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Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By A. Gidron , Deputy Clerk

Attorneys for Plaintiff MATTHEW BUETTLE. in a Representative capacity, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MATTHEW BUETTLE, in a
Representative capacity, and on behalf of
other members of the general public similarly
situated,

Plaintiff,

v.

SBSD LLC d.b.a. ALDEA LA JOLLA, a
Nevada Corporation; STEVE HOROWITZ,
an individual, and DOES 1-10, inclusive

Defendants

CASE NO. 25CU018945C

COMPLAINT FOR:

1. **MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 et seq.**
2. **MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 et seq.**
3. **OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 et seq.**
4. **WAGE STATEMENT VIOLATIONS PURSUANT TO LABOR CODE § 2698 et seq.**
5. **FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 et seq.**
6. **IMPROPER TIP POOLING VIOLATIONS PURSUANT TO LABOR CODE §§ 351 AND 353**
7. **FAILURE TO PAY WAGES UPON SEPARATION PURSUANT TO LABOR CODE § 2698 et seq.**

COMES NOW Plaintiff MATTHEW BUETTLER ("Plaintiff"), in a Representative capacity, on behalf of all aggrieved employees, and on behalf of other members of the general public similarly situated, and alleges for their complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may **not** be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff's injuries occurred in the County of San Diego, State of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant SBSD LLC d.b.a. ALDEA LA JOLLA, (Referred to herein as "Defendants" or "SBDC"), was and is a Nevada corporation doing business throughout the state, including the County of San Diego, State of California. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant STEVE HOROWITZ, (Referred to herein as "Defendants" or "SBSB"), was and is an individual doing business throughout the state, including the County of San Diego, State of California.
4. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named

1 Defendants is responsible in some manner for the wrongs and damages as herein alleged, and
2 in so acting was functioning as the agent, servant, partner, and employee of the co-defendants,
3 and in doing the actions mentioned below, was acting within the course and scope of his or her
4 authority as such agent, servant, partner, and employee with the permission and consent of the
5 co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said
6 defendants. Wherever it is alleged herein that any act or omission was done or committed by
7 any specially named Defendant or Defendants, Plaintiff intends thereby to allege and does
8 allege that the same act or omission was also done and committed by each and every defendant
9 named as a DOE, both separately and in concert with the named Defendant or Defendants.

- 10 6. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
11 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
12 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
13 legal entities which were licensed to do and/or were doing business in the County of San
14 Diego, State of California at all times relevant to the subject matter of this action.

15 **FACTUAL BACKGROUND**

- 16 7. Plaintiff was employed by Defendants from approximately April 16, 2024 through July 3,
17 2024. Throughout his employment with Defendants, Plaintiff performed his job in a capable,
18 and competent manner.
- 19 8. Throughout the term of their employment, Plaintiff and all other aggrieved employees were,
20 and currently are, denied the benefits and protections of the Labor Code due to Defendants'
21 institutionalized pay practices, standard as to all of Defendants' California-based employees.
- 22 9. On December January 7, 2024, counsel for Plaintiff prepared and submitted via online filing
23 a letter to the California Labor & Workforce Development Agency ("LWDA"). A copy of the
24 letter was mailed to Defendants, via USPS Certified Mail. The letter contained the specific
25 provisions of the California Labor Code and Business and Professions Code violated by
26 Defendants, as well as the facts and theories in support of Plaintiffs' claims. (Please see
27 **Exhibit 1**, a true and correct copy of this letter.)
- 28 10. The statutory time period for the LWDA to investigate and/or respond, and for the employer

1 to respond, has concluded.

