCP §§ 395(a) and 395.5, because (a) liability arose therein; (b) many of the acts or transactions that are the subject matter of this Complaint occurred therein; and/or (c) Defendants either are headquartered, found, maintain offices, transact business, and/or have a registered agent located therein.

9. In addition, B&PC § 17204 provides that any person acting on his or his own behalf may bring an action in a court of competent jurisdiction. Thus, the San Bernardino Superior Court maintains appropriate jurisdiction to hear and adjudicate this matter.

III.

SUMMARY OF CLAIMS

10. Plaintiffs bring this action because Plaintiffs were nonexempt employees during the Statutory Period and (a) were not paid minimum wages, overtime and double overtime wages; (b) denied uninterrupted, “off-duty” meal and rest periods due to misclassification; (c) was not timely paid all wages due upon termination of employment; (d) was not provided accurate wage statements; and (3) were not paid all of their commissions, PTO and paid vacation time.

11. Plaintiffs’ theory of liability is as follows: Defendants classified Plaintiffs as nonexempt employees. Plaintiffs work or worked for Defendants as nonexempt sale representatives, entitling them to be paid for each hour worked, including all minimum wages, overtime compensation at the correct rate of pay, non-compliant meal-and-rest breaks, earned commissions, PTO and pay for accrued vacation, given accurate wage statements, and wages for all labor performed. Plaintiffs are or were paid on an hourly basis and on commission with quarterly bonuses. Plaintiffs received commissions from Defendants related to the telephone sales of Defendants’ materials, which were *not* included in their regular rate of pay when they worked overtime (including, doubletime). During the entire course of their employment, Defendants uniformly and consistently required the Plaintiffs to work more than eight hours a day or 40 hours a week, resulting in Plaintiffs not being paid time for all of their regular, overtime and doubletime hours worked. Plaintiffs were also not provided uninterrupted, off-duty meal breaks of at least 30 minutes. Moreover, Defendants failed to provide Plaintiffs with sufficiently numerous rest breaks of at least 10-minutes every four hours worked (or major fraction thereof). Accordingly, Plaintiffs have not been properly paid all of their wages. As a consequence of their uniform and systematic policies and practices, Defendants thus failed to comply with failed to comply with and violated the applicable Labor Code sections, applicable IWC Wage Order(s) and California regulations described below.

12. As a result of Defendants’ uniform policy of not including all remuneration when calculating the Plaintiffs’ regular rate of pay, Defendants knowingly and intentionally failed to pay the Plaintiffs for all labor performed. As part of the Plaintiffs’ compensation, they received

1 hourly wages and also earned commissions, quarterly bonuses (based on amount of sales) and  
2 annual bonuses (based on amount of sales). Defendants, however, did not include the  
3 bonuses/commissions payments into the calculation of the Plaintiffs' overtime rates of pay.  
4 Thus, Defendants also did not pay the Plaintiffs an hourly wage for each and every hour  
5 worked, nor did Defendants pay the Plaintiffs overtime (including, doubletime) for all work  
6 performed in excess of 8 hours per workday or 40 hours in a given workweek.

7 13. Moreover, Defendants failed to tender to the Plaintiffs all of their earned regular  
8 and overtime wages in accordance with California law, including such that labor performed  
9 between the 1st and 15th days, inclusive, of any calendar month was not paid for between the  
10 16th and the 26th day of the month during which the labor was performed, and labor performed  
11 between the 16th and the last day, inclusive, of any calendar month, was not paid for between  
12 the 1st and 10th day of the following month.

13 14. Furthermore, Defendants discouraged, impeded and dissuaded Aggrieved  
14 Employees from taking compliant meal periods. Respondents pressured the Aggrieved  
15 Employees to work through their meal periods or to eat at their desk in order to complete their  
16 assignment for the benefit of Defendants' customers. Therefore, Plaintiffs were not given an  
17 opportunity to take compliant meal periods. Moreover, Defendants failed to pay the Plaintiffs  
18 one hour of pay for instances where Defendants failed to provide the Plaintiffs the opportunity  
19 to take a 30-minute consecutive meal break, relieved of all duties, for shifts of 5 hours or  
20 greater, or a second meal period for shifts in excess of 10 hours. As a result of Defendants'  
21 unlawful policies and practices, Defendants thus violated the applicable Labor Code sections  
22 described below.

23 15. Moreover, Defendants discouraged, dissuaded, impeded and prevented Plaintiffs  
24 from recording all hours worked. Respondents encouraged and did not provide Plaintiffs to take  
25 compliant rest breaks because Defendants wanted Plaintiffs to work and complete their  
26 assignments. Therefore, Defendants did not provide compliant rest breaks to Plaintiffs. Further,  
27 Defendants failed to pay Plaintiffs one hour of pay of pay for the numerous instances where  
28 Defendants failed to authorize and permit the Plaintiffs the opportunity to take a paid 10-minute

1 rest break, relieved of all duties, for shifts of at least 3.5 hours. Defendants also failed to pay  
2 the Plaintiffs one hour of pay for the numerous instances where Defendants failed to authorize  
3 and permit the Plaintiffs the opportunity to take a second rest period for shifts of more than 6  
4 hours, or a third rest period for shifts in excess of 10 hours. In a nutshell, Defendants failed to  
5 make available to Plaintiffs proper rest periods in compliance with California law. As a result  
6 of Defendants' unlawful policies and practices, Respondents violated the applicable Labor  
7 Code sections described below.

