



March 7, 2023

VIA LWDA WEBSITE

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

Re: *Jonathan Chande v. The Shade Store, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Jonathan Chande in claims arising from his employment with The Shade Store, LLC and DOES 1 through 100 (collectively “TSS”). Mr. Chande is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to TSS’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

TSS is in the business of window treatments and repairs and employs individuals to perform such work at various businesses and residences that require its services. Mr. Chande commenced employment with TSS as a non-exempt employee from approximately August 2021 until approximately November 2023 in the position of measure and pro installer. Mr. Chande had no set schedule. Rather, he would generally work Monday through Friday between 8-12 hours per day depending on work demands. However, as discussed below, Mr. Chande worked considerably more hours than he was credited for on his wage statements. Mr. Chande was paid at a rate of approximately \$27.00 per hour at the time of his separation with TSS.

For purposes of this letter, the “aggrieved employees” whom Mr. Chande seeks to represent are the other aggrieved employees of TSS in California at any time during the one year preceding the date of this letter through the present.

During Mr. Chande’s employment with TSS, Mr. Chande and other aggrieved employees were not paid for all hours worked due to TSS’ failures to properly account for all hours that Mr. Chande and other aggrieved employees actually worked. Mr. Chande and other aggrieved employees routinely worked overtime hours but did not receive overtime compensation equal to one and one-half times their regular rate of pay for all overtime hours worked. For example, after Mr. Chande would clock out for the day, he would be required to perform routine maintenance work on his company vehicle or be subject to reprimand from his supervisors. Mr. Chande estimates he would spend at least

2 hours performing these duties each shift that he was required to do so, doing work on the company truck such as cleaning it and organizing all of the numerous parts, tools, and other equipment, all without any compensation from TSS. At any point during the day or night, even if Mr. Chande was not working, his supervisors would reach out to him on his cell phone and require him to send a picture of his company vehicle in an effort by TSS to ensure compliance with this policy. Furthermore, Mr. Chande would consistently be badgered with work related calls and communications on his days off but was never provided any sort of compensation for this off-the-clock work. Finally, Mr. Chande would be sent to remote worksites during each of his shifts, sometimes multiple hours away from his house. However, TSS maintained a strict policy/practice that Mr. Chande was not permitted to clock in until he had been driving for at least an hour. For example, if the first job that Mr. Chande was assigned to perform work at was in Lakewood, California (about a 15-minute drive from Mr. Chande's home in Paramount, California), then he would be permitted to clock in when he arrived at the job site. However, if Mr. Chande's first job site assignment was in San Bernardino, for example, he would be off-the-clock driving and only once he had been on the road for an hour would he be permitted to clock in, a policy/practice that resulted in countless hours of work that went wholly uncompensated. Finally, every Wednesday morning while he was driving to his first stop of the shift, Mr. Chande would be made to participate in a mandatory 30-minute Microsoft "Teams" meeting, which as discussed above would have been inherently off-the-clock and which posed a serious safety hazard to Mr. Chande and other aggrieved employees that were being forced to participate in a pre-shift meeting while driving. Consequently, due to TSS' unlawful timekeeping and payment policies and practices that failed to compensate for all hours worked, Mr. Chande and other aggrieved employees have been deprived of all required minimum and overtime wages.

Additionally, Mr. Chande and other aggrieved employees routinely worked in excess of 8 hours per workday and/or 40 hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, TSS paid Mr. Chande and other aggrieved employees non-discretionary bonuses, commissions, and other forms of non-discretionary pay that are not excludable from the regular rate of pay (hereinafter the aforementioned forms of pay are referred to as "Incentive Pay"). Despite TSS' payment of Incentive Pay to Mr. Chande and other aggrieved employees, TSS failed to properly calculate the regular rate of pay, thereby causing Mr. Chande and other aggrieved employees to be underpaid all required overtime wages.