2 **REPRESENTATIVE ALLEGATIONS**

3 11. As more specifically set forth below, Plaintiff brings this action in a representative capacity on
4 behalf of all current and former aggrieved employees of Defendants. Code Civ. Proc. § 2699;
5 *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Plaintiff is proceeding in a
6 representative capacity under PAGA. Throughout the operative limitations period, Plaintiff and
7 all other aggrieved employees were denied the protections and benefits of the Labor Code due
8 to Defendants' standard practices. Throughout their employment, Plaintiff and all other
9 aggrieved employees were and are denied full and accurate compensation, including overtime
10 compensation, in violation of, *inter alia*, Labor Code sections 510, 1194, and 1197. Plaintiff
11 and the other aggrieved employees were and are denied Meal and Rest Periods and Meal and
12 Rest Period payments, in violation of, *inter alia*, Labor Code sections 226.7 and 512.
13 Defendants failed to furnish accurate itemized wage statements in violation of, *inter alia*,
14 Labor Code section 226. Defendants failed to reimburse Plaintiff and other aggrieved
15 employees for necessary business expenditures in violation of, *inter alia*, Labor Code section
16 2802. Defendants failed to provide all compensation due at termination of employment in
17 violation of, *inter alia*, Labor Code sections 201 through 203.

18 12. Plaintiff brings this action on the grounds that he and other current and former aggrieved
19 employees of Defendants were and are improperly denied the mandated wages resulting from
20 the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The
21 number of current and former aggrieved employees is believed to exceed One Hundred (100)
22 members.

23 13. The approximately One Hundred (100) aggrieved employees are comprised of Defendants'
24 current or former California-based employees.

25 14. The questions of law and fact common to all aggrieved employees arising from Defendants'
26 actions include, among others, the following:

- 27 a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and
28 double time wages due and owing to them;

- b. Whether Defendants failed to pay its employees all compensation due and owing at termination of employment;
 - c. Whether Defendants failed to provide its employees with statutorily-compliant Meal and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and 226.7, in that Defendants' written policies are not compliant with California law, and Defendants do not allow its employees duty-free Meal and/or Rest Periods on occasion;
 - d. Whether Defendants failed to properly provide Meal and Rest Period Premiums in accordance with law;
 - e. Whether Defendants failed to properly calculate and pay its employees overtime compensation or Meal and Rest Period Premiums in accordance with law by failing to properly calculate, into the Regular Rate of Pay, the value of all employee benefits and other non-discretionary compensation; and
 - f. Whether Defendants failed to properly reimburse its employees for necessary business expenditures for, *inter alia*, cell phone costs and other work supplies, in violation of Labor Code section 2802.
 - g. Whether Defendants failed to provide Plaintiff with his personnel file within 30 days of a written request in violation of Labor Code section 1198.5(a).
15. At all times mentioned herein, Defendants were subject to the Labor Codes and Industrial Welfare Commission Wage Orders of the State of California, including, but not limited to, California Labor Code section 2698 *et seq.*
 16. At all times mentioned herein, Defendants are and were "employers" as that term is used within the relevant sections of the California Labor Code.
 17. Plaintiff has exhausted his administrative remedies and pre-filing requirements pursuant to California Labor Code section 2699.3, and has also fulfilled all notice requirements under the statute.
 18. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendants' standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION
Meal and Rest Period Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 as though fully set forth herein.
20. Labor Code section 1198 states:
- The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.
- Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.
21. Under applicable California law, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a Meal Period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second Meal Period of not less than 30 minutes” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11050 (11)(A).
22. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11050 (11).
23. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11050 (11).
24. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11050 (11), (12).
25. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period policies.

- 1 26. For example, Defendants do not possess a legal Meal Period policy or legal Rest Period policy,
2 and makes no attempt to ensure that its employees are either timely or wholly provided Meal
3 Periods or Rest Periods.
- 4 27. Defendants would also pressure employees to either skip, or cut short, Meal Periods and Rest
5 Periods, based on customer emergencies and coverage issues. As a *first* example, SBSD Time
6 Records (produced by SBSD) show that on June 7, 2024, Plaintiff started a shift at 11:21 a.m.
7 and then clocked out from his shift at 10:51 p.m. On this date, Plaintiff **worked a shift lasting**
8 **11 hours** with no 2nd Meal Period. Further, the SBSD Wage Statements indicate **no** California
9 Meal Period Penalty was paid for this Pay Period. (**Exhibit 1: Exhibit A therein**). As a *second*
10 example, SBSD Time Records (produced by SBSD) show that on May 25, 2024, Plaintiff
11 started a shift at 12:03 p.m. and then clocked out from his shift at 10:54 p.m. On this date,
12 Plaintiff **worked a shift lasting 10 hours and 21 minutes** with no 2nd Meal Period. Further,
13 the SBSD Wage Statements indicate **no** California Meal Period Penalty was paid for this Pay
14 Period. (**Exhibit B: Exhibit B therein**).
- 15 28. In addition, Defendants had notice of Plaintiff working outside of his scheduled and/or
16 reported hours, as well as within Meal and Rest Periods, but failed to provide any
17 compensation for this work-time.
- 18 29. Defendants willfully failed and refused to pay Plaintiff and all other aggrieved employees one
19 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period
20 was not provided, as required by Labor Code section 226.7 and IWC Wage Order 5 § (11),
21 (12).
- 22 30. Any payments made by Defendants for non-compliant Meal Periods were not paid at the
23 employee's regular rate in violation of Labor Code section 226.7 and the operative IWC Wage
24 Orders. Instead, these payments were made at an employee's base rate and did not include the
25 value of, *inter alia*, all actual compensation owed, and/or all employee benefits such as, for
26 example, non-discretionary compensation and other employee benefits.
- 27 31. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
28 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be