8         16. In addition, the Plaintiffs are entitled to all accrued PTO and vacation pay. The  
9 Plaintiffs' forfeiture claim is based upon Defendants' low-cap rate on the accrual of vacation  
10 time. The Department of Industrial Relations ("DIR") in an opinion letter opines that the  
11 accrual cap on vacation must be reasonable, and the Claimants believe that Respondents'  
12 policies ultimately resulted in the forfeiture of some vacation time for each Aggrieved  
13 Employee. *See* DLSE Opinion Letter 1993.05.17 regarding Vacation Pay Policy. Additionally,  
14 the Labor Code § 227.3 prohibits "forfeiture of vested vacation time upon termination."

15         17. Furthermore, Defendants had a uniform policy and practice to violate the Labor  
16 Code by failing to account for all of the hours worked by the Plaintiffs, inaccurately setting  
17 forth the net and gross wages earned, and by failing to show premium wages for meal-and-rest  
18 break violations as detailed herein. As a result, Respondents violated the wage statement  
19 requirements of the applicable Labor Code described below by failing to accurately record the  
20 Aggrieved Employees' respective (1) gross wages earned, (2) total hours worked, (3) net wages  
21 earned, and (4) all applicable hourly rates and the corresponding number of hours worked at  
22 each hourly rate.

23         18. Finally, and when Plaintiff Kirstie Price's employment with Defendants ended,  
24 Defendants failed to pay her all of her earned wages as detailed above, immediately upon her  
25 discharge or within 72 hours thereafter. In addition, Defendant failed to pay the waiting time  
26 penalties to which Plaintiff Kirstie Price is entitled under the applicable Labor Code as  
27 described below.  
28

19. As a result of Defendants' uniform treatment of the Plaintiffs, Defendants committed numerous violations of California's Labor Codes including, but not limited to: (1) failing to pay the Aggrieved Employees for all labor performed, including failing to pay an hourly wage for each and every hour worked, and including all minimum wages for all hours worked; (2) failing to pay the Aggrieved Employees for all overtime hours worked, including doubletime for all doubletime hours worked; (3) failing to provide the Aggrieved Employees compliant meal-and-rest periods; (4) failing to pay the Aggrieved Employees for all accrued vacation, PTO and earned commissions; (5) failing to provide the Aggrieved Employees accurate wage statements; and (6) failing to timely pay the Aggrieved Employees wages upon termination of employment. Plaintiffs r

20. As a result of Defendants' aforementioned violations, Plaintiffs, seek minimum wage, overtime and double overtime compensation for all overtime and double overtime work required, premium wages for meal-and-rest break violations, unpaid commissions/PTO/vacation time, restitutionary and declaratory relief, penalties as permitted by applicable law, interest, and attorneys' fees and costs.

#### IV. THE PARTIES

21. Plaintiff Kirstie Price is, and at all times mentioned herein, was a resident of Upland, California. Plaintiff Kirstie Price is a former employee who's employment with Defendant was terminated on or about May 24, 2021 and who worked at Defendants' office location in City of Ontario, County of San Bernardino, State of California.

22. Plaintiff Kyle Hicks is, and all times mentioned herein, was a resident of Redlands, California. Plaintiff Kyle Hick has been employed by Defendants from on or about August 24, 2020 to the present and works at Defendants' office location in City of Ontario, County of San Bernardino, State of California.

23. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants DOES 1 through 100 are unknown to Plaintiffs, who therefore sues these Defendants by fictitious names pursuant to California Code of Civil Procedure (CCP) § 474. Plaintiffs further

1 alleges that each of these fictitious Defendants is in some manner responsible for the acts and  
2 occurrences herein set forth. Plaintiffs will amend this Complaint to show these Defendants' true  
3 names and capacities when ascertained, as well as the manner in which each fictitious Defendants is  
4 responsible.

5 24. Plaintiffs is informed and believes, and on that basis alleges, that Defendants named  
6 in this Complaint were agents, servants, employees, co-conspirators and/or joint venturers of each of  
7 the remaining Defendants and were at all times acting within the course-and-scope of said agency,  
8 service, employment, conspiracy and/or joint venture.

9 25. Defendants, and each of them, aided and abetted, encouraged and rendered substantial  
10 assistance in accomplishing the wrongful conduct complained of herein. In taking action, as  
11 particularized herein, to aid and abet and substantially assist the commission of these wrongful acts  
12 complained of, each of the Defendants acted with an awareness of his/his/its/their primary  
13 wrongdoing and realized that his/his/its/their conduct would substantially assist the accomplishment  
14 of the wrongful conduct and wrongdoing.

15 V.

16 CAUSES OF ACTION

17 FIRST CAUSE OF ACTION

18 (Violation of Labor Code §§ 1194, 1194.2 and 1197 for Failure to Pay Minimum Wage)

19 (Brought by Plaintiffs Against all Defendants)

20 26. Plaintiffs incorporate by reference and realleges each and every one of the allegations  
21 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

22 27. Labor Code § 1197 makes it unlawful to pay an employee less than the minimum  
23 wage, as established by the Industrial Welfare Commission, for each hour worked.