Mr. Chande and other aggrieved employees were not authorized to take all legally required rest periods. Mr. Chande and the other employees would be made to work through their rest periods to meet the intense workloads imposed on them by TSS. Due to the overwhelming workload and the company culture, Mr. Chande and the other aggrieved employees were generally not permitted to exercise any compliant duty-free rest periods. Additionally, TSS' policy/practice prohibited Mr. Chande and other aggrieved employees from leaving their trucks unattended during their rest periods, and therefore, failed to authorize and permit Mr. Chande and other aggrieved employees to

take duty-free paid rest periods for every four-hour period worked, or major fraction thereof. Despite TSS' failure to authorize and permit Mr. Chande and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, TSS never provided Mr. Chande and other aggrieved employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, TSS maintained no payroll code or other mechanism for the payment of rest period premiums in the event Mr. Chande and other aggrieved employees were not authorized to take lawful rest periods.

TSS also frequently failed to provide Mr. Chande and other aggrieved employees with a timely duty-free first meal period when they worked shifts in excess of 6.0 hours. Instead, Mr. Chande and other aggrieved employees were not provided all legally compliant meal periods due to TSS' meal period policies and practices which fail to provide a timely 30-minute duty-free first meal period (i.e. a first meal period commencing before the end of the fifth hour of work). Mr. Chande estimates that he did not receive a compliant first meal period, whether it be shortened, missed, or interrupted, on at least 75% of the shifts that he worked. Missed/interrupted/or shortened meal periods were an exceedingly frequent occurrence as Mr. Chande and other aggrieved employees were made to adhere to strict schedules and deadlines that caused them to be pressured to get back to work as soon as possible after beginning their meal periods, if they were able to take them at all. Furthermore, even on those occasions where Mr. Chande and other aggrieved employees did receive meal periods, they were almost always interrupted and/or on-duty. For the vast majority of his employment, though, Mr. Chande was not afforded to take any time to exercise a meal period whatsoever, instead being made to simply eat whatever snacks and food he had with him while driving between job sites so as to meet TSS' unrealistic scheduling demands and deadlines. Mr. Chande's missed, shortened, late, and on-duty meal periods were a direct result of TSS' policy/practice. TSS also failed to provide second meal periods when Mr. Chande and other aggrieved employees worked shifts in excess of 10.0 hours. Mr. Chande routinely worked in excess of 10 hours during his employment, but he cannot recall receiving a second meal period. In addition, on those occasions when Mr. Chande and the other aggrieved employees were not provided with all legally compliant meal periods to which they were entitled, TSS failed to compensate them with the required meal period premiums, as mandated by Labor Code § 226.7.

TSS failed to adequately reimburse Mr. Chande and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Chande and other aggrieved employees to purchase and maintain necessary tools such as saws and other hand tools necessary for the performance of his job duties. In addition, Mr. Chande and other aggrieved employees would perform the vast majority of their work duties on their personal cellular phones on behalf of TSS. While at some point in Mr. Chande's employment, he began receiving a \$40 per month reimbursement for the use of his personal cellular phone, these payments were not disbursed throughout the entirety of the class period, and to the extent that they represented reimbursement for cellular phone use, it was grossly under representative of the actual expenses incurred by Mr. Chande

and other aggrieved employees for cellular phone use for business purposes.

TSS failed to meet its obligations to provide paid sick leave to Mr. Chande and other aggrieved employees under Labor Code § 245.5(b) which requires that employers authorize and permit its employees who worked 30 or more days within a year to accrue paid sick leave, and to allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting all of the statutory requirements for being able to accrue and utilize paid sick leave, Mr. Chande and other aggrieved employees were not provided paid sick leave on those occasions where they needed to take a “sick day” in violation of Labor Code § 245.5(b).

As a result of TSS’ failure to pay all minimum and overtime wages, and failure to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof, TSS has maintained inaccurate payroll records, failed to timely pay all wages owed to separating employees at the time of their separation, and issued inaccurate wage statements.

Furthermore, TSS violated Labor Code § 204 by failing to pay Mr. Chande and other aggrieved employees all wages earned at least twice during each calendar month.