1 proven at trial.

2 32. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
3 behalf of themselves and all other aggrieved employees by and through Labor Code section
4 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
5 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
6 Prayer For Relief.

7 33. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
8 pursuant to Labor Code sections 2699(a) for each of these employees.

9 34. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
10 section 2699(g)(1).

11 **SECOND CAUSE OF ACTION**
12 **Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.**
13 **Representative Action**
(By Plaintiff against Defendants and DOES 1 through 10)

14 35. Plaintiff hereby incorporates by reference paragraphs 1 through 34 as though fully set forth
15 herein.

16 36. Defendants failed to pay its employees all compensation due in violation of, among other
17 statutes, Labor Code section 1197. California law holds that the failure to pay for any work
18 time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.*, (2005) 135 Cal.
19 App.4th 314, 323. These violations were caused by and through Defendants' failure to
20 maintain accurate Time Records (as required by California law), to the detriment of the
21 employees. Specifically, although Defendants would receive "to-the-minute" start and end
22 times (from their employees' mandated timekeeping practices), Defendants would thereafter
23 alter - and deduct time from - the Time Records, prior to payment of compensation to the
24 employees. Additionally, the right to receive the proper minimum wage compensation was
25 impacted by Defendants knowingly failing to consider other work performed by the employees,
26 including all time employees were under Defendants' control. These actions, and instructions,
27 caused the employees to lose compensation, including proper minimum wage compensation
28 and overtime compensation.

1 37. As a result of Defendants' failure to comply with the provisions of the Labor Code, Plaintiff
2 and all other aggrieved employees have been damaged in an amount to be proven at trial.

3 38. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff
4 on behalf of himself and all other aggrieved employees by and through Labor Code section
5 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
6 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
7 Prayer For Relief.

8 39. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
9 pursuant to Labor Code sections 2699(a) for each of these employees.

10 40. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
11 section 2699(g)(1).

12 **THIRD CAUSE OF ACTION**
13 **Overtime Violations Pursuant to Labor Code § 2698 et seq.**
14 **Representative Action**
(By Plaintiff against Defendants and DOES 1 through 10)

15 41. Plaintiff hereby incorporates by reference paragraphs 1 through 40 as though fully set forth
16 herein.

17 42. Defendants failed to pay Plaintiff and all other aggrieved employees all compensation,
18 including overtime compensation, due in violation of, among other statutes, Labor Code
19 section 510. These violations occurred due to Defendants' illegal policies, referenced above,
20 whereby employees experienced monetary under-compensation. The systematic failure to
21 provide proper overtime compensation is a violation of California law.

22 43. Additionally, Defendants also failed to provide the actual Overtime Rate of Pay by ignoring
23 certain compensation when calculating the Regular Rate of Pay including, but not limited to,
24 commissions, shift differentials, various forms of bonus and/or incentive pay, and the value
25 of employee benefits and employee discounts, in violation of Labor Code section 510.

26 44. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
27 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
28 proved at trial.

1 45. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
2 behalf of himself and all other aggrieved employees by and through Labor Code section
3 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
4 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
5 Prayer For Relief.

6 46. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
7 pursuant to Labor Code sections 2699(a) for each of these employees.

8 47. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
9 section 2699(g)(1).