24 28. Labor Code § 1194 entitles an employee receiving less than the minimum wage  
25 to recover, in a civil action, the unpaid balance of minimum wages owing, plus interest thereon,  
26 reasonable attorneys' fees, and costs of suit.

27 29. Labor Code section 1194.2 entitles an employee receiving less than the minimum  
28 wage to recover liquidated damages in an amount equal to the unpaid minimum wages and

1 interest thereon.

2 30. Due to Defendants' improper pay policies and/or practices, Defendants failed to  
3 pay Plaintiffs any compensation at all for each of hour of work as described above, and thus  
4 failed to pay the minimum wages that Plaintiffs are entitled to, for each hour worked, under  
5 Labor Code § 1197 and applicable IWC Wage Order(s).

6 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants'  
7 failure to pay the minimum wage for each hour worked, as described herein, was done willfully.

8 32. Additionally, as a result of Defendants failure to pay Plaintiffs the minimum  
9 wages for all hours worked, Plaintiffs were not timely paid all earned wages as required by  
10 Labor Code § 204.

11 33. Based on Defendants' conduct, as alleged above, Defendants are liable to  
12 Plaintiffs for unpaid minimum-wage compensation pursuant to California Labor Code §§ 1194  
13 and 1197, and applicable IWC Wage Order(s), liquidated damages in an amount equal to the  
14 unpaid wages owed to such employees, plus interest, pursuant to California Labor Code §  
15 1194.2, and attorneys' fees and costs of suit, pursuant to California Labor Code §§ 1194 and  
16 1194.2.

## 17 SECOND CAUSE OF ACTION

18 (Violation of Labor Code §§ 510 and 1194 for Failure to pay Overtime Wages and Double  
19 Overtime Wages)

20 (Brought by Plaintiffs Against all Defendants)

21 34. Plaintiffs incorporate by reference and realleges each and every one of the allegations  
22 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

23 35. Plaintiffs were at all times subject to state laws and regulations protecting the  
24 employee's entitlement to be paid, and presumption to be paid, overtime and double overtime wages  
25 for requisite hours worked beyond a normal workday or a normal workweek, as specified, without  
26 limitation, by Labor Code §§ 510, 1194, and applicable IWC Wages Order(s) and California Code of  
27 Regulations.

28 36. California law requires employers, such as Defendants, to pay overtime

1 compensation to all nonexempt employees for all hours worked over 40 hours per week, or over 8  
2 hours per day. Labor Code § 204 establishes the fundamental right of all employees in California to  
3 be paid wages, including straight time and overtime, in a timely fashion for their work. This  
4 precludes any waiver for unpaid due and owing wages that remain unpaid at the time of separation.

5 37. Labor Code § 510(a) states in pertinent part: “Any work in excess of eight hours in  
6 one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at  
7 the rate of no less than one and one-half times the regular rate of pay for any employee.”

8 38. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the  
9 hours set by the IWC or under conditions prohibited by the IWC Wage Order(s).

10 39. Plaintiffs were nonexempt employees entitled to be paid overtime and double  
11 overtime compensation for all overtime hours worked. Plaintiffs were regularly required to work  
12 overtime during the Statutory Period but were denied payment of overtime, double overtime or  
13 premium wages.

14 40. Throughout the Statutory Period, Plaintiffs worked in excess of 8 hours in a workday  
15 and/or 40 hours in a workweek.

16 41. Throughout the Statutory Period, Plaintiffs, at times, also worked in excess of 12  
17 hours in a workday and seven consecutive days in a workweek.

18 42. During the Statutory Period, Defendants failed and refused to pay Plaintiffs overtime  
19 and double overtime premium pay for their overtime and double overtime hours worked.

20 43. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein,  
21 Plaintiffs has sustained damages, including loss of earnings for hours of overtime and double  
22 overtime worked on behalf of Defendants in an amount to be established at trial, prejudgment  
23 interest, and costs and attorneys’ fees, pursuant to statute and other applicable law.

24 **THIRD CAUSE OF ACTION**

25 **(Violation of Labor Code §§ 226.7, 512 and Applicable IWC Wage Order(s) for Denial of**  
26 **Required Meal-and-Rest Periods)**

27 **(Brought by Plaintiffs Against all Defendants)**

28 44. Plaintiffs incorporate by reference and realleges each and every one of the allegations

1 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

2 45. Labor Code § 226.7(a) provides that “[n]o employer shall require any employee to  
3 work during any meal or rest period mandated by an applicable order of the [IWC].”

4 46. Labor Code § 512 provided that “[a]n employer may not employ an employee for a  
5 work period of more than five hours per day without providing the employee with a meal period of  
6 not less than 30 minutes, except that if the total work period per day of the employee is no more than  
7 six hours, the meal period may be waived by mutual consent of both the employer and employee.”

8 47. Labor Code § 512 further provides that “[a]n employer may not employ an employee  
9 for a work period of more than 10 hours per day without providing the employee with a second meal  
10 period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the  
11 second meal period may be waived by mutual consent of the employer and the employee only if the  
12 first meal period was not waived.”

13 48. Labor Code § 516 provides that the IWC may adopt or amend working conditions  
14 with respect to meal periods for any worker s in California consistent with the health and welfare of  
15 those workers.

