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on behalf of himself and current and former aggrieved employees

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

GEORGE A. RODRIGUEZ, on behalf of
himself and other aggrieved employees,

Plaintiff,

vs.

ADT COMMERCIAL, LLC; and DOES 1 to
100, inclusive,

Defendants.

Case No.: **23CV027906**

PAGA ACTION

**PLAINTIFF GEORGE A.
RODRIGUEZ'S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff GEORGE A. RODRIGUEZ ("Plaintiff"), who alleges and
complains against Defendants ADT COMMERCIAL, LLC; and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
hours worked at minimum wage and all overtime hours worked at the overtime rate of pay;

1 statutory penalties for failure to timely pay earned wages during employment; statutory penalties
2 for failure to provide accurate wage statements; statutory waiting time penalties in the form of
3 continuation wages for failure to timely pay employees all wages due upon separation of
4 employment. Plaintiff seeks on a representative basis, following notice to the Labor and
5 Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor
6 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
7 others aggrieved.

8 **II. JURISDICTION AND VENUE**

9 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
10 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
11 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
12 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
13 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
14 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
15 aggrieved California-based hourly non-exempt employees occurred in locations throughout
16 California, including but not limited to Alameda County, at 4384 Enterprise Place, Fremont,
17 California 94538.

18 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
19 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
20 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
21 tolled from April 6, 2020, until October 1, 2020.

22 **III. PARTIES**

23 4. Plaintiff brings this action as a representative of the Labor and Workforce
24 Development Agency on behalf of himself and other current and former employees subject to
25 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
26 filed include current, former and/or future employees of Defendants who work, worked, or will
27 work for Defendants as direct employees as well as temporary employees employed through temp
28 agencies as hourly non-exempt employees in California. At all times mentioned herein, the

1 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
2 employed by Defendants in an hourly position at Defendants' location in Alameda from in or
3 around February 27, 2022, until on or about August 2022.

4 5. Plaintiff is informed and believes and thereon alleges that Defendant ADT
5 COMMERCIAL, LLC is authorized to do business within the State of California and is doing
6 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant
7 hereto were persons acting on behalf of Defendant ADT COMMERCIAL, LLC in the
8 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
9 Defendant ADT COMMERCIAL, LLC operates in Alameda County and employed Plaintiff and
10 aggrieved employees in Alameda County, including but not limited to, at 4384 Enterprise Place,
11 Fremont, California 94538.

12 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
13 through 50 are corporations, or are other business entities or organizations of a nature unknown to
14 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
15 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
16 working conditions of employment of Plaintiff and aggrieved employees.

17 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
18 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
19 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
20 supervisor, independent contractor and/or employee of each defendant who violated or caused to
21 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
22 the Industrial Welfare Commission's wage orders regulating hours and days of work.

23 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
24 sues said defendants by said fictitious names, and will amend this complaint when the true names
25 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
26 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
27 named defendants is in some manner responsible for the events and allegations set forth in this
28 complaint.

9. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.

(Against all Defendants by Plaintiff)

10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

11. During the period beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 510, 1194, 1197 and Sections 14 and 15 of the applicable Wage Orders.

12. Specifically, Defendants have committed the following violations of California Labor Code:

13. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all “hours worked,” which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

14. Labor Code sections 1194 and 1197 require an employer to compensate employees for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the Wage Orders.

15. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more minutes per shift than Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages at the applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

1 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
2 non-exempt employees who worked as technicians to drive Defendants' company vehicle to
3 commute from their home to their first jobsite without detour or engaging in any personal pursuit
4 while in the company vehicle and from their last jobsite directly home without detour or engaging
5 in any personal pursuit while in the company vehicle.

6 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
7 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
8 control without paying wages for that time. This resulted in Plaintiff and other current and former
9 aggrieved California-based hourly non-exempt employees working time for which they were not
10 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
11 Wage Order.

12 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
13 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
14 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
15 which includes all time that an employee is under control of the employer and all time the
16 employee is suffered and permitted to work. This includes the time an employee spends, either
17 directly or indirectly, performing services that inure to the benefit of the employer.'

18 18. Labor Code sections 510 and 1194 require an employer to compensate employees a
19 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
20 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

21 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
22 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
23 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
24 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
25 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
seventh day of a workweek shall be compensated at the rate of no less than twice the
regular rate of pay of an employee.

