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May 8, 2025

Via Online Filing

Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Via U.S. Certified Mail

AllSaints USA Limited
750 N. San Vicente Blvd., Suite 1050
Los Angeles, CA 90069

Re: *Jonathan Carpio v. AllSaints USA Limited, et al*

To Whom It May Concern:

Please be advised that this law firm represents Jonathan Carpio ("Mr. Carpio" or "Plaintiff") in claims arising from his employment with AllSaints USA Limited and Does 1 through 100 (collectively, "Defendants"). Mr. Carpio is an "aggrieved employee" as defined by Labor Code section 2698, *et seq*. due to Defendants' violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated.

For purposes of this letter, "aggrieved employees" are all current and former employees of Defendants who have worked for Defendants in California at any time from one year immediately preceding the date of this letter through the date that judgment is entered in Mr. Carpio's contemplated PAGA action or any alternative date agreed upon by the parties and/or approved by the court. Some of the violations alleged herein, such as the overtime and meal period premium payment violations, apply only to non-exempt employees, whereas other violations, such as the failure to include the employer's address on employee wage statements, apply to both non-exempt and exempt employees.

Defendants did (and do) business as a clothing retailer, and they employed Plaintiff and other aggrieved employees within the State of California during the relevant time period.

Plaintiff worked for Defendants as a non-exempt, hourly Store Manager at Defendants' Glendale, CA location from approximately October 2022 to approximately April 2025.

During Plaintiff's employment, Plaintiff and other aggrieved employees often worked over 8.0 hours in a workday and/or over 40.0 hours in a workweek, but Defendants failed to pay them overtime at one and one-half times their "regular rate" of pay as required under Labor Code § 510 and Wage Order 7. Specifically, Plaintiff and other non-exempt aggrieved employees regularly received non-discretionary bonuses, monthly commissions, and/or other forms of compensation not excludable from the "regular rate" of pay (these forms of compensation are hereinafter referred to collectively as "Incentive Pay"), but Defendants failed to incorporate Incentive Pay into the "regular rate" of pay when paying overtime and/or double-time compensation. For example, Plaintiff's wage statement dated January 31, 2025 (for the pay period of January 19-25, 2025) reflects that he was paid commissions of $1,751.12. On information and belief, commissions were paid roughly one month in arrears, and therefore these commissions were earned in December 2024. However, Plaintiff's overtime wages in December 2024 were paid at $43.50 per hour, which was 1.5 times Plaintiff's *base* hourly rate of $29.00, and Defendants failed to incorporate the value of his earned commissions into his "regular rate" of pay. Similarly, Plaintiff's wage statement dated April 25, 2025, for the pay period of April 13-19, 2025, reflects that Plaintiff was paid commissions of $636.24, which on information and belief were earned in March 2025. But again, Defendants paid Plaintiff's overtime wages in March 2025 at $43.50 per hour, which was 1.5 times Plaintiff's *base* hourly rate of $29.00, and Defendants failed to incorporate the value of his earned commissions. Plaintiff and other non-exempt aggrieved employees likewise received Incentive Pay at various points throughout the relevant time period, and Defendants have generally failed to incorporate them into the "regular rate" of pay, resulting in underpaid overtime and/or double-time wages.

In addition to under-paying overtime wages, Defendants' failure to incorporate Incentive Pay into the regular rate also resulted in Defendants' failing to pay meal period premiums at the "regular rate of compensation" as required under Labor Code § 226.7. For example, in the pay period of March 2-8, 2025 (with a check date of March 14, 2025), Plaintiff received two meal period premiums, labeled "Meal Penalty" on his wage statement, at the rate of $29.00, which was Plaintiff's *base* hourly rate. As noted above, Plaintiff also earned commissions in March 2025, but Defendants failed to true up Plaintiff's meal period premium payments, and therefore failed to pay Plaintiff's meal period premium payments at his "regular rate of compensation." *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858 (2011) (holding that "regular rate of compensation" in Labor Code § 226.7 has the same meaning as "regular rate of pay" in Labor Code § 510). On information and belief, Defendants' other non-exempt employees likewise have been paid meal period premiums and earned Incentive Pay during corresponding time periods during the relevant time period, and Defendants likewise have failed to incorporate the value of Incentive Pay into their meal period premiums, thereby failing to pay such premiums at the "regular rate of compensation."