16 49. Section 11(A) of the applicable IWC Wage Order(s) provides that “[u]nless the  
17 employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered  
18 an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted  
19 only when the nature of the work prevents an employee from being relieved of all duty and when by  
20 written agreement between the parties an on-the-job paid meal period is agreed to. The written  
21 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

22 50. Section 11(B) of the applicable IWC Wage Order(s) provide that “[i]f an employer  
23 fails to provide an employee a meal period in accordance with the applicable provisions of this  
24 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of  
25 compensation for each workday that the meal period is not provided.”

26 51. Plaintiffs consistently worked over five hours per shift and therefore entitled to a  
27 meal period of not less than 30 minutes no later than every five hours worked.

28 52. Plaintiffs did not enter into any written agreement with Defendants agreeing to an on-

1 the-job paid meal period.

2 53. Similarly, Plaintiffs were entitled to duty-free, uninterrupted 10-minute rest periods  
3 for every four hours worked (or every major fraction thereof) or be paid for one hour of premium  
4 wage at the employee's regular rate of pay for each day that a rest period was not authorized,  
5 permitted or otherwise compliant with applicable law.

6 54. Defendants failed to comply with their required meal-and-rest period obligations  
7 established by Labor Code §§ 226.7, 512, 516 and Section 11 and 12 of the applicable IWC Wage  
8 Order(s).

9 55. Defendants had no policy to provide Plaintiffs with a legal meal period and as such  
10 denied, impeded, discouraged and/or dissuaded Plaintiffs from taking legally mandated meal  
11 periods. Defendants further had no policy to provide, authorize or permit Plaintiffs to take compliant  
12 rest periods, nor did it pay a premium wage for missed, short, late or interrupted rest periods.

13 56. Further, Defendants knew or should have known that Plaintiffs were denied required  
14 meal periods and rest periods and Defendants did not take steps to address the situation.

15 57. Therefore, Plaintiffs were effectively denied his legally requisite meal-and-rest  
16 periods.

17 58. Pursuant to Section 11(B) and Section 12 of the applicable IWC Wage Order(s) and  
18 Labor Code § 226.7(b), which states "if an employer fails to provide an employee a meal or rest  
19 period in accordance with an applicable order of the [IWC], the employer shall pay the employee  
20 one additional hour of pay at the employee's regular rate of compensation for each workday that the  
21 meal or rest period is not provided." Plaintiffs is entitled to damages in an amount equal to an  
22 additional hour of pay at the employee's regular rate of compensation for each workday that the  
23 meal period and/or rest period was not provided, in a sum to be proven at trial.

24 59. Pursuant to Labor Code § 218.6 and CC § 3287, Plaintiffs seek recovery of  
25 prejudgment interest on all amounts recovered herein.

26 60. Plaintiffs limit the recovery of premium wages to one hour per day for any missed,  
27 short, late or uninterrupted meal period and to one of pay for each employee at their respective  
28 regular rate of pay for any missed, short, late or interrupted rest period, as demonstrated by the

1 Division of Labor Standards Enforcement (DLSE) Policy Manual guidelines, for a maximum  
2 recovery of two premiums wages payments per employee per day.

3  
4 **FOURTH CAUSE OF ACTION**

5 **(Violation of Labor Code §§ 201-203 for Failure to Timely pay all Wages due Upon**  
6 **Termination of Employment)**

7 **(Brought by Plaintiff Kirstie Price Against all Defendants)**

8 61. Plaintiffs incorporates by reference and realleges each and every one of the  
9 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
10 forth herein.

11 62. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due  
12 within the time specified by law. Labor Code § 203 provides that if an employer willfully fails to  
13 timely pay such wages. The employer must continue to pay the subject employee's wages until the  
14 back wages are paid in full or an action is commenced up to a maximum of 30 days of wages.

15 63. Plaintiff Kirstie Price, who ceased employment with Defendants, is entitled to unpaid  
16 compensation, but to date, has not received such compensation. More than 30 days have passed since  
17 Plaintiff Kirstie Price has left Defendants' employ.

18 64. As a consequence of Defendants' willful conduct in not paying compensation for all  
19 hours worked, Plaintiff Kirstie Price, whose employment ended within three years of the Statutory  
20 Period, is entitled to 30 days' wages under Labor Code § 203, together with interest thereon and  
21 attorneys' fees and costs.

22 **FIFTH CAUSE OF ACTION**

23 **(Violation of Labor Code §§ 226, 1174, 1174.5, and Applicable IWC Wage Order(s) for Failure**  
24 **to Provide Accurate Itemizes Wage Statements)**

25 **(Brought by Plaintiffs Against all Defendants)**

26 65. Plaintiffs incorporate by reference and realleges each and every one of the allegations  
27 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

28 66. Labor Code § 266 requires an employer to furnish its employees with an accurate

1 itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours  
2 worked by each respective individual, (3) all deductions, (4) net wages earned and/or (5) all  
3 applicable hourly rates in effect during each respective pay period and the corresponding number of  
4 hours worked at each hourly rate by each respective individual.