10 **FOURTH CAUSE OF ACTION**
11 **Wage Statement Violations Pursuant to Labor Code § 2698 et seq.**
12 **Representative Action**
13 **(By Plaintiff against Defendants and DOES 1 through 10)**

14 48. Plaintiff hereby incorporates by reference paragraphs 1 through 47 as though fully set forth
15 herein.

16 49. Defendants failed to provide Plaintiff and all other aggrieved employees with accurate itemized
17 wage statements in violation of, among other statutes, Labor Code section 226. These
18 violations include, but are not limited to, Defendants' failure to accurately identify all
19 applicable regular and overtime (including double-time) rates of pay in violation of section
20 226(a)(9), and providing inaccurate representations of both "gross" and "net wages."
21 Defendants also failed to accurately list "all applicable hourly rates in effect during the pay
22 period and the corresponding number of hours worked at each hourly rate," in violation of
23 226(a)(9). Defendants also failed to provide an accurate showing of the "total hours worked,"
24 in violation of Labor Code section 226(a)(2). For example, Defendants had notice of
25 employees working outside of their scheduled and/or reported hours, as well as within Meal
26 and Rest Periods, but did not provide compensation.

27 50. Further, the Defendants' wage statement listings are confusing and employees cannot readily
28 ascertain their total hours worked, applicable rates, and all gross and net wages. As one
example, Defendants are apparently using a time calculating system other than "minutes", but

without explanation to the employees within the wage statement.

51. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

52. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

53. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

54. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

FIFTH CAUSE OF ACTION
Failure to Reimburse Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

55. Plaintiff hereby incorporates by reference paragraphs 1 through 54 as though fully set forth herein.

56. Defendants failed to reimburse their employees for all necessary business expenditures incurred in direct consequence of the discharge of their duties in violation of, among other statutes, Labor Code section 2802. These expenditures are the result of, *inter alia*, Defendants' standard policies which require its employees to incur mileage and to use their own cell phones for work-related purposes, without reimbursement.

57. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

58. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section

1 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
2 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
3 Prayer For Relief.

4 59. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
5 pursuant to Labor Code sections 2699(a) for each of these employees.

6 60. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
7 section 2699(g)(1).

8 **SIXTH CAUSE OF ACTION**
9 **Improper Tip Pooling Violations Pursuant to Labor Code sections 351 and 353**
10 **Representative Action**
11 **(By Plaintiff against Defendants and DOES 1 through 10)**

12 61. Plaintiff hereby incorporates by reference paragraphs 1 through 60 as though fully set forth
13 herein.

14 62. Throughout the applicable time period, Plaintiff and other aggrieved employees were denied
15 the benefits and protections of the California Labor Code and IWC Wage Order(s) and were
16 damaged thereby.

17 63. Defendants failed to provide Plaintiff and other nonexempt employees with all tips due and
18 owing to them, in violation of Labor Code section 351. The violations were caused, in part, by
19 Defendants illegal "tip pooling" system, whereby Defendants and their agents would
20 improperly collect, with-hold and/or take a portion of the gratuities from the gratuities paid,
21 given to, or left for the employees. Defendants and their agents would also fail to timely
22 provide for the remuneration of gratuities provided via credit or debit card. Defendants also
23 failed to keep accurate records of all gratuities received, in violation of Labor Code section
24 353.

25 64. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
26 Code, Plaintiff and all other employees have been damaged in an amount to be proven at trial.

27 65. Plaintiff has incurred and continue to incur legal expenses and attorneys' fees. Plaintiff is
28 presently unaware of the precise amount of these expenses and fees and pray for leave of court
to amend this Complaint when the amounts are more fully known.

SEVENTH CAUSE OF ACTION
Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

66. Plaintiff hereby incorporates by reference paragraphs 1 through 65 as though fully set forth herein.
67. Defendants failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code sections 201 through 203. These violations resulted from, among other unlawful actions, Defendants' willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code sections 226.7, 510, 512, 1197, and 2802, as set forth above.
68. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.
69. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.
70. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.
71. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1), and interest, pursuant to Labor Code section 218.6.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all aggrieved employees, prays for judgment as follows:

1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section 2699(g)(1);
2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and
3. For such other relief as the Court deems just and proper.

