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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

GINA BURCIAGA, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

B.S.D. CAPITAL, INC., a Corporation; FUND
CALIFORNIA, LLC, a Limited Liability
Company; LENDISTRY SBLC, LLC, a
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. 23STCV10241

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
218, 221, 226(a), 226.7, 227.3, 246, 510,
512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), California Code of
Regulations, Title 8, Section 11070(14)
(Failure to Provide Seating), and the
applicable Wage Order(s).

FILED
Superior Court of California
County of Los Angeles

08/07/2024

David W. Slayton, Executive Officer / Clerk of Court

By: S. Hahn Deputy

1 Plaintiff Gina Burciaga (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against B.S.D. Capital, Inc., Fund California, LLC
8 and Lendistry SBLC, LLC (referred to as “DEFENDANT”) seeking only to recover PAGA civil
9 penalties on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. **PLAINTIFF does not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699. PLAINTIFF is not suing in her individual**
12 **capacity; she is proceeding herein solely under the PAGA, on behalf of the State of**
13 **California for all aggrieved employees, including herself and other aggrieved employees.**

14 Nothing in this complaint should be construed as PLAINTIFF suing in her individual capacity.
15 To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not
16 seek underlying general and/or special damages for those violations, but simply the civil
17 penalties permitted by California Labor Code § 2699.

18 2. California has enacted the PAGA which permit a PLAINTIFF to bring an action
19 on behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and
20 sole nature of this action.

21 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
22 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
23 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
24 complaint should be construed as attempting to obtain any relief that would not be available in
25 a PAGA-only action.

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THE PARTIES

4. B.S.D. Capital, Inc. is a corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

5. Fund California, LLC is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

6. Lendistry SBLC, LLC is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

7. PLAINTIFF alleges there has existed a unity of interest between B.S.D. Capital, Inc., Fund California, LLC and Lendistry SBLC, LLC as evidenced by pay stubs, California Secretary of State registered business information, and the companies PLAINTIFF worked for, such that any individuality and separateness between the entities has ceased and both defendants are referred to herein as ("DEFENDANT").

8. DEFENDANT, commonly known as Lendistry, provides lending services to small businesses.

9. PLAINTIFF was employed by DEFENDANT in California from December 28, 2020 to June of 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

10. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by B.S.D. Capital, Inc. and/or Fund California, LLC and/or Lendistry SBLC, LLC in California, including any employees staffed with B.S.D. Capital, Inc. and/or Fund California, LLC and/or Lendistry SBLC, LLC by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of March 2, 2022 until a date as determined by the Court (the "PAGA PERIOD").

11. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

13. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

1 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
2 was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time
3 worked, meaning the time during which an employee is subject to the control of an
4 employer, including all the time the employee is suffered or permitted to work.
5 DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without
6 paying them for all the time they are under DEFENDANT's control. Among other things,
7 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
8 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
9 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
10 break. DEFENDANT, as a matter of established company policy and procedure,
11 administers a uniform practice of rounding the actual time worked and recorded by
12 PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT,
13 so that during the course of their employment, PLAINTIFF and the AGGRIEVED
14 EMPLOYEES are paid less than they would have been paid had they been paid for actual
15 recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the
16 practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off
17 the clock in that DEFENDANT, as a condition of employment, required these employees to
18 submit to mandatory temperature checks and symptom questionnaires for COVID-19
19 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a
20 result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime
21 wage compensation, and off-duty meal breaks by working without their time being correctly
22 recorded and without compensation at the applicable rates. DEFENDANT's policy and
23 practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is
24 evidenced by DEFENDANT's business records.

25 15. State law provides that employees must be paid overtime and meal and rest
26 break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the
27 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is
28 tied to specific elements of an employee's performance.

1 16. The second component of PLAINTIFF's and the AGGRIEVED
2 EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that
3 paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their
4 performance for DEFENDANT. The non-discretionary incentive program provided all
5 employees paid on an hourly basis with incentive compensation when the employees met the
6 various performance goals set by DEFENDANT. However, when calculating the regular
7 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
8 the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
9 compensation as part of the employees' "regular rate of pay" for purposes of calculating
10 overtime pay and meal and rest break premium pay. Management and supervisors described
11 the incentive program to potential and new employees as part of the compensation package.
12 As a matter of law, the incentive compensation received by PLAINTIFF and the
13 AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to
14 do so has resulted in a underpayment of overtime compensation and meal and rest break
15 premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by DEFENDANT.

