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Filed
Superior Court of California,
Sacramento
05/16/2023
stewarl
By _____, Deputy
23CV001753

8 **SUPERIOR COURT STATE OF CALIFORNIA**

9 **COUNTY OF SACRAMENTO**

10 TANNER HUBER, an individual, on
11 behalf of himself and Aggrieved
12 Employees

13 Plaintiff(s),

14 v.

15 ENLITE HOME, LLC, a California
16 Limited Liability Company, SANJEEV
17 THAKUR, an individual, DOES 1-20,
18 inclusive,

19 Defendant(s).

Case No.:

**PLAINTIFF'S COMPLAINT FOR
PENALTIES PURSUANT TO
CALIFORNIA LABOR CODE
SECTIONS 2699, ET SEQ.
(PRIVATE ATTORNEYS GENERAL
ACT ["PAGA"])**

BY FAX

COMES NOW, Plaintiff TANNER HUBER ("Plaintiff"), on behalf of himself, Aggrieved Employees, and the State of California and files this Private Attorneys General Act ("PAGA") Action Complaint against ENLITE HOME, LLC, a California Limited Liability Company, SANJEEV THAKUR, an individual; and DOES 1-20, inclusive. On information and belief, Plaintiff alleges:

I. NATURE OF THE ACTION

1. Plaintiff brings this Private Attorneys General Act ("PAGA") action in his representative capacity on behalf of the State of California and on behalf of all Defendants' current and former outsides salespersons employed in California (hereinafter "Aggrieved Employees") from February 10, 2022 to the present. ("PAGA PERIOD"). Plaintiff is an Aggrieved Employee within the meaning of Labor Code section 2699(c) because he was employed by Defendants over the PAGA PERIOD and suffered one or more of the alleged Labor Code violations committed by Defendants, as alleged herein.

2. These alleged Labor Code violations are based on Defendants' 1) willful misclassification of employees as independent contractors; 2) failure to pay overtime; 3) failure to pay minimum wage; 4) failure to provide meal periods or pay premiums in lieu thereof; 5) failure to provide rest periods or pay premiums in lieu thereof; 6) inaccurate wage statement penalties; 7) failure to pay wages in a timely manner; 8) failure to reimburse work-related expenses; 9) violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order); 10) waiting-time penalties; and 11) failure to provide paid sick leave.

II. VENUE & JURISDICTION

3. This case is subject to the jurisdiction of this Court pursuant to the California Labor Code, California Business and Professions Code, and the California Code of Civil Procedure. The amount in controversy exceeds the jurisdictional minimum of this Court. At all times alleged herein, one or more Defendants were residents of or were doing business in, the State of California, County of Sacramento.

4. Venue in Sacramento County is proper pursuant to sections 395 and 395.5 of the Code of Civil Procedure in that at all relevant times herein, at least some of the violations of law alleged to have been committed herein occurred in Sacramento County and/or because each Defendant is found, maintains offices, or conducts substantial business in the County of Sacramento.

5. As a result of the violations alleged herein, all Defendants are subject to PAGA penalties, which Plaintiff seeks for himself and for other aggrieved current and former employees of Defendants, and the State of California. Plaintiff is an Aggrieved Employee within the meaning of Labor Code section 2698, *et seq.* and has complied with the pre-filing requirements of PAGA. Pursuant to Labor Code section 2699.3 (a), Plaintiff gave written notice of the facts and legal basis for his claims, as alleged herein, via online submission to the California Labor & Workforce Development Agency (“LWDA”) on February 10, 2023 and send notice via certified mail to Defendants the same day. To date, the LWDA has not provided a response to Plaintiff’s notice. As such, Plaintiff has exhausted his administrative remedies and may bring an action on behalf of himself and all other Aggrieved Employees.

III. PARTIES

6. Plaintiff TANNER HUBER is an individual over the age of 18 and a resident of the State of California. At all times relevant to this Complaint, Plaintiff was employed by Defendants.

7. On Plaintiff's information and belief, Defendant ENLITE HOME, LLC is a California Limited Liability Company organized and existing under the laws of California.

8. On information and belief, Plaintiff alleges that Defendant SANJEEV THAKUR is an individual and during all times relevant is and was the Owner/Manager/Member of Defendant ENLITE HOME, LLC and, as such, this Defendant SANJEEV THAKUR is believed to be an “other person acting on behalf of an employer” within the meaning of Labor Code §§ 558 and 558.1.

