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VIA ONLINE FILING

Labor and Workforce Development Agency

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Sacramento, CA 95814

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<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: Joshua Smith v. ADT LLC

Dear Representative:

This office represents Joshua Smith (“**Mr. Smith**”) with respect to his claims under the California Labor Code against ADT LLC (“**Employer**”). This letter is being sent simultaneously to Employer by certified mail.

Employer employed Mr. Smith from approximately May 18, 2021 to June 17, 2025, as an hourly, non-exempt employee. During his employment with Employer, Mr. Smith was employed as a Install Service Technician at Employer’s location at 1120 Palmyrita Avenue, Riverside, CA 92507. Employer is a security company that provides residential and small business electric security.

Mr. Smith intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 (“**PAGA**”). Mr. Smith is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of Employer (“**Aggrieved Employees**”). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employer violated several of California’s wage and hour laws during Mr. Smith’s employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission Wage Orders (“**IWC Wage Order**”) including *inter alia*, IWC Wage Order No. 4. These claims are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Mr. Smith and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employer regularly required Mr. Smith and Aggrieved Employees to work more than eight (8) hours in a day or forty (40) hours in a workweek, but failed to pay them overtime compensation for such work. Employer also failed to provide Mr. Smith and Aggrieved Employees with adequate training as to



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the payment of overtime compensation, all in an effort to keep its workers uninformed as to their legal right to overtime compensation. In addition, Employer regularly required Mr. Smith and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Smith and Aggrieved Employees to: (1) respond to Employer and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Mr. Smith and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Smith and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation. Mr. Smith and Aggrieved Employees were regularly interrupted during meal break periods through constant phone calls on their personal cell phone to respond to work-related tasks and communications. Moreover, Mr. Smith and Aggrieved Employees were required to always monitor both their work and personal cell phones, even during meal breaks and before clocking in for their shift. This consisted of phone calls to customers and management to give them updates about their work-related tasks. Additionally, Mr. Smith and Aggrieved Employees would be pressured to drive to different job sites while clocked out for their purported meal breaks in order to complete their tasks on time.

In addition to requiring Mr. Smith and Aggrieved Employees to perform work off-the-clock without compensation, Employer also utilized time rounding practices that resulted in the systematic underpayment of wages to Mr. Smith and Aggrieved Employees, including minimum wages, straight time wages and overtime wages. Employer also failed to accurately record the actual time worked by Mr. Smith and Aggrieved Employees, which resulted in a failure to pay Mr. Smith and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Mr. Smith and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employer has failed to pay Mr. Smith and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order No. 4 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Mr. Smith and Aggrieved Employees will therefore seek unpaid wages; PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 4; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; compensation pursuant to Labor Code Section 1194; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employer failed to provide Mr. Smith and Aggrieved Employees with legally-compliant 30-minute meal periods. Mr. Smith and Aggrieved Employees were required by Employer to work more than five (5)



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hours per day but were not provided with timely uninterrupted 30-minute meal periods. Further, Mr. Smith and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Mr. Smith and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Mr. Smith and Aggrieved Employees were regularly taking their meal breaks after the fifth (5th) and tenth (10th) hour of work due to scheduling and workload that would hinder their ability to take timely lunches without risking the possibility of incomplete work. On the occasions that Mr. Smith and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short. Mr. Smith and Aggrieved Employees often missed their meal breaks completely due to workload and the Employer required Mr. Smith and Aggrieved Employees to falsify their time entries to reflect timely meal breaks on their time records. Additionally, Mr. Smith and Aggrieved Employees were constantly interrupted during their meal breaks to tend to work-related tasks such as communicating with customers and management through their personal cell phones and traveling to different job sites to complete their tasks on time.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Smith and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Mr. Smith and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Mr. Smith and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Smith and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Mr. Smith and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to telephone calls; and (7) Employer's policy and culture prevented Mr. Smith and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees right to receive timely, uninterrupted, and duty-free meal periods.

Mr. Smith and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 4 and California Labor Code sections 226.7, 512(a) and 1198.

Mr. Smith and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 4; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.



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3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employer failed to authorize and permit Mr. Smith and Aggrieved Employees take legally-compliant 10-minute rest periods. Employer required Mr. Smith and Aggrieved Employees to work through rest periods. Mr. Smith and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Smith and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. Mr. Smith and Aggrieved Employees were never able to take a rest break due to the overwhelming workload and scheduling that impeded their ability to take a rest break. Moreover, Mr. Smith and Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Smith and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Mr. Smith and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Mr. Smith and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Smith and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Mr. Smith and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, which included responding to telephone calls; and (7) Employer's policy and culture prevented Mr. Smith and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees right to receive rest periods.

Mr. Smith and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 4 and California Labor Code sections 226.7, and 1198.

Mr. Smith and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 4; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT



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As to each pay period, Employer has failed to timely pay all wages earned because Mr. Smith and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).

Mr. Smith and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Mr. Smith and Aggrieved Employees failed to include the actual hours worked, the actual gross wages earned, and the correct rates of pay. Accordingly, Employer violated California Labor Code section 226(a).

Mr. Smith and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employer has failed to maintain accurate records relating to Mr. Smith and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Mr. Smith and Aggrieved Employees were required to falsify their meal break time entries to reflect timely meal breaks. Additionally, Mr. Smith and Aggrieved Employees were required to provide customers with updates before clocking in to their shifts and that time worked was never reflected on their time records. Accordingly, Employer violated IWC Wage Order No. 4 and California Labor Code sections 1198.5 and 1174(d).

Mr. Smith and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 4; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 4 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Mr. Smith and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, a spare tire for a company owned vehicle. Mr. Smith was required to purchase a spare tire for a work provided vehicle during an emergency and was never compensated for



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it.

Accordingly, Employer violated IWC Order No. 4 and California Labor Code sections 2800 and 2802.

Mr. Smith and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 4; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

Upon the termination of employment, Mr. Smith and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employer's practices of requiring Mr. Smith and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employer failed to pay Mr. Smith and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employer also failed to pay Mr. Smith and Aggrieved Employees for meal period premiums, and rest period premiums they were owed, amongst other wages. Accordingly, Employer violated California Labor Code sections 201 and 202.

Mr. Smith and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

Therefore, on behalf of the State of California and all Aggrieved Employees, Mr. Smith may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very Truly Yours,

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Notice provided to Employer via Certified Mail (9414711105495805143815)

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