Dated: April 10, 2025

SULLIVAN & YAECKEL LAW GROUP, APC

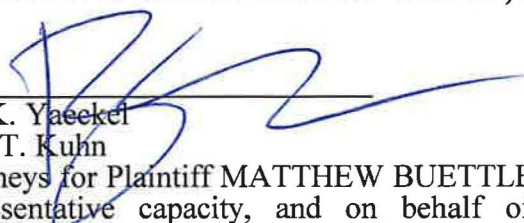

Eric K. Yaeckel
Ryan T. Kuhn
Attorneys for Plaintiff MATTHEW BUETTLER. in a
Representative capacity, and on behalf of other
members of the general public similarly situated

Exhibit 1

SULLIVAN & YAECKEL

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PHONE 619-702-6760
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January 7, 2025

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: **Matthew Buettler v. SBSD LLC d.b.a. ALDEA LA JOLLA
and Steve Horowitz**
Our File No.: 7437

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by SBSD LLC d.b.a. ALDEA LA JOLLA and Steve Horowitz (collectively referred to as “SBSD”), in the above referenced matter. This “written notice” is filed on behalf of Matthew Buettler (hereinafter referred to as “Plaintiff”) and all current and former non-exempt employees employed by SBSD. Thank you for your assistance and instruction on this issue.

Please Note: In providing said notice, Plaintiff intends to proceed in a “representative capacity only.” Plaintiff is not seeking any individual relief. This is consistent with recent California Court of Appeal precedent. See *Balderas v Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533. However, Plaintiff is also aware of a potentially conflicting Court of Appeal Opinion in *Leeper v. Shipt, Inc.* (2024) Second Dist, Div One, Case No. B339670. The *Leeper* Court required a PAGA Plaintiff to proceed on a representative and individual basis. Accordingly, Plaintiff has also provided notice herein of individual labor code violations experienced by Plaintiff. Plaintiff will pursue penalties for these individual violations only in the event that future precedent, or a ruling from the Court, requires that Plaintiff proceed in an individual and representative basis.

The specific provisions alleged to have been violated by SBSD are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 204, 226, 226(a), 226.7, 510, 511, 512, 1194, and 2802, as well as IWC Wage Order 5, and/or any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11050 *et seq.*, or any other applicable wage orders.

Facts and theories supporting the allegations: Plaintiff was employed as an employee for SBSD from approximately April 2024 through July 2024.

Please Note: Some of the Labor Code violations experienced by Plaintiff (and others similarly situated), were caused by SBSD's categorization of Plaintiff (and others), as "exempt" employees. For example, as these employees were designated as "exempt" by SBSD, they did not receive Overtime Compensation, regardless of how many hours a day/week they would work, and were not provided legal Meal or Rest Periods. Moreover, Plaintiff is aware that there were numerous employees at SBSD who performed very similar job duties to him, and *did* receive overtime compensation.

The California Court of Appeal has confirmed in *Atempa v. Pedrazzani* and *Usher v. White*, that under CA Labor Code section 558, PAGA penalties can be levied on individual owners, officers, and agents of the business for violations of CA minimum wage and overtime laws. Pursuant to section 558, this includes violations of sections: 203, 226, 226.7, 1193.6, 1194, and 2802.

Throughout the term of Plaintiff's employment, SBSD required Plaintiff and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

- SBSD failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 204, 1194, 510, IWC Wage Order 5, and/or any other applicable wage orders. This illegal action is due, in part, to SBSD's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, SBSD would instruct Plaintiff to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, SBSD would often require Plaintiff to work extended hours (beyond scheduled hours), without compensation. Further, SBSD would regularly contact Plaintiff outside of normal work hours (*i.e.*, "after hours" or during lunch) without compensation.
- Additionally, among other issues, SBSD has notice of Plaintiff, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Plaintiff were frequently scheduled to be "On Call" outside of when their work shifts ended, but were never compensated for this time. Further, SBSD failed to properly calculate and pay overtime at the actual overtime rate of pay, as SBSD ignores certain compensation when calculating the Regular Rate of Pay.