5 67. Therefore, pursuant Labor Code §§ 226, California employers are required to  
6 maintain accurate records pertaining to the total hours worked for Defendants by Plaintiffs, including  
7 but not limited to, beginning and ended of each work period, all deductions, meal periods, the total  
8 daily hours worked, and the total hours worked per pay period and applicable rates of pay.

9 68. As a pattern and practice, Defendants did not furnish Plaintiffs with an accurate  
10 itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) all  
11 deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each  
12 respective pay period and the corresponding number of hours worked at each hourly rate.

13 69. As a pattern and practice, in violation of Labor Code § 226(a), Defendants did not  
14 maintain accurate records pertaining to all deductions made and the total hours worked by Plaintiffs  
15 including, but not limited to, meal periods and the total daily hours worked.

16 70. Pursuant to Labor Code § 226(e), Plaintiffs is entitled to penalties as follows:

- 17 i. Fifty dollars (\$50.00) for the initial pay period in which a violation  
18 occurs; and  
19 ii. One hundred dollars (\$100.00) for each violation in a subsequent  
20 pay period.

21 71. Pursuant to Labor Code §226(e), Plaintiffs are entitled to injunctive relief to ensure  
22 Defendants' compliant with Labor Code §226.

23 72. Pursuant to Labor Code §§ 226(e) and (h), Plaintiffs are entitled to an award of costs  
24 and reasonable attorneys' fees.

25 **SIXTH CAUSE OF ACTION**

26 **(Violation of California Labor Code Sections 201, 202, and 203 For Failure to Pay Unpaid**

27 **Wages, Earned Commissions, PTO and Accrued Vacation Pay)**

28 **(Brought by Plaintiffs Against All Defendants)**



## EIGHT CAUSE OF ACTION

**(Violation of the PAGA)**

**(Brought by Plaintiffs Against all Defendants)**

83. Plaintiffs incorporate by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

84. Plaintiffs, by virtue of his employment with Defendants and Defendants' violations of the Labor Code as alleged herein, is aggrieved employee with standing to bring an action under the PAGA. Plaintiffs, by virtue of **Exhibit 1** attached hereto, have satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, including, without limitation, the penalty provisions identified in Labor Code § 2699.5. Since the LWDA took no steps within the time period required to intervene and because Defendants took no corrective action to remedy the allegations set forth above, Plaintiffs, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as is set forth in Labor Code §2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a,

204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

79. Plaintiffs are informed and believe that Defendants have violated and continue to violate provisions of the Labor Code and applicable Wage Orders related to the failure to provide accurate itemized wage statements. Despite mailing of **Exhibit 1** at least 60-days prior to the filing of this FAC, no state agency has acknowledged, accepted or advised Plaintiffs that it intends to investigate the Labor Code violations alleged in this FAC, such that, by operation of law, Plaintiffs are entitled to commence this cause of action in the California Superior Court and as a representative action under the PAGA.

80. Plaintiffs, as personal representatives of the general public, will and do seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Statutory Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Said funds recovered will be distributed in accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of California and the LWDA.

## VIII.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs prays for relief as follows:

1. For damages, as set forth in Labor Code § 1194, 1194.2, 1197 and the applicable

- 1 IWC Wage Order(s) regarding minimum wages, and for damages, as set forth in  
2 Labor Code § 1194(a) and the applicable IWC Wage Order(s) regarding wages due  
3 and owing, according to proof;
- 4 2. For damages, as set forth in Labor Code § 226.7 and the IWC Wage Order(s)  
5 regarding wages due and owing, according to proof;
- 6 3. A declaratory judgment that the practices complained of herein are unlawful under  
7 California law, applicable IWC Wage Order(s) and regulations;
- 8 4. Appropriate equitable relief to remedy Defendants' violations of California law  
9 including, but not necessarily limited to, an order enjoining Defendants from  
10 continuing its unlawful practices;
- 11 5. All appropriate state and federal statutory penalties;
- 12 6. An award of compensatory damages to the extent available, and restitution to be paid  
13 by Defendants according to proof;
- 14 7. Unpaid overtime premium compensation as provided by California law for overtime  
15 hours worked;
- 16 8. Compensation at the rate of one hour of regular pay for each instance in which  
17 Plaintiffs worked through a rest break or was denied a proper rest break for every four  
18 hours worked (or major fraction thereof);
- 19 9. Compensation at the rate of one hour of regular pay for each instance in which  
20 Plaintiffs worked through a meal period or was denied a proper meal period;
- 21 10. Labor Code § 203 Waiting Time Penalties;
- 22 11. Damages and penalties pursuant to Labor Code §§ 226(a) and 226.3;
- 23 12. Unpaid wages, salaries, commissions, PTO, accrued holiday pay, accrued  
24 vacation pay, pension and 401(k) contributions pursuant to California Labor  
25 Code Sections 201, 202 and 203; and
- 26 13. For an order that Defendants make restitution to the Plaintiffs due to its unlawful  
27 business practices, including unlawfully-collected compensation pursuant to B&PC  
28 §§ 17203 and 17204;

14. Pre-and-post judgment interest, as provided by law;
15. Such other equitable relief as this Court may deem just and proper;
16. For an Order requiring Defendants to make full restitution and payment pursuant to Labor Code §§ 200, *et seq.*, 500, *et seq.* and 1194:
  - a. For restitution of all unpaid wages;
  - b. For all other appropriate declaratory and equitable relief;
  - c. For interest to the extent permitted by law;
  - d. For an award of attorneys' fees and costs incurred in the investigation, filing and prosecution of this action pursuant to CCP §1021.5, B&PC §17200, *et seq.*, Labor Code §1194 and any other applicable provision of law;
17. For attorneys' fees and costs of suit, including expert fees and fees pursuant to Labor Code §§ 226, 1194, CCP § 1021.5, and other applicable state laws.
18. For penalties as provided, per violation, under the PAGA, Labor Code §§ 2699, *et seq.*, and as provided by Labor Code § 558, and distributed in accordance with the PAGA.

