

VIA ELECTRONIC FILING

February 24, 2022

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

PERSONNEL STAFFING GROUP, LLC
1571 LAKE COOK ROAD, SUITE 600
DEERFIELD, IL 60015

OS4LABOR LLC
BRYAN GORDON
120 N. FAIRWAY LANE, SUITE A
WEST COVINA, CA 91791

DART WAREHOUSE CORPORATION
WILLIAM XAVIER VITERI
1430 SOUTH EASTMAN AVE.
COMMERCE, CA 90023

**JESSICA DIAZ v. PERSONNEL STAFFING GROUP, LLC; OS4LABOR LLC; DART
WAREHOUSE CORPORATION**

RE: PRIVATE ATTORNEYS GENERAL ACT

To Whom It May Concern:

Please be informed that our client, Ms. Jessica Diaz (hereinafter “our client” or “Ms. Diaz”) seeks penalties on behalf of the State of California and all current and former employees, including ALL HOURLY, NON-EXEMPT EMPLOYEES (“aggrieved employees”) who worked for PERSONNEL STAFFING GROUP, LLC; OS4LABOR LLC; and DART WAREHOUSE CORPORATION (hereinafter collectively referred to as “DART”) at various different locations in the state of California during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). It is our contention that PERSONNEL STAFFING GROUP, LLC, OS4LABOR LLC, and DART WAREHOUSE CORPORATION are “joint employers” in that they each controlled the wages, hours, and/or working conditions of Ms. Diaz and other hourly, non-exempt employees who worked at any of their locations in the State of California during the relevant PAGA period.

Ms. Diaz worked for DART for approximately one week in January 2022. Ms. Diaz was classified as an hourly, non-exempt employee. Her latest rate of pay was \$18.50 per hour.

DART has committed the following labor code violations against Ms. Diaz and other similarly situated aggrieved employees:

DART did not provide Ms. Diaz and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate her and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because DART had a policy of rounding down work hours to the detriment of employees, which results in “time shaving” and employees such as Ms. Diaz not being paid for all hours worked, akin to a minimum wage violation. Moreover, and to the extent that Ms. Diaz and others worked through their meal periods or their meal periods were interrupted by work obligations (and Ms. Diaz’s were), that would result in a minimum wage violation for not being paid for all hours worked.

Due to the above , including the “off the clock” work, DART also violated Labor Code §510 because it failed to pay our client and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. This is so because the “off the clock” work and hours mentioned above were not factored into Ms. Diaz’s and others’ regular hours, which would have essentially resulted in overtime hours worked. In addition, any bonus or incentive payments were not factored into the regular rate of pay for purposes of calculating the overtime rate of pay.

DART violated Labor Code §§ 512 and 226.7 along with the applicable Industrial Welfare Commission Wage Order (no. 4) because it failed to provide our client and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and our client did not validly waive said meal periods. DART did not completely relieve our clients of all duties during said meal periods. DART did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory meal periods was not provided. It was not part of the company culture for employees such as Ms. Diaz and others to always and consistently take timely, uninterrupted meal breaks before the 5th hour worked. In addition, Ms. Diaz and others did not receive a second meal break before the 10th hour worked. As such, the culture at DART did not lend itself to the employees consistently receiving statutory breaks wherein they were relieved of all work duties. There would be several instances wherein Ms. Diaz would be attempting to take a statutory break but would be interrupted by management. It was the normal practice and custom of DART not to authorize, permit, and enforce statutory meal periods.

Similarly, DART violated Labor Code § 226.7 along with the applicable Industrial Welfare Commission Wage Order (no. 4) because it failed to provide our client and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. DART did not completely relieve our client of all duty during said rest periods. DART did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory rest periods was not



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provided. Like the situation involving meal breaks, it was not company policy and not part of the company culture for employees such as Ms. Diaz and others to take always and consistently take timely, uninterrupted rest breaks in the middle of their first and second 4 hours of work. As stated above, there would be several instances wherein Ms. Diaz would be attempting to take a statutory break but would be interrupted by management. As such, the culture at DART did not lend itself to the employees receiving timely, uninterrupted statutory breaks wherein they were relieved of all work duties.

Furthermore, during the relevant time period, and due to the violations as alleged above, DART failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. DART was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, all hours worked, all hourly rates in effect, overtime hours worked, gross wages earned, premium pay for missed meal and rest breaks, all deductions, net wages earned, gross wages earned, all deductions, the correct name and address of the employing entity, the start and end of the pay period, and reimbursement for business expenses, among others. As such, DART did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements during the PAGA period.

DART violated Labor Code § 203 because it willfully failed to pay our client and other similarly situated aggrieved employees their earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, overtime compensation, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

During the relevant time period, DART also failed to keep accurate and complete payroll records showing the hours worked by Ms. Diaz and other similarly situated aggrieved employees as well as the correct wages paid to Ms. Diaz and other aggrieved employees pursuant to California Labor Code sections 1174(d).

Moreover, Ms. Diaz and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by DART. These costs include, but are not limited to, use of personal cell phones for work purposes. Accordingly, DART was in violation of California Labor Code sections 2800 and 2802.

Moreover, DART failed to provide rest break facility for its employees, including Ms. Diaz pursuant to Wage Order no. 4, section 13.

In addition, Ms. Diaz would have claims for sexual harassment and retaliation under the Fair Employment and Housing Act (FEHA) as well as retaliation pursuant to Labor Code section 1102.5. During her employment tenure, Ms. Diaz suffered an injury at work to her leg. The day after her injury, Ms. Diaz asked her manager, "George", for help on how to use the "PFR gun" due to the fact that she was injured. The manager took this opportunity to try to rub Ms. Diaz's leg and got extremely close to her physically. While getting very close, the manager was leering at Ms. Diaz and staring right at her. Note that the manager had also commented on Ms. Diaz's



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looks and said she “looks good”, which had already made Ms. Diaz uncomfortable. Due to the hostile work environment, Ms. Diaz reported her manager’s conduct to Mr. Brooks. Mr. Brooks did not seem to care about Ms. Diaz’s complaint and said that his workers had been running on 13 days straight. Ms. Diaz responded that it didn’t minimize George’s inappropriate conduct. Ms. Diaz was terminated that same afternoon, hours after her complaint to Mr. Brooks. Ms. Diaz asked for a written statement of the complaint she made, but was not provided with a copy.

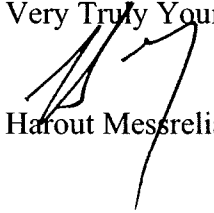
Each of the aforementioned violations, except the Labor Code section 226(a) violations, is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, our clients also intend to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by DART.

If you have any 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,



Harout Messrelian, Esq.