16 17. As a result of their rigorous work schedules, PLAINTIFF and the
17 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
18 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
19 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as
20 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
21 a meal break. Further, DEFENDANT from time to time fails to provide PLAINTIFF and
22 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in
23 which these employees were required by DEFENDANT to work ten (10) hours of work.
24 DEFENDANT also engaged in the practice of rounding the meal period times to avoid
25 paying penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the
26 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
27 and in accordance with DEFENDANT's corporate policy and practice.
28

1 18. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
2 EMPLOYEES were also required from time to time to work in excess of four (4) hours
3 without being provided ten (10) minute rest periods. Further, these employees were denied
4 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
5 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
6 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
7 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
8 hours or more from time to time. PLAINTIFF and the AGGRIEVED EMPLOYEES were
9 also not provided with one hour wages in lieu thereof. Additionally, the applicable
10 California Wage Order requires employers to provide employees with off-duty rest periods,
11 which the California Supreme Court defined as time during which an employee is relieved
12 from all work related duties and free from employer control. In so doing, the Court held that
13 the requirement under California law that employers authorize and permit all employees to
14 take rest period means that employers must relieve employees of all duties and relinquish
15 control over how employees spend their time which includes control over the locations
16 where employees may take their rest period. Employers cannot impose controls that prohibit
17 an employee from taking a brief walk - five minutes out, five minutes back. Here,
18 DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED EMPLOYEES from
19 unconstrained walks and is unlawful based on DEFENDANT's rule which states
20 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
21 their rest period.

22 19. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
23 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
24 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
25 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for
26 all time worked, meaning the time during which an employee was subject to the control of
27 an employer, including all the time the employee was permitted or suffered to permit this
28 work. DEFENDANT required these employees to work off the clock without paying them

1 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or
2 should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under
3 compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED
4 EMPLOYEES forfeited time worked by working without their time being accurately
5 recorded and without compensation at the applicable minimum wage and overtime wage
6 rates. To the extent that the time worked off the clock does not qualify for overtime
7 premium payment, DEFENDANT fails to pay minimum wages for the time worked off-the-
8 clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

9 20. From time to time, DEFENDANT also fails to provide PLAINTIFF and the
10 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
11 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
12 provides that every employer shall furnish each of his or her employees with an accurate
13 itemized wage statement in writing showing, among other things, gross wages earned and all
14 applicable hourly rates in effect during the pay period and the corresponding amount of time
15 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
16 an hourly basis. As such, the wage statements should reflect all applicable hourly rates
17 during the pay period and the total hours worked, and the applicable pay period in which the
18 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
19 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to
20 identify such information. More specifically, the wage statements failed to identify the
21 accurate total hours worked each pay period. When the hours shown on the wage statements
22 were added up, they did not equal the actual total hours worked during the pay period in
23 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this
24 paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage statement that lists
25 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
26 from time to time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage
27 statements which violated Cal. Lab. Code § 226.

1 21. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
2 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
3 the wages are paid not more than seven (7) calendar days following the close of the payroll
4 period. Cal. Lab. Code § 210 provides:

5 in [I]n addition to, and entirely independent and apart from, any other penalty provided
6 this article, every person who fails to pay the wages of each employee as provided in
7 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
8 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

9 22. DEFENDANT from time to time fails to pay PLAINTIFF and the
10 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
11 accordance with Cal. Lab. Code § 204(d).

12 23. DEFENDANT underpaid sick pay wages to PLAINTIFF and the
13 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in
14 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
15 employees earn non-discretionary remuneration, including, but not limited to, incentives,
16 shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,
17 DEFENDANT underpays sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at
18 their base rates of pay.

19 24. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
20 employees be calculated by dividing the employee's total wages, not including overtime
21 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
22 days of employment.

23 25. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
24 at the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely
25 earned non-discretionary incentive wages which increased their regular rate of pay.
26 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
27 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
28 required under Cal. Lab. Code Section 246.

1 26. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
2 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
3 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
4 believes and based thereon alleges that such failure to pay sick pay at regular rate was
5 willful, such that the AGGRIEVED EMPLOYEES whose employment has separated are
6 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

7 27. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
8 to collect or receive from an employee any part of wages theretofore paid by said employer
9 to said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and the
10 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
11 PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
12 deductions from compensation payable to PLAINTIFF and the AGGRIEVED
13 EMPLOYEES, and thereby fails to pay these employees all wages due at each applicable
14 pay period and upon termination.

15 28. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
16 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred
17 by the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of
18 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
19 2802, employers are required to indemnify employees for all expenses incurred in the course
20 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
21 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
22 employee in direct consequence of the discharge of his or her duties, or of his or her
23 obedience to the directions of the employer, even though unlawful, unless the employee, at
24 the time of obeying the directions, believed them to be unlawful."

25 29. In the course of their employment PLAINTIFF and the AGGRIEVED
26 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
27 personal cellular phones as a result of and in furtherance of their job duties as employees for
28 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost

1 associated with the use of their personal cellular phones for DEFENDANT's benefit.
2 Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were required by
3 DEFENDANT to use their personal cellular phones. As a result, in the course of their
4 employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES
5 incurred unreimbursed business expenses which included, but were not limited to, costs
6 related to the use of their personal cellular phones all on behalf of and for the benefit of
7 DEFENDANT.