**IX.**

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which Plaintiffs has a state and/or federal constitutional right to jury trial

Respectfully submitted,

DATED: October 18, 2021

BELIGAN & CARNAKIS

By: 

Chris L. Carnakis  
Leah M. Beligan  
Attorneys for Plaintiffs

# **Exhibit 1**

# B & C

BELIGAN & CARNAKIS  
A LIMITED LIABILITY PARTNERSHIP

LEAH M. BELIGAN, ESQ.  
CHRIS L. CARNAKIS, ESQ.

MAIN OFFICE  
19800 MACARTHUR BOULEVARD,  
SUITE 300  
NEWPORT BEACH, CALIFORNIA 92612

TEL.: (949) 224-3881  
FAX: (949) 724-4566

June 28, 2021

**Via Online Filing**

Labor & Workforce Development Agency  
801 K Street, Suite 2101  
Sacramento, CA 95814

**Via Certified Mail (Return Receipt Requested)**

Attn: Management  
Brady Worldwide, Inc. dba Brady Corporation  
3200 E. Guasti Road, Suite #300  
Ontario, CA 91761

Attn: Management  
AIO Acquisition, Inc. dba Personnel Concepts  
3200 E. Guasti Road, Suite #300  
Ontario, CA 91761

CT Corporation System  
c/o Brady Worldwide Inc. & AIO Acquisition, Inc.  
300 North Brand Blvd., Suite 700  
Glendale, CA 91203

**Re: Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA")**

Dear Sir or Madam:

CLAIMANTS KIRSTIE PRICE AND KYLE HICKS ("Claimants") retained our law firm to represent her and other similarly situated current and former employees of BRADY WORLDWIDE, INC. doing business as BRADY CORPORATION and AIO ACQUISITION, INC. doing business as PERSONELL CONCEPTS ("Respondents") for alleged violations of the California Labor Code. Respondents employed Claimants and other similarly situated employees throughout California (collectively, the "Aggrieved Employees"). As will be explained in detail below, Claimants alleges that Respondents violated numerous California Labor Codes; thus, entitling the Aggrieved Employees to penalties under the PAGA.

This letter formally serves to inform Respondents of Claimants' intent to bring a cause of action for violations of the PAGA for Respondents' failure to: (1) pay the Aggrieved Employees for all wages earned, including minimum wages; (2) pay the Aggrieved Employees for overtime compensation, including doubletime compensation; (3) pay premiums for meal-and-rest period violations; (4) earned commissions, PTO and pay for accrued vacation; (5) provide accurate, itemized wage statements; and (6) timely pay all wages due at the time of separation or termination of employment. During the relevant time period, Respondents failed to pay non-overtime and overtime wages, provide compliant meal-and-rest periods, earned commissions, PTO and pay for accrued vacation, provide accurate wage statements, and failed to pay Claimants and the Aggrieved Employees additional wages and penalties for said violations. As a result, Respondents violated, among other statutes and regulations, Labor Code §§ 200-203, 218, 226, 226.7, 510, 512, 558, 558.1, 1174(d), 1194, 1197, 1198, 1400, 2802 and provisions of Industrial Welfare Commission ("IWC") Wage Order 4-2001 ("Wage Order 4").

Claimants is informed and believe that said violations are ongoing, systematic and uniform. If Respondents fails to cure these alleged violations, as stated above, Claimants will bring an action against Respondents under the PAGA to recover wages and penalties as provided by California law.<sup>1</sup>

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<sup>1</sup> Without limitation, Claimants, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes, each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

### **Facts and Theories to Support the Alleged Labor Code Violations**

Respondents classified Claimants and the Aggrieved Employees as nonexempt employees. Each non-exempt employee of Respondents, while having varied job titles throughout California, were and are, at all times, entitled to be paid for each hour worked, including all minimum wages, overtime compensation at the correct rate of pay, non-compliant meal-and-rest breaks, earned commissions, PTO and pay for accrued vacation, given accurate wage statements, and wages for all labor performed. The Aggrieved Employees' primary positions were nonexempt sales representatives or similarly titled positions. The Aggrieved Employees are paid on an hourly basis and on commission with quarterly bonuses. The Aggrieved Employees received commissions from Respondents related to the telephone sales of Respondents' materials, which were not included in their regular rate of pay when they worked overtime (including, doubletime). During the entire course of their employment, Respondents uniformly and consistently required the Aggrieved Employees to work more than eight hours a day or 40 hours a week, resulting in the Aggrieved Employees not being paid time for all of their regular, overtime and doubletime hours worked. The Aggrieved Employees were also not provided uninterrupted, off-duty meal breaks of at least 30 minutes. Moreover, Respondents failed to provide Claimants with sufficiently numerous rest breaks of at least 10-minutes every four hours worked (or major fraction thereof). Accordingly, Claimants have not been properly paid all of their wages. As a consequence of its uniform and systematic policies and practices, Respondents failed to comply with and violated Labor Code §§ 201-203, 226, 226.7, 512, 510, 512, 1174, 1194, 1198, and applicable IWC Wage Order(s) and California regulations.