In addition to under-paying overtime compensation and meal period premiums, Defendants' failure to properly calculate the "regular rate" also resulted in an underpayment of sick pay. For example, Plaintiff's wage statement dated October 25, 2024 (for the pay period of October 13-19, 2024) reflects that Plaintiff received 3.0 hours of sick pay, which was paid at Plaintiff's *base* hourly rate of $29.00, without incorporating the value of the $613.51 in commissions that Plaintiff earned in October 2024 (as reflected on Plaintiff's November 29, 2024 wage statement). This practice violates Labor Code § 246(l), which requires sick pay to be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time." On information and belief, Defendants have likewise failed to incorporate the value of Incentive Pay into the "regular rate" when calculating and paying sick pay to other non-exempt employees.

Defendants' failure to pay all owed overtime wages and failure to pay meal period premium wages at the "regular rate" have resulted in Defendants' maintaining inaccurate payroll records and issuing inaccurate wage statements to Plaintiff and other non-exempt employees.

In addition, the wage statements issued to Plaintiff and other aggrieved employees (both exempt and non-exempt) have been facially deficient, in that they do not include the full "name and address of the employer." While they contained Defendants' street address ("750 N San Vicente Blvd"), they did not contain Defendants' suite number, city, state, or ZIP code, in violation of Labor Code Section 226(a)(8).

As a further result of Defendants' failure to pay all owed overtime wages and failure to pay meal period premium wages at the "regular rate," Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

Defendants have also failed to reimburse Plaintiff and other aggrieved employees for all business expenses incurred in the course of their employment. Specifically, Defendants have required Plaintiff and other aggrieved employees to use their personal cell phones for work purposes. For example, Plaintiff and other aggrieved employees were expected to, and would, routinely communicate with each other using the Google Chat app, including the "Google Spaces" feature, on their personal cell phones. In additional to communicating internally among employees in Plaintiff's location, employees from all stores in a particular geographic region would all participate in a Google chat group, so that employees in the various stores could communicate regarding, for example, whether any stores in the area had specific items in stock. In the chat group that Plaintiff belonged to, employees from Defendants' locations in Century City, Sherman Oaks, Beverly Drive, Beverly Center, Santa Monica, and Glendale all participated in the chat. Plaintiff was also required to use the GMail and Google Slides apps on his personal cell phone for work purposes. Despite requiring Plaintiff and other aggrieved employees to use their personal cell phones for work, Defendants have failed to reimburse them for any portion of their personal cell phone bill, as required under California law, including but not limited to Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

On information and belief, Defendants have engaged in all of the above unlawful practices against Plaintiff and other aggrieved employees throughout the relevant time period and continuing to the present.

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As described above, Defendants committed, and continue to commit, the following violations of the California Labor Code and Industrial Welfare Commission Wage Order No. 7 ("Wage Order 7") against Plaintiff and other aggrieved employees:

<u>Overtime Violations</u>

Defendants were, and are, required to properly compensate their non-exempt employees, including Mr. Carpio and other aggrieved employees, for all overtime hours worked pursuant to Labor Code §§ 510 and 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess of 8 hours per workday or over 40 hours in a workweek and for the first eight (8) hours on the seventh (7th) day of work. Wage Order 7, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours in a workday or in excess of eight hours on the seventh consecutive day of work in the workweek. As alleged herein, Defendants have failed to pay all overtime and/or double-time wages owed to Mr. Carpio and other aggrieved employees, in violation of California law.