Failure to Provide Compliant Meal Periods

- SBSB failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 5, and/or any other applicable wage orders. For example, SBSB does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy the employees were on a given day. As a **first** example, SBSB Time Records (produced and verified by SBSB) show that on June 7, 2024, Mr. Buettler started a shift at 11:21 a.m. and then clocked out from his shift at 10:51 p.m. On this date, Mr. Buettler **worked a shift lasting 11 hours** with no 2nd Meal Period. Further, the SBSB Wage Statements indicate **no** California Meal Period Penalty was paid for this Pay Period. (**Exhibit A**). As a **second** example, SBSB Time Records (produced and verified by SBSB) show that on May 25, 2024, Mr. Buettler started a shift at 12:03 p.m. and then clocked out from his shift at 10:54 p.m. On this date, Mr. Buettler **worked a shift lasting 10 hours and 21 minutes** with no 2nd Meal Period. Further, the SBSB Wage Statements indicate **no** California Meal Period Penalty was paid for this Pay Period. (**Exhibit B**).
- SBSB would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to supervisors and/or customers at all times. SBSB has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees **were** paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7.” *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, italics added. Even more recently, a 2020 California Supreme Court ruling stated that, “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’” *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, SBSB failed to pay Meal Period Premiums at the proper rate, as SBSB fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal.5th 858.

- SBSB required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Meal Periods. On occasion, SBSB would interrupt, or cut short, its employees’ Meal Periods and require them to return to work.
- SBSB illegally retained control over its employees during Meal Periods. For example, SBSB required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their phones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

- SBSB failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 5, and/or any other applicable wage orders. For example, SBSB does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. SBSB makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. SBSB would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to supervisors and customers at all times. SBSB has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which SBSB would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.
- SBSB required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Rest Periods. On occasion, SBSB would interrupt, or cut short, its employees’ Rest Periods and require them to return to work. Plaintiff was required to respond to supervisors and customers during Rest Periods.
- Finally, SBSB illegally retained control over its employees during Rest Periods. For example, SBSB required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their telephones) at all times, including during Rest Periods.

Wage Statement Violations

- SBSB violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Plaintiff and other employees were not compensated for all hours worked (due in part to SBSB’s requirement that employees list only *scheduled* work-times, not actual work-times.)

- SBSB violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, SBSB (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which SBSB would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.

- SBSB violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. SBSB does not explain how its system describes “time worked” on the Wage Statement itself. As such, Plaintiff cannot “readily ascertain” what these figures mean. This is because SBSB is apparently using a time-calculating system other than “minutes,” but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent what these figures (*i.e.* “.76”) are meant to represent. Without an explanation for how these figures were arrived at, employees cannot “readily ascertain” their total hours worked. Therefore, SBSB failed to provide an accurate showing of the “total hours worked” by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

Failure to Provide Compliant Expense Reimbursement Payments

- SBSB failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Plaintiff and other non-exempt employees, including expenses for cell-phone costs and mileage.

Willful Failure to Provide All Compensation to Ex-Employees

- SBSB failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that SBSB failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above.

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Failure to Provide Compensation for Gratuities Earned

- SBSB failed to ensure that its nonexempt employees fully received the gratuities left for the nonexempt employees by SBSB's patrons, in that SBSB and its agents would collect and/or take a portion of the gratuities for themselves. For example, SBSB and its agents would often use an illegal "tip pool" to illegally with-hold tips from the nonexempt employees, in violation of Labor Code section 351. SBSB also fails to keep accurate records of all gratuities received, in violation of Labor Code section 353.

To confirm, SBSB is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Ryan T. Kuhn, Esq.

Via Certified U.S. Mail

INCORP SERVICES, INC.
Agent for Service of Process for
SBSB LLC
5716 Corsa Ave Suite 110
Westlake Village, CA 91362

STEVE HOROWITZ
Aldea La Jolla
1251 Prospect St.
La Jolla, CA 92037

Exhibit A

Timesheets Edit



(/mvc/aldealajolla/Team/PersonalProfile/ProfileOverview/NjI4NjY5Jl9fX2g9LTxNDEyMTM5NDk=?

aWQ9NjI4NjY5JkVOYW1IPSZFTnVtYmVyPSZmaWQ9MTk5NCZOZXdlXJlPUZhbHNlUmN1cnVbnRTdGVwPTAmY2F0ZWdvcnJJZD0wJklzTXlZZWxmVGFiPUZhbHI