Finally, TSS failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Chande and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the employer; v) the address of the legal entity that is the employer; vi) the telephone number of the employer; vii) identifying information for the employer’s workers’ compensation insurance carrier; and viii) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Mr. Chande and other aggrieved employees, TSS failed to do so in violation of Labor Code § 2810.5.

As described above, TSS committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 16 (“Wage Order 16”):

Minimum Wage Violations

TSS was required to pay Mr. Chande and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1182.12, 1194; 1194.2, 1197; and Wage Order 16 § 4. As alleged above, TSS maintained and maintains timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Chande and other aggrieved employee whether by rounding, time-shaving, or otherwise. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Chande and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

TSS was required to pay Mr. Chande and other aggrieved employees overtime wages for all overtime hours worked. *See* Labor Code §§ 1194(a) and 1198; Wage Order 16, § 3. Wage Order 16, § 3 requires an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order. At all times relevant herein, TSS caused Mr. Chande and other aggrieved employees to work overtime hours but did not compensate Mr. Chande and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, TSS failed to provide Mr. Chande and other aggrieved employees with all required and compliant meal periods due to TSS's meal period policies/practices that often fail to provide 30 minute off-duty first meal periods before the end of the fifth hour of work. *See* Labor Code §§ 226.7 and 512; Wage Order 16, § 11. As a result, Mr. Chande and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, TSS also failed to authorize and permit Mr. Chande and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 16, § 12. As a result, Mr. Chande and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required paid rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Failure to Reimburse Necessary Business Expense

TSS was subject to Labor Code § 2802, which states that "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." TSS was subject to Labor Code § 2804, which states

that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.” As alleged herein, due to TSS’ unlawful reimbursement practices, TSS failed to indemnify Mr. Chande and other aggrieved employees for all necessary business expenses incurred, as described in detail above.

Wage Statement Violations

TSS was required to furnish Mr. Chande and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. See Labor Code §§ 226(a) and 1174(d); Wage Order 16, § 7. As a result of TSS’ failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, TSS maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Chande and other aggrieved employees in violation of Labor Code § 226.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. TSS failed to timely pay Mr. Chande and other aggrieved employees all of their final wages at the time of separation, which included all overtime and minimum wages, and all meal and rest period premium wages at the time of aggrieved employees’ separation of employment. Pursuant to Labor Code § 203, TSS’ failure to pay all final wages due to Mr. Chande and other aggrieved employees was willful and, consequently, entitles Mr. Chande and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day TSS failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

As an “aggrieved employee,” Mr. Chande will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Chande’s own investigation, and on information and belief, TSS committed and continue to commit the following Labor Code violations:

- a. TSS violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Chande and other aggrieved employees the statutory minimum wage for all hours worked;
- b. TSS violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Chande and other aggrieved employees all overtime compensation earned;

- c. TSS violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Chande and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. TSS violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Chande and other aggrieved employees from taking all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Chande and other aggrieved employees at their respective regular rates of compensation;
- e. TSS violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Chande and other aggrieved employees for all work-related expenses incurred;
- f. TSS violated Labor Code § 226 by failing to furnish Mr. Chande and other aggrieved employees with accurate and compliant itemized wage statements;
- g. TSS violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Chande and other aggrieved employees;
- h. TSS violated Labor Code § 204 by failing to pay Mr. Chande and other aggrieved employees all wages earned at least twice during each calendar month; and
- i. TSS violated Labor Code § 245.5 by failing to permit and authorize Mr. Chande and other aggrieved employees to exercise the use of their accrued paid sick leave days;
- j. TSS violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Chande and other aggrieved employees; and
- k. TSS violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Chande and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and TSS if the LWDA intends to investigate the alleged violations of the Labor Code stated herein. Please contact me should you require additional information.

Sincerely,
STANSBURY BROWN LAW, PC



Ethan C. Surls

cc: The Shade Store, LLC (via certified mail)