26 Labor Code section 510.

27 19. In this case, Defendants failed to pay Plaintiff and other current and former
28 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours

1 worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

2 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
3 non-exempt employees who worked as technicians to drive Defendants' company vehicle to
4 commute from their home to their first jobsite without detour or engaging in any personal pursuit
5 while in the company vehicle and from their last jobsite directly home without detour or engaging
6 in any personal pursuit while in the company vehicle.

7 20. The foregoing policies, practices, and/or procedures resulted in time during each
8 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
9 employees were under the control of Defendants but were not compensated. To the extent that the
10 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
11 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
12 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
13 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
14 sections 510 and 1194 and the applicable Wage Order.

15 21. **Failure to timely pay earned wages during employment:** In California, wages
16 must be paid at least twice during each calendar month on days designated in advance by the
17 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
18 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
19 16th and the 26th day of that month and wages earned between the 16th and the last day,
20 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
21 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
22 paid within seven (7) calendar days following the close of the payroll period in which wages were
23 earned. Labor Code section 204(d).

24 22. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
25 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
26 exempt employees' earned wages (including minimum wages, and/or overtime wages), in
27 violation of Labor Code section 204. Defendants' aforementioned policies, practices, and/or
28 procedures resulted in their failure to pay Plaintiff's and other current and former aggrieved

1 California-based hourly non-exempt employees' their earned wages within the applicable time
2 frames outlined in Labor Code section 204.

3 **23. Failure to provide complete and accurate wage statements:** Labor Code section
4 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
5 employee his or her wages, the employer must "furnish each of his or her employees ... an
6 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
7 employee, except for any employee whose compensation is solely based on a salary and who is
8 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
9 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
10 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
11 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
12 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
13 name of the employee and his or her social security number, (8) the name and address of the legal
14 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
15 the corresponding number of hours worked at each hourly rate by the employee."

16 **24.** As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
17 and other current and former aggrieved California-based hourly non-exempt employees all wages
18 earned (including minimum wages, and/or overtime wages) rendered Plaintiff's and other current
19 and former aggrieved California-based hourly non-exempt employees' wage statements
20 inaccurate, in violation of Labor Code section 226.

21 **25. Failure to pay employees all wages due at time of termination/resignation:** An
22 employer is required to pay all unpaid wages timely after an employee's employment ends. The
23 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
24 hours of resignation (Labor Code section 202).

25 **26.** As a derivative of Plaintiff's allegations above, because Defendants failed to pay
26 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
27 all their earned wages (including minimum wages, and/or overtime wages), Defendants failed to
28 pay those employees timely after each employee's termination and/or resignation, in violation of

1 Labor Code sections 201, 202, and 203.

2 27. Defendants' violations of Wage Order 4 constituted violations of Labor Code
3 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

4 28. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
5 employee, on behalf of himself or herself and other current or former employees, to bring a civil
6 action to recover civil penalties against all Defendants pursuant to the procedures specified in
7 Labor Code section 2699.3.

8 29. Plaintiff has complied with the procedures for bringing suit specified in Labor
9 Code section 2699.3. On December 8, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA
10 and provided notice to Defendants by certified mail which provided notice of the specific
11 provisions of the Labor Code alleged to have been violated, including the facts and theories to
12 support the violations alleged.

13 30. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
14 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
15 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
16 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
17 to investigate Plaintiff's claims.

18 31. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
19 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 510, 1194,
20 1197 and one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to
21 the present, in the following amounts:

22 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, one
23 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
24 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
25 violation [penalty amounts established by Labor Code section 2699(f)(2)].

26 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
27 for each employee for each pay period for the initial violation, and for each subsequent violation,
28 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts

1 established by Labor Code section 226.3].

2 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
3 employee for each pay period for the initial violation, and for each subsequent violation, one
4 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
5 established by Labor Code section 558] and any unpaid wages.

6 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
7 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
8 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
9 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

10 32. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
11 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER**
14 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

15 **ON THE FIRST CAUSE OF ACTION:**

16 1. That Defendants be found to have violated the provisions of the Labor Code and
17 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

18 2. For any and all legally applicable penalties during the relevant statute of limitations
19 subject to any permissible tolling, including but not limited to those recoverable under the
20 California Labor Code, including but not limited to section 2699(f);

21 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
22 under California Labor Code section 2699(g); and

23 4. For such and other further relief, in law and/or equity, as the Court deems just or
24 appropriate

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1 Dated: February 14, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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3 By: *Vincent C. Granberry*
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