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Submitted Via Online Filing July 7, 2025

Labor and Workforce Development Agency
Attn. PAGA Administrator

Re: *GREGORY WILLIAM WAYNE II V. L8 SOUTH COAST PLAZA LLC*

Dear Administrator,

Please allow this correspondence to serve as written notice, as required by California Labor Code § 2699.3(a)-(c), of the specific provisions of the California Labor Code violated by L8 SOUTH COAST PLAZA LLC ("Defendant"). As detailed below, Plaintiff GREGORY WILLIAM WAYNE II ("Plaintiff") on behalf of himself and other non-exempt employees in the state of California ("aggrieved employees") alleges that Defendant have violated the following Labor Code provisions:

a. Underpayment and late of minimum wages and hourly wages in violation of California Labor Code §§ 204, 1194, 1194.2, 1197, IWC Wage Order, California Minimum Wage Order.

b. Underpayment of overtime wages in violation of California Labor Code §§ 510, 1194, and IWC Wage Order.

c. Failure to provide compliant meal periods in violation of California Labor Code §§ 226.2, 226.7 and 512 and IWC Wage Order.

d. Failure to provide compliant rest periods in violation of California Labor Code §§ 226.7 and 512 and IWC Wage Order.

e. Failure to reimburse business expenses in violation of California Labor Code 2802 and IWC Wage Order.

f. Non-compliant wage statements in violation of California Labor Code § 226(a).

g. Failure to pay all wages upon resignation or termination due to the underpayment of wages and/or overtime in violation of California Labor Code §§ 201-203.

h. Failure to pay, appropriately accrue, and forfeiture of paid time off in violation of California Labor Code § 227.3.

i. Failure to pay and appropriately accrue sick pay wages in violation of California Labor Code § 246.

j. Failure to provide a signed copy of the contract related to commissions and the method by which the commissions shall be computed and paid in violation of California Labor Code § 2751.

k. Failure to keep payroll records showing total hours worked and wages paid in violation of California Labor Code §§1174-1174.5 and IWC Wage Order.

Starting in approximately March of 2025 and continuing through approximately May 30, 2024, Plaintiff worked for Defendant as a salesperson.

Plaintiff and other aggrieved employees working for Defendant were compensated based on an hourly rate.

Plaintiff and certain other aggrieved employees working for Defendant were also compensated through forms of non-discretionary compensation, such as a commission.

Plaintiff and other aggrieved employees working for Defendant were not compensated for all time worked, had their time entries altered/decreased by Defendant, were required to work "off the clock," were not paid for mandatory trainings, and not paid for reporting time pay.

Plaintiff and other aggrieved employees are entitled to liquidated damages equal to unlawfully unpaid minimum wages with interest pursuant to Labor Code § 1194.2.

Due to these and other issues, Plaintiff and other aggrieved employees were also not compensated appropriately for overtime wages and double overtime wages. Plaintiff and other employees worked overtime during their employment with Defendant by working over eight (8) hours in a workday and/or forty (40) hours in a workweek. Plaintiff and other employees were not compensated for all hours worked and were not compensated at the appropriate overtime rate, which resulted in underpayments of overtime wages and double overtime wages.

Under California law, the determination of the regular rate of pay for purposes of determining the amount of overtime pay must include all remuneration earned by the employee including the employee's bonuses, shift-differential pay or other non-hourly compensation. See DLSE Manual § 49.2.1.2 ("Compute the regular rate by dividing the total earnings for the week, including earnings during overtime hours, by the total hours worked during the week, including the overtime hours."); see also 29 C.F.R. § 778.118-120 ("When the commission is paid on a weekly basis, it is added to the employee's other earnings for that workweek . . . and the total is divided by the total number of hours worked in the workweek to obtain the employee's regular hourly rate for the particular workweek.").

The "regular rate of pay" must include "all remuneration for employment paid to, or on behalf of, the employee." Alonzo v. Maximus, Inc., 832 F. Supp. 2d 1122, 1130 (C.D. Cal. 2011). "Thus, when an employer calculates 1.5 times an employee's regular rate of pay to pay overtime, ***the employer must include bonuses, commissions, or any other income not subject to an exception in that calculation***." Brum v. Marketsource, Inc., No. 2:17-cv-241-JAM-EFB, 2017 U.S. Dist. LEXIS 94079, at *10 (E.D. Cal. June 16, 2017) (emphasis added).

Defendant did not include non-discretionary compensation in calculating the hourly rate of pay for overtime purposes. Instead, the regular rate of pay used for calculating the overtime rate of pay was strictly based on the employees' hourly wage (not including the non-discretionary compensation). As such, Defendant owe Plaintiff and other aggrieved employees additional overtime pay based on a calculation using the correct, higher rate of pay (taking into account the non-discretionary compensation).

Further, Defendant failed to pay Plaintiff and other aggrieved employees all wages due to them within any time period specified by Labor Code § 204, including earned and unpaid minimum, overtime, and premium wages.

During Plaintiff's employment by Defendant, Plaintiff and other aggrieved employees working for Defendant were forced to miss taking compliant meal periods (30-minute meal periods after the first five hours worked) due to the demands placed on them by Defendant and lack of coverage. Moreover, Plaintiff and other aggrieved employees were deprived of taking a second meal period after ten hours worked.