9. Plaintiff does not know the true names and capacities of Defendants sued in this

1 Complaint as DOES 1 through 20, inclusive, and therefore sues these Defendants by fictitious
2 names. Plaintiff will amend this Complaint to allege the true names and capacities of DOES 1
3 through 20, inclusive when ascertained. Plaintiff is informed, believes, and thereupon alleges
4 that each of the Defendants named herein as DOES 1 through 20, inclusive, is responsive in
5 some manner for the occurrence, injury, and other damages alleged in this Complaint.

6 10. Plaintiff is informed, believes, and thereupon alleges, that each Defendant was in
7 some manner responsible for the acts and damages alleged herein, and/or are indebted to
8 Plaintiff as alleged herein, and that each Defendant was the agent, employer, and co-conspirator
9 of each other Defendant, and was acting in the course and scope of such agency and conspiracy.
10 In this Complaint where Plaintiff refers to Defendant singularly, such reference shall be
11 construed to be a reference to all Defendants named herein, including those named fictitiously.

12 IV. FACTUAL ALLEGATIONS

13 11. Plaintiff worked for Defendants as a Sales Representative, Manager, Regional
14 Manager from approximately July 2017 to March 15, 2022. Enlite Home LLC is a solar sales
15 company that sells solar paneling to residential customers primarily in California. Plaintiff
16 started working for the company as a sales representative. Although Defendants headquarters
17 was recently relocated to Provo, Utah, over the sales season they worked from hubs in
18 Sacramento, Tracy, San Jose, Bakersfield, Fontana, Temecula and Fresno.

19 12. Plaintiff and Aggrieved Employees are/were classified as independent contractors
20 and work on a 100% commission-based payment system. Plaintiff and Aggrieved Employees
21 receive their commission on a weekly basis via 1099.

22 13. Plaintiff worked most days about 10 or more hours making sales and building,
23 training and developing the sales teams. The sales representatives that work under him in
24 California are generally recruited from Utah and come to different locations across California to
25 work from approximately May through September. Once the sales representatives arrive in
26 California, they are lodged in various apartment complexes across California. Sales
27 representatives are generally expected to reimburse Defendants \$600.00 per month for rent until
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1 they make a certain sales quota.

2 14. As sales representatives for Defendants, Aggrieved Employee are required to sign
3 representative agreement, manager agreement, and housing agreement. Sales representatives are
4 further required to work 6 days a week, from Monday through Saturday and adhere to a daily
5 schedule. Specifically, sales representatives were required to attend a mandatory meeting at 1:00
6 p.m. each day and worked until approximately 8:00 p.m. or later. Sales representatives are also
7 required to wear a company uniform and are not permitted to work for any other company while
8 working for Defendants.

9 15. In addition to their time spent on sales related activities, Plaintiff and Aggrieved
10 Employees spent a significant number of hours per week that were uncompensated either due to
11 a lack of sales, or engaging in tasks that did not directly earn additional compensation under
12 Defendants' system, including the daily mandatory meetings mentioned above.

13 16. Defendants did not pay Plaintiff and Aggrieved Employees for any non-selling
14 time, such as time spent in meetings, time spent during trainings, time spent learning
15 information about the products and services being sold and time spent during rest periods, etc.
16 Because of this, Defendants failed to provide paid rest periods and pay Plaintiff and Aggrieved
17 Employees at least minimum wage for every hour worked.

18 17. Furthermore, Plaintiff and Aggrieved Employees sometimes worked overtime
19 (i.e., over eight hours in a day or forty in a week). However, because Defendants classified
20 Aggrieved Employees as independent contractors, they did not have any policy or practice to
21 pay overtime wages to Plaintiff and Aggrieved Employees. Additionally, Defendants did not
22 keep track of any of the hours Plaintiff and Aggrieved Employees worked, including regular
23 hours, overtime hours, or time spent during meal periods, if any.

24 18. Defendants' failure to pay for all regular and overtime hours worked also resulted
25 in Defendants' failure to pay Plaintiff and Aggrieved Employees all wages they were owed
26 during the applicable pay period.

27 19. Defendants did not have a policy or practice to authorize Plaintiff and Aggrieved
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1 Employees to take all meal periods and paid rest periods owed to them. Plaintiff and Aggrieved
2 Employees did not receive a meal period or began their first meal period before completion of
3 their fifth hour worked on multiple occasions. Furthermore, as a result of Defendants'
4 compensation system, Plaintiff and Aggrieved Employees were not able to take any paid rest
5 periods because rest periods were unpaid as non-productive time. No separate compensation for
6 time spent on rest periods were given. Defendants did not pay Plaintiff and Aggrieved
7 Employees any meal or rest period premiums.

8 20. Plaintiff and Aggrieved Employees were further not compensated for, or
9 reimbursed for travel expenses, digital equipment used for sales purposes, and work-related cell
10 phone use.