As a result of Respondents' uniform treatment of the Aggrieved Employees, Respondents committed numerous violations of California's Labor Codes including, but not limited to: (1) failing to pay the Aggrieved Employees for all labor performed, including failing to pay an hourly wage for each and every hour worked, and including all minimum wages for all hours worked; (2) failing to pay the Aggrieved Employees for all overtime hours worked, including doubletime for all doubletime hours worked; (3) failing to provide the Aggrieved Employees compliant meal-and-rest periods; (4) failing to pay the Aggrieved Employees for all accrued vacation, PTO and earned commissions; (5) failing to provide the Aggrieved Employees accurate wage statements; and (6) failing to timely pay the Aggrieved Employees wages upon termination of employment.

**A. Respondents Failed to: (1) pay the Aggrieved Employees for all Labor Performed; (2) Failed to pay the Aggrieved Employees an Hourly Wage for Each and Every Hour Worked, Including All Minimum Wages for All Hours Worked; and (3) Failed to pay Them Overtime Wages for all Overtime Hours Worked, Including Doubletime for All Doubletime Hours Worked.**

At all times relevant, pursuant to Labor Code §§ 1197 and 1198, it is unlawful for an employer to pay less than the wage established by law or to employ persons in excess of the hours fixed by the IWC or under conditions prohibited by Wage Order 4.

At all times relevant, Labor Code § 1194(a) provides that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

At all times relevant, Labor Code § 200(a) defines “wages” as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” Labor Code § 200(b) defines “labor” as all “work[] or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.”

At all times relevant, Labor Code § 218 provides that “[n]othing in this article shall limit the right of any wage Claimants to sue directly or through an assignee for any wages or penalty due him under this article.”

At all times relevant, Labor Code § 510 provides for payment of a minimum wage regardless of the number of hours worked, and 1.5 times each employee’s regular rate of pay for all work over 8 hours in a day, 40 hours in any work week, or the first 8 hours of the seventh consecutive day of work. In addition, Labor Code § 510 provides for payment of twice the employee’s regular rate of pay for work in excess of 12 hours per day or in excess of 8 hours on the seventh consecutive day of any work week.

At all times relevant, Labor Code § 558 provides, in pertinent part, “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the [IWC] shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was

underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

At all times relevant, Labor Code § 204 provides that all wages, other than those mentioned in sections 201, 202, 204.1, or 204.2, earned by any person in any employment, are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

At all times relevant, Labor Code § 210 provides, in pertinent part, “every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

Here, Respondents violated Labor Code §§ 200, 204, 210, 218, 510, 558, 1182.12, 1194, 1197 and 1198. As a result of Defendant’s uniform policy of not including all remuneration when calculating the Aggrieved Employees’ regular rate of pay, Respondents knowingly and intentionally failed to pay the Aggrieved Employees for all labor performed. As part of the Aggrieved Employees’ compensation, they received hourly wages and also earned commissions, quarterly bonuses (based on amount of sales) and annual bonuses (based on amount of sales). Respondents, however, did not include the bonuses/commissions payments into the calculation of the Aggrieved Employees’ overtime rates of pay. Thus, Respondents also did not pay the Aggrieved Employees an hourly wage for each and every hour worked, nor did Respondents pay the Aggrieved Employees overtime (including, doubletime) for all work performed in excess of 8 hours per workday or 40 hours in a given workweek.

Moreover, Respondents failed to tender to the Aggrieved Employees all of their earned regular and overtime wages in accordance with California law, including, but not limited to, Labor Code § 204, such that labor performed between the 1st and 15th days, inclusive, of any calendar month was not paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, was not paid for between the 1st and 10th day of the following month.

**B. Respondents Failed to Provide the Aggrieved Employees with Uninterrupted Off-Duty First and Second Meal Periods.**

At all times relevant, Labor Code § 512 requires that each employee working at least 5 hours must be given a paid or unpaid meal period of not less than 30-consecutive minutes, uninterrupted, where the employee is relieved of all job duties; and that a second meal period of not less than 30-consecutive minutes, uninterrupted, be given to each employee working at least 10 hours in any given workday.

At all times relevant, Labor Code § 226.7 provides that each nonexempt employee who is not permitted to take valid meal periods must be paid one hour of additional pay at the employee's regular rate of pay for each such workday in which valid meal periods are not provided.

Here, and as set forth above, Respondents discouraged, impeded and dissuaded Aggrieved Employees from taking compliant meal periods. Respondents pressured the Aggrieved Employees to work through their meal periods or to eat at their desk in order to complete their assignment for the benefit of Respondents' customers. Therefore, the Aggrieved Employees were not given an opportunity to take compliant meal periods. Moreover, Respondents failed to pay the Aggrieved Employees one hour of pay for instances where Respondents failed to provide the Aggrieved Employees the opportunity to take a 30-minute consecutive meal break, relieved of all duties, for shifts of 5 hours or greater, or a second meal period for shifts in excess of 10 hours. As a result of Respondents' unlawful policies and practices, Respondents violated Labor Code §§ 226.7, 512, 558, 1197, and 1198.