During Plaintiff's employment by Defendant, Plaintiff and other aggrieved employees working for Defendant were forced to miss taking compliant rest periods (ten minutes rest time per four hours worked) due to the demands placed on them by Defendant and lack of coverage.

Defendant failed to pay penalties for noncompliant rest and meal periods (premium pay as required by Labor Code § 226.7(b) and Sections 11 and 12 of the applicable Wage Order in lieu of meal and/or rest periods).

To the extent Defendant paid some penalties (one hour of pay) for certain missed or non-compliant meal or rest periods, Defendant paid such penalties at an incorrect rate that is lower than the rate required by law. More specifically, because the Legislature intended “regular rate of compensation” under Lab. Code, § 226.7, subd. (c), to have the same meaning as “regular rate of pay” under Lab. Code, § 510, subd. (a), the calculation of premium pay for a noncompliant meal, rest, or recovery period, like the calculation of overtime pay, had to account for not only hourly wages but also other nondiscretionary payments. Thus, an employer calculating premium pay for noncompliant meal or rest breaks according to the employee’s base hourly rate while omitting nondiscretionary incentive payments failed to pay in accordance with the employee’s regular rate of compensation. Ferra v. Loews Hollywood Hotel, LLC, 11 Cal. 5th 858 (2021). By doing so, Defendant underpaid each meal and rest period penalty payment. Also, by doing so, Defendant underpaid overtime wages to Plaintiff and other aggrieved employees at the incorrect rate.

Plaintiff and other aggrieved employees were not reimbursed for all business expenses and, to the extent such reimbursement was provided, it was provided in an amount not sufficient to reimburse Plaintiff and other employees for such expenses, including use of their personal mobile phones and data plans, which were required to perform their duties. See Cochran v. Schwan’s Home Service, Inc., 228 Cal. App. 4th 1137 (2014) (Lab. Code, § 2802, requires an employer to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, regardless of the details of the employee’s cell phone plan, whether the phone bill is paid for by a third person or at all, and whether the employee changed plans to accommodate worked-related cell phone usage; to show liability under § 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and that he or she was not reimbursed).

Based on these underpayments of regular wages, overtime wages, double overtime wages, and unpaid or underpaid meal/rest period penalties, employees who were terminated or resigned did not receive all wages owed to them upon termination or within seventy-two (72) hours after resignation.

In addition, Defendant did not provide Plaintiff and other aggrieved employees with accurate wage statements as required under California law. More specifically, the wage statements provided to Plaintiff and other employees did not reflect or did not accurately reflect the: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name and address of the legal entity that is the employer, and (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Accordingly, Plaintiff and other employees were not able to promptly and easily determine the missing information without reference to other documents or information.

The wage statements also did not provide accurate information by omitting the lack of meal/rest break premium pay that should have been paid to Plaintiff and other aggrieved employees. See Naranjo v. Spectrum Sec. Servs., Inc., 13 Cal. 5th 93 (2022) (Because premium pay for missed meal and rest breaks under Lab. Code, § 226.7, compensated employees for the work performed during a break period and therefore constituted wages within the meaning of Lab. Code, §§ 200, subd. (a), 203, 226, penalties could be available for an employer's alleged failure to timely pay or report such payments.).

The wage statements also did not include accurate information about the non-discretionary compensation paid to Plaintiff and other aggrieved employees. The DLSE Enforcement Manual specifically provides that the information on the wage statements required under Labor Code section 226(a)(3) must include "3. The number of piece rate units earned and any applicable piece rate whenever an employee is being paid on a piecework basis (and commissioned employees, i.e., commission rate and amount of sales.)" (emphasis added). See DLSE Enforcement Policies and Interpretations Manual § 14.1.1; see also Balboa Acquisition v. Ratkovich, No. SACV 07-00091-JVS (RNBx), 2008 U.S. Dist. LEXIS 126625, at *6-7 (C.D. Cal. Feb. 27, 2008).

Defendant maintained unlawful business practices in their exercise of improperly calculating and improperly paying out the accrued vacation hours of Plaintiff and other aggrieved employees.

Defendant violated California Labor Code §§ 1174, 1174.5 by failing to keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments.

Defendant violated California Labor Code § 2751 by failing to provide a signed copy of the contract related to commissions and the method by which the commissions shall be computed and paid.

Defendant also violated California Labor Code § 246 by failing to properly accrued and pay sick pay at the correctly regular rate of pay, which should have included all non-discretionary incentive compensation. Instead, the regular rate of pay used paying sick pay was the base hourly rate, not including all non-discretionary incentive compensation.

Based on the foregoing detailed facts, Defendant undertook actions against Plaintiff and other aggrieved employees that violated the above-enumerated provisions of the California Labor Code and applicable Wage Order.

To confirm, Defendant (and each of them) are a "person" as defined within California Labor Code section 18.

As detailed above, Defendant has violated or has caused to be violated a number of California wage and hour laws. Plaintiff requests the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Plaintiff requests the agency inform them if it does not intend to investigate these violations so that Plaintiff may proceed by filing a Court Action under PAGA on behalf of himself and other aggrieved employees.

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.

Best Regards,

George S. Azadian, Esq.
AZADIAN LAW GROUP, PC

cc: Via Certified U.S. Mail

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