11 21. The policies and practices described above resulted in Plaintiff and Aggrieved
12 Employees being owed wages at the time of their separation or termination that went unpaid by
13 Defendants. Indeed, because Defendants classified Plaintiff and Aggrieved Employees as
14 independent contractors, they were not issued any wage statements, let alone wage statements
15 that stated their total hours worked, and the number of regular and overtime hours they worked
16 and corresponding applicable hourly rates, the correct amount of gross and net wages, and
17 amounts for meal and rest period premiums.

18 22. Sanjeev Thakur was an officer, director, shareholder, and/or managing agent of
19 Defendants responsible for the violations stated herein as he was in a position of authority with
20 the power and responsibility to monitor, institute, and/or modify the unlawful practices, but
21 chose to ratify them instead.

22 V. CAUSES OF ACTION

23 FIRST CAUSE OF ACTION 24 Private Attorneys General Act 25 (Lab. Code, §§ 2698, *et seq*) 26 (As to All Defendants)

27 23. Plaintiff incorporates in this cause of action each and every allegation of the
28 preceding paragraphs, as though fully set forth herein.

1 24. Plaintiff has alleged to the Labor Commissioner that Defendants have violated
2 the following provisions of the Labor Code in their dealings with Plaintiff other Aggrieved
3 Employees:

- 4 • **Willful Misclassification of Employees as Independent Contractors (Lab. Code §**
5 **226.8)**
- 6 • **Failure to pay Overtime (Lab. Code §§ 1194, 510, Wage Orders)**

7 Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their
8 regular rate of pay for any work in excess of eight (8) hours in one workday and any work in
9 excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times
10 their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any
11 one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all
12 hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess
13 of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff
14 and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week
15 and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled
16 to recover all unpaid overtime wages.

- 17 • **Failure to pay Minimum Wage (Lab. Code § 1194)**

18 During the period Plaintiff and Aggrieved Employees were employed by
19 Defendants they were entitled to be paid at least the State's minimum wage rate for each hour
20 that they worked, including non-productive time. *See, e.g., IWC Wage Order MW-2019; IWC*
21 *Wage Order No. 4, § (4); Cal. Lab. Code §§ 1194, 1197.1.* For the reasons stated above,
22 Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked.

- 23 • **Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof (Labor Code**
24 **§§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B))**

25 Labor Code section 226.7 and Wage Order No. 4, section 11(A) require employers to
26 provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be
27 taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 4,
28 section 11 (B) further provide that employers may not employ employees for a work period of
more than ten (10) hours per day without providing the employee with a second meal period of
thirty (30) minutes. For the reasons stated above, Plaintiff and Aggrieved Employees were not
authorized and permitted to take legally compliant meal periods pursuant to California law.
Defendants also failed to pay any meal period premiums for their failure to provide meal
periods.

1 • **Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof (Labor Code**
2 **§ 226.7 and Wage Order No. 4, § 12(A))**

3 Labor Code section 226.7 and Wage Order No. 4, section 12(A) require employers to
4 provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major
5 fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were
6 not authorized and permitted to take all legally compliant rest periods owed to them pursuant to
7 California law. Moreover, any rest periods Plaintiff and Aggrieved Employees did receive were
8 unpaid. Defendants also failed to pay any rest period premiums for their failure to provide rest
9 periods.

10 • **Inaccurate Wage Statement Penalties (Lab. Code §§ 226, 226.3)**

11 Labor Code section 226 requires employers to furnish to employees with “an accurate
12 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
13 employee, ... (3) the number of piece-rate units earned and any applicable piece rate if the
14 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
15 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
16 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
17 employee and only the last four digits of his or her social security number or an employee
18 identification number other than a social security number, (8) the name and address of the legal
19 entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period
20 and the corresponding number of hours worked at each hourly rate by the employee “ For the
21 reasons stated above, Defendants failed to comply with these requirements with respect to
22 Plaintiff and Aggrieved Employees.

23 • **Failure to Maintain Accurate Records (Labor Code §§ 226.3, 1174, 1198 and**
24 **Wage Order No. 4(A))**

25 Labor Code section 226.3 provides that any employer who fails to maintain records
26 required by Labor Code section 226(a) or provide records required by 226(a) shall be subject
27 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee
28 per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
29 violation in a subsequent citation. Labor Code section 1174(d) provides that employers must
30 keep and maintain accurate payroll records showing the hours worked daily by, and the wages
31 paid to, employees. Defendants failed to maintain the accurate records required by law and,
32 instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees
33 wage records and hours worked.