Number:

6287

Phone / Email:

(267) 798-6287 - mbuettler@gmail.com (mailto:mbuettler@gmail.com)

Position:

Management Salary All Staff

EE Status:

Terminated

Status

Imported

Projected Hours

0.00

Previous (05/16/2024 - 05/31/2024)

06/01/2024 - 06/15/2024 : **Matt Buettler**

Next (06/01/2024 - 06/15/2024)

Add +

Aldea - 06/20/2024

Date	Job	Earning Code	In	Out	Time Off	Reg.	OT	\$ Amt	Rate	Audit	
Saturday 06/01/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Server	REGULAR	3:59 PM	11:12 PM	00:30	6.72		0			
Sunday 06/02/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Server	REGULAR	11:08 AM	9:31 PM	00:34	9.81		0			
Wednesday 06/05/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Server	REGULAR	2:00 PM	9:11 PM	00:30	6.68		0			
Thursday 06/06/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Server	REGULAR	1:24 PM	9:56 PM	00:30	8.04		0			
Thursday 06/06/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Shift Manager / Assistant Manager	REGULAR	9:57 PM	9:57 PM	00:00	0.01		0			
Friday 06/07/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Shift Manager / Assistant Manager	REGULAR	11:21 AM	11:21 AM	00:00	0.00		0			
Friday 06/07/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Server	REGULAR	11:21 AM	10:51 PM	00:30	11.00		0			
Totals						82.51	0.00	0.00			

SBSD LLC
- Aldea 5549 Loma Vista Loop 33896

Name Matt Buettler Address 3681 Keating Street San Diego, CA 92110	Employee ID 6287 SSN xxx-xx-8158 Net Pay \$2,063.92 Fed Filing Status S,0 Fed Add. Amount 0	Pay Begin Date 06/01/2024 Pay End Date 06/15/2024 Check Date 06/20/2024 State Filing Status CA - S, 0 State Add. Amount 0.00	Paygroup Aldea Department 1251 Prospect Street Location 1251 Prospect Street Job Title Management Salary All Staff Pay Rate \$60,000.00 / Salary
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Paycheck Summary

	Gross Earnings	Total Taxes	Total Deductions	Net Pay
Current	\$2,500.00	\$436.08	\$0.00	\$2,063.92
YTD	\$10,000.00	\$1,744.32	\$0.00	\$8,255.68

Earnings

Description	Amount	Worked Hours	Non-Worked Hours	Rate
SALARY	\$2,500.00	86.67		\$28.85
TOTAL	\$2,500.00	86.67	0.00	

Non-Taxable Earnings

Description	Amount	Worked Hours	Non-Worked Hours	Rate
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YTD Earnings

Description	Taxation	YTD Amount	YTD Hours Worked	YTD Non-Worked Hours
SALARY	Taxable	\$10,000.00	346.68	
TOTAL		\$10,000.00	346.68	0.00

Taxes

Description	Amount	YTD
Federal Income Tax	\$217.33	\$869.32
FICA	\$155.00	\$620.00
Medicare	\$36.25	\$145.00
SDI Withholding - CA	\$27.50	\$110.00
TOTAL	\$436.08	\$1,744.32

Before Tax Deductions

Description	Amount	YTD
-------------	--------	-----

After Tax Deductions and Other

Description	Amount	YTD
-------------	--------	-----

Employer Paid Benefits

Description	Amount	YTD
-------------	--------	-----

Net Pay Distribution

Payment Type	Paycheck Number	Account Type	Account Number	Amount Paid
Direct Deposit	10092	Checking	XXXXXXXXXX	\$2,063.92

Time Away From Work

Type	Start	End	Earned	Taken	Upcoming	Available
Sick	04/16/2024	12/31/2024	0.000	0.000	0.000	0.000
Balances as of processing date and could be impacted by accruals and taken time. Please refer to the system for the most up to date balances.						