<u>Failure to Pay Meal Period Premiums at the Regular Rate of Compensation</u>

As alleged herein, Defendants have failed to pay meal period premiums at Plaintiff's and other non-exempt aggrieved employees' "regular rate of compensation," as required by Labor Code § 226.7 and Wage Order 7, § 11, as a result of Defendants' failure to incorporate the value of Incentive Pay when calculating the "regular rate." As a result, Defendants have violated Labor Code §§ 226.7, 1198, and 1199.

<u>Failure to Reimburse Expenses</u>

As alleged herein, Mr. Carpio and other aggrieved employees have been required to use their personal cell phones and/or other personal items for work purposes without reimbursement. Although Mr. Carpio and other aggrieved employees have incurred these expenses in direct discharge of their job duties and/or at Defendants' direction, Defendants have not reimbursed them for their necessary work expenditures during the relevant time period. Defendants' policy of not providing reimbursement for necessary work expenditures violates Labor Code §§ 2802 and 2804 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer.") Mr. Carpio and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses, with interest.

<u>Sick Pay Violations</u>

As alleged herein, Defendants have failed to pay sick pay to Mr. Carpio and other non-exempt aggrieved employees at their respective "regular rate" of pay in violation of Labor Code § 246 and the rest of the Healthy Workplaces, Healthy Families Act of 2014, codified at Labor Code § 245 *et seq*.

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Failure to Pay All Wages Owed at Termination

As alleged herein, Defendants have failed to pay Mr. Carpio and other non-exempt aggrieved former employees all wages owed to them at the time of termination of employment, including but not limited to all overtime wages and meal period premium wages. This violates Labor Code §§ 201-202, which require prompt payment of all wages due at the end of employment when an employee is terminated or quits.

Wage Statement and Recordkeeping Violations

As alleged above, Defendants have, as a matter of uniform policy and practice, failed to furnish Mr. Carpio and other aggrieved employees with complete and accurate wage statements with respect to, *inter alia*, the name and address of the employer, gross and net wages earned, all rates of pay, and hours worked at each rate of pay, in violation of Labor Code § 226(a). Defendants have also failed to maintain accurate records of, *inter alia*, aggrieved employees' hours worked and meal periods taken.

Mr. Carpio is informed and believes, and based thereon alleges, that the violations alleged herein are continuing to the present and are ongoing. As an "aggrieved employee," Mr. Carpio will initiate a civil action on behalf of himself, the State of California, and other aggrieved employees to recover civil penalties and obtain injunctive relief regarding the wage and hour violations alleged herein. Based on Mr. Carpio's investigation, and on information and belief, Defendants have committed the following Labor Code violations:

a. Defendants have violated Labor Code §§ 204, 510, 558, 1194, 1198, and 1199 by failing to pay Mr. Carpio and other non-exempt aggrieved employees all overtime and/or double-time compensation earned;

b. Defendants have violated Labor Code § 245 *et seq*. (including but not limited to Labor Code § 246) by failing to properly pay sick pay wages to Plaintiff and other aggrieved employees;

c. Defendants have violated Labor Code §§ 226.7, 1198, and 1199 by failing to pay meal period premiums to Mr. Carpio and other non-exempt aggrieved employees at the employees' respective "regular rates of compensation";

d. Defendants have violated Labor Code § 226 by failing to furnish Mr. Carpio and other aggrieved employees with accurate and complete itemized wage statements;

e. Defendants have violated Labor Code §§ 201-202 by failing to timely pay all final wages to Mr. Carpio and other aggrieved employees;

f. Defendants have violated Labor Code §§ 2802, 2804, 1198, and 1199 by failing to reimburse or indemnify Mr. Carpio and other aggrieved employees for business expenses incurred in the course of their employment;

g. Defendants have violated Labor Code §§ 1174, 1198, and 1199 by failing to maintain accurate records regarding Mr. Carpio and other aggrieved employees.

Pursuant to Labor Code section 2699.3, please notify our office and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
MARQUEE LAW GROUP, A.P.C.

Tuvia Korobkin