**C. Respondents Failed to Provide the Aggrieved Employees with Uninterrupted Off-Duty Rest Periods.**

At all times relevant, Wage Order 4, which applies to the Aggrieved Employees' employment with Respondents specifically requires each nonexempt employee working at least 3.5 hours to be given a paid rest period of not less than 10-consecutive minutes, uninterrupted, where the employee is relieved of all duties. In addition, a second rest period of not less than 10-consecutive minutes must be given to each nonexempt employee working at least 6 hours in any given workday, and a third rest period for shifts in excess of 10 hours.

At all times relevant, Labor Code § 226.7 provides that each nonexempt employee who is not permitted to take a valid rest period must be paid one hour of additional pay at the employee's regular rate of pay for each such workday in which a valid rest period is not provided.

Here, and as set forth above, Respondents discouraged, dissuaded, impeded and prevented the Aggrieved Employees from recording all hours worked. Respondents encouraged and did not provide the Aggrieved Employees to take compliant rest breaks because Respondents wanted the Aggrieved Employees to work and complete their assignments. Therefore, Respondents did not provide compliant rest breaks to the Aggrieved Employees. Further, Respondents failed to pay the Aggrieved Employees one hour of pay of pay for the numerous instances where Respondents failed to authorize and permit the Aggrieved Employees the opportunity to take a paid 10-minute rest break, relieved of all duties, for shifts of at least 3.5 hours. Respondents also failed to pay the Aggrieved Employees one hour of pay for the numerous instances where Respondents failed to authorize and permit the Aggrieved Employees the opportunity to take a second rest period for shifts of more than 6 hours, or a third rest period for shifts in excess of 10 hours. In a nutshell, Respondents failed to make available to the Aggrieved Employees proper rest periods in compliance with California law. As a result of Respondents' unlawful policies and practices, Respondents violated Labor Code §§ 226.7, 512, 558, 1197, and 1198.

#### **H. Defendants Failed to Pay Unpaid Wages, Earned Commissions, PTO and Accrued Vacation Pay to the Aggrieved Employees.**

California Labor Code Sections 201 and 202 require Defendant to pay its employees all wages due within the time specified by Law. California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty days wages.

The Aggrieved Employees are entitled to all unpaid compensation, but to date have not received all such compensation. Respondents have not paid the Aggrieved Employees all of their accrued and rightfully earned commissions related to the telephone sales of Respondents' materials to its customers.

In addition, the Aggrieved Employees are entitled to all accrued PTO and vacation pay. The Aggrieved Employees' forfeiture claim is based upon Respondents' low-cap rate on the accrual of vacation time. The Department of Industrial Relations ("DIR") in an opinion letter opines that the accrual cap on vacation must be reasonable, and the Claimants believe that Respondents' policies ultimately resulted in the forfeiture of some vacation time for each Aggrieved Employee. *See* DLSE Opinion Letter 1993.05.17 regarding Vacation Pay Policy. Additionally, the Labor Code § 227.3 prohibits "forfeiture of vested vacation time upon termination."

**D. Respondents Failed to Furnish Accurate Wage Statements to the Aggrieved Employees.**

At all times relevant, Labor Code § 226 requires Central Transport to “furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

Here, Respondents violated Labor Code § 226. Respondents had a uniform policy and practice to violate said Labor Code by failing to account for all of the hours worked by the Aggrieved Employees, inaccurately setting forth the net and gross wages earned, and by failing to show premium wages for meal-and-rest break violations as detailed herein. As a result, Respondents violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Aggrieved Employees’ respective (1) gross wages earned, (2) total hours worked, (3) net wages earned, and (4) all applicable hourly rates and the corresponding number of hours worked at each hourly rate.

**E. Respondents Failed to pay all Wages Due to the Aggrieved Employees Upon Separation or Termination of Employment.**

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

Here, Respondents violated Labor Code §§ 200-203. When former Aggrieved Employees’ employment with Respondents ended, Respondents failed to pay them all of their earned wages as detailed above, immediately upon their discharge or within 72 hours thereafter.

Labor & Workforce Development Agency  
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In addition, Respondents failed to pay the waiting time penalties to which the Aggrieved Employees are entitled.

To date, as set forth in detail above, Respondents has failed to pay the Aggrieved Employees all of their earned regular and overtime wages, premium wages for meal-and-rest break violations, accrued interest thereon, and failed to remit the Labor Code §§ 210 and 558 penalties to be imposed as a consequence of said violations of the Labor Code.

### **Conclusion**

Respondents have violated several California Labor Codes. Claimants request the LWDA to investigate the above allegations and provide notice of the allegations under PAGA's provisions. Alternatively, Claimants request the LWDA to inform them if it does not intend to investigate these violations, so they may include the violations discussed in this letter.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

BELIGAN & CARNAKIS



CHRIS L. CARNAKIS  
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DIRECT FAX: (213) 325-0219

CLC/idt