Memo

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Exhibit B

Timesheets Edit



/mvc/aldeajolla/Team/PersonalProfile/ProfileOverview/NjI4NjY5Jl9fX2g9LTlxNDEyMTMSNDk=?

aWQ9NjI4NjY5JkVOYW1IPSZFTnVtYmVYPSZmaWQ9MTk5NCZOZXdlXlJPUZhbHNlJmN1cnJlbnRtdGVwPTAmY2F0ZWdvcnJlZD0wJklzTXlZZWxmVGFiPUZhbl

Number:

6287

Phone / Email:

(267) 798-6287 - mbuettler@gmail.com (mailto:mbuettler@gmail.com)

Position:

Management Salary All Staff

EE Status:

Terminated

Status

Imported

Projected Hours

0.00

05/16/2024 - 05/31/2024 : **Matt Buettler**

Next (05/16/2024 - 05/31/2024)

Aldea - 06/05/2024

Add +

Date	Job	Earning Code	In	Out	Time Off	Reg.	OT	\$ Amt	Rate	Audit	
Tuesday 05/21/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Shift Manager / Assistant Manager	REGULAR	4:00 PM	7:48 PM	00:00	3.81		0			
Wednesday 05/22/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Server	REGULAR	3:00 PM	10:17 PM	00:30	6.78		0			
Wednesday 05/22/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Server	REGULAR	10:21 PM	10:22 PM	00:00	0.02		0			
Thursday 05/23/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Server	REGULAR	4:13 PM	9:06 PM	00:00	4.90		0			
Friday 05/24/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Server	REGULAR	2:00 PM	10:47 PM	00:30	8.29		0			
Saturday 05/25/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Server	REGULAR	12:03 PM	10:54 PM	00:30	10.33		0			
Sunday 05/26/2024 (US/Pacific) Management Salary All Staff	Aldea 1251 Prospect Street Server	REGULAR	12:20 PM	8:26 PM	00:36	7.48		0			
Totals						59.37	0.00	0.00			

SBSD LLC
- Aldea 5549 Loma Vista Loop 33896

Name Matt Buettler Address 3681 Keating Street San Diego, CA 92110	Employee ID 6287 SSN xxx-xx-8158 Net Pay \$2,063.92 Fed Filing Status S,0 Fed Add. Amount 0	Pay Begin Date 05/16/2024 Pay End Date 05/31/2024 Check Date 06/05/2024 State Filing Status CA - S, 0 State Add. Amount 0.00	Paygroup Aldea Department 1251 Prospect Street Location 1251 Prospect Street Job Title Management Salary All Staff Pay Rate \$60,000.00 / Salary
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Paycheck Summary

	Gross Earnings	Total Taxes	Total Deductions	Net Pay
Current	\$2,500.00	\$436.08	\$0.00	\$2,063.92
YTD	\$7,500.00	\$1,308.24	\$0.00	\$6,191.76

Earnings

Description	Amount	Worked Hours	Non-Worked Hours	Rate
SALARY	\$2,500.00	86.67		\$28.85
TOTAL	\$2,500.00	86.67	0.00	

Non-Taxable Earnings

Description	Amount	Worked Hours	Non-Worked Hours	Rate
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YTD Earnings

Description	Taxation	YTD Amount	YTD Hours Worked	YTD Non-Worked Hours
SALARY	Taxable	\$7,500.00	260.01	
TOTAL		\$7,500.00	260.01	0.00

Taxes

Description	Amount	YTD
Federal Income Tax	\$217.33	\$651.99
FICA	\$155.00	\$465.00
Medicare	\$36.25	\$108.75
SDI Withholding - CA	\$27.50	\$82.50
TOTAL	\$436.08	\$1,308.24

Before Tax Deductions

Description	Amount	YTD
-------------	--------	-----

After Tax Deductions and Other

Description	Amount	YTD
-------------	--------	-----

Employer Paid Benefits

Description	Amount	YTD
-------------	--------	-----

Net Pay Distribution

Payment Type	Paycheck Number	Account Type	Account Number	Amount Paid
Direct Deposit	10086	Checking	XXXXXXXXXX	\$2,063.92

Time Away From Work

Type	Start	End	Earned	Taken	Upcoming	Available
Sick	04/16/2024	12/31/2024	0.000	0.000	0.000	0.000
Balances as of processing date and could be impacted by accruals and taken time. Please refer to the system for the most up to date balances.						

Memo