34 • **Failure to Pay Wages in a Timely Manner (Labor Code §§ 204, 210)**

35 Labor Code section 204 requires wages to be paid twice during each calendar month

1 on paydays designated in advance by the employer as regular paydays. Labor Code section 204
2 further requires that semimonthly paychecks include the wages earned during that pay period.
3 (See *Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662,669.) Labor Code section 210
4 allows for employees to seek penalties, including unpaid wages. Here, Defendants failed to
5 provide Plaintiff and Aggrieved Employees all wages they were owed during the applicable pay
6 period.

7 • **Failure to Reimburse Work-Related Expenses (Lab. Code § 2802)**

8 Labor Code section 2802(a) states that “An employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
11 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
12 believed them to be unlawful.” Defendants failed to pay any reimbursements for travel expenses,
13 use of personal digital equipment, and cellphone use by Plaintiff and Aggrieved Employees.

14 • **Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days
15 of Work in Any Industrial Welfare Commission Order)**

16 Labor Code section 558 states that it is unlawful for any employer, or other person
17 acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1
18 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code
19 section 558.1 states that it is unlawful for any employer or other person acting on behalf on an
20 employer to violate, or cause to be violated, any provision regulating minimum wages or hours
21 and days of work in any order of the Industrial Welfare Commission, as well as Sections 203,
22 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and
23 through Defendants agents, violated Plaintiff and Aggrieved Employees’ rights provided for
24 under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and
25 incorporated statutes therein. Sanjeev Thakur was an officer, director, shareholder, and/or
26 managing agent of Defendants responsible for the violations stated herein as he was in a position
27 of authority with the power and responsibility to monitor, institute, and/or modify the unlawful
28 practices, but chose to ratify them instead.

• **Waiting-Time Penalties (Lab. Code §§ 201-203, 256)**

24 Labor Code sections 201-203 require that all wages, including regular and overtime
25 wages and meal and rest period premiums, be paid to employees upon separation and/or
26 termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved
27 Employees did not receive all final wages due and owing to them at the time of termination or
28 seventy-two (72) hours thereafter as required by Labor Code sections 201-203.

• **Failure to Provide Paid Sick Leave (Labor Code §§ 246, 246.5, 248.5)**

1 Labor Code sections 246, *et seq.*, mandate that employers must provide California
2 employees, who work thirty (30) or more days within a year for the employer, paid sick leave of
3 at least one (1) hour for every thirty (30) hours worked that begins to accrue at the
4 commencement of employment. An employer may use a different accrual method, other than
5 providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so
6 that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off
7 by the 120th calendar day of employment or each calendar year, or in each 12-month period. An
8 employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of
9 three (3) days, whichever is greater, during a year period. However, employers using an accrual
10 method rather than a lump sum method must allow employees to accrue up to forty-eight (48)
11 hours or the equivalent of six (6) days at any given time. Employers must authorize employees
12 to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy
13 Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health
14 condition of, or preventive care for, an employee or an employee's family member. Any sick
15 leave taken must be paid at the employee's regular rate of pay. For the reasons state above,
16 Defendants failed to provide Plaintiffs and Aggrieved Employees with sick leave meeting the
17 requirements set forth in HWHFA. Plaintiffs will be seeking equitable, injunctive, and
18 restitutionary relief to remedy these violations.

19 25. Plaintiff seeks civil penalties against Defendants as provided in the California
20 Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor
21 Code section 2699(f)(2).

22 26. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor
23 Code sections 2699(a) and 2699.3.

24 27. Furthermore, to the extent that any of the conduct and violations alleged herein
25 did not affect Plaintiff during the PAGA PERIOD, Plaintiff seek penalties for those violations
26 that affected other Aggrieved Employees. (*See Huff v. Securitas Security Services USA, Inc.*
27 (2018) 23 Cal. App. 9 ["PAGA allows an "aggrieved employee" -- a person affected by at least
28 one Labor Code violation committed by an employer--to pursue penalties for all the Labor Code
violations committed by that employer."].)

29 28. As a proximate result of the Defendants' conduct, Plaintiff and Aggrieved
Employees have been damaged and request relief as described below.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants as follows

1 (a) For reasonable attorney's fees and costs of suit to the extent
2 permitted by law, including pursuant to Labor Code § 2699, *et seq.*;

3 (b) For civil penalties to the extent permitted by law pursuant to the
4 Labor Code under the Private Attorneys General Act; and

5 (c) For such other relief as the Court deems just and proper
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7 **DREW LEWIS, PC**
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9 Dated: May 15, 2023

10 By: 
11 Drew Lewis
12 Attorney for Plaintiff
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