8 30. In violation of the applicable sections of the California Labor Code and the
9 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
10 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
11 knowingly and systematically failed to provide PLAINTIFF and the other AGGRIEVED
12 EMPLOYEES suitable seating when the nature of these employees' work reasonably
13 permitted sitting.

14 31. DEFENDANT knew or should have known that PLAINTIFF and other
15 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
16 when it did not interfere with the performance of their duties, and that DEFENDANT did
17 not provide suitable seating and/or did not allow them to sit when it did not interfere with
18 the performance of their duties.

19 32. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
20 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage
21 Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties
22 on behalf of PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein.
23 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's
24 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
25 California Labor Code and regulations promulgated thereunder as herein alleged.

26 33. The employment of PLAINTIFF and some AGGRIEVED EMPLOYEES has
27 terminated and DEFENDANT has not tendered payment of all wages owed as required by
28 law. Additionally, at all times during the term of PLAINTIFF's employment with

1 DEFENDANT, PLAINTIFF and AGGRIEVED EMPLOYEES earned and accrued vested
2 vacation and holiday time on the date of their termination pursuant to DEFENDANT's
3 uniform vacation policies and applicable California law. The amount of vacation pay
4 PLAINTIFF and the other AGGRIEVED EMPLOYEES earned and accumulated is
5 evidenced by DEFENDANT's business records. Additionally, DEFENDANT also underpaid
6 accrued vested vacation wages to PLAINTIFF and other AGGRIEVED EMPLOYEES by
7 failing to pay such wages at the regular rate of pay and more specifically the final rate of pay
8 that included all non-discretionary incentive compensation. Rather than pay vacation wages
9 at the regular rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFF and other
10 AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of
11 PLAINTIFF's and AGGRIEVED EMPLOYEES' non-discretionary incentive compensation
12 into the vacation wage payment calculations. DEFENDANT failed to specify in
13 DEFENDANT's written vacation policy the rate at which PLAINTIFF and other
14 AGGRIEVED EMPLOYEES would be paid vacation upon leaving employment with
15 DEFENDANT. As a result of DEFENDANT's unlawful practice, policy and procedure to
16 deny paying the PLAINTIFF and AGGRIEVED EMPLOYEES all of their vested vacation
17 and holiday time, DEFENDANT failed to pay the PLAINTIFF and AGGRIEVED
18 EMPLOYEES all vested vacation time as wages due upon employment termination, in
19 violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly,
20 DEFENDANT underpaid waiting time penalties to PLAINTIFF and AGGRIEVED
21 EMPLOYEES at their base rates of pay, instead of including all of PLAINTIFF's' and
22 AGGRIEVED EMPLOYEES' non-discretionary compensation into the waiting time penalty
23 calculations. This failure by DEFENDANT is believed to be the result of DEFENDANT's
24 unlawful, unfair and deceptive refusal to provide compensation for earned, accrued and
25 vested vacation and holiday time, as well as the corresponding waiting time penalties that
26 were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive practice to the
27 detriment of PLAINTIFF and AGGRIEVED EMPLOYEES. DEFENDANT's uniform
28 practice and policy of failing to pay the AGGRIEVED EMPLOYEES for all vested vacation

1 and holiday time accumulated at employment termination violated and continues to violate
2 Section 227.3 of the California Labor Code.

3 34. All of the conduct and violations alleged herein occurred during the PAGA
4 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
5 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
6 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
7 2018 AJDAR 12157 (Certified for Publication 12/19/18).

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9 **JURISDICTION AND VENUE**

10 35. This Court has jurisdiction over this Action pursuant to California Code of
11 Civil Procedure, Section 410.10.

12 36. Venue is proper in this Court pursuant to California Code of Civil Procedure,
13 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
14 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
15 facilities in this County and/or conducts substantial business in this County, and (ii)
16 committed the wrongful conduct herein alleged in this County against PLAINTIFF and other
17 AGGRIEVED EMPLOYEES.

18
19 **FIRST CAUSE OF ACTION**

20 **For Violation of the Private Attorneys General Act**

21 **[Cal. Lab. Code §§ 2698, *et seq.*]**

22 **(By PLAINTIFF and Against All Defendants)**

23 37. PLAINTIFF realleges and incorporates by this reference, as though fully set
24 forth herein, the prior paragraphs of this Complaint.

25 38. PAGA is a mechanism by which the State of California itself can enforce state
26 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
27 the state's labor law enforcement agencies. An action to recover civil penalties under
28 PAGA is fundamentally a law enforcement action designed to protect the public and not to

1 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
2 but to create a means of "deputizing" citizens as private attorneys general to enforce the
3 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
4 public interest to allow aggrieved employees, acting as private attorneys general to recover
5 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
6 claims cannot be subject to arbitration.

7 39. PLAINTIFF, and such persons that may be added from time to time who
8 satisfy the requirements and exhaust the administrative procedures under the Private
9 Attorney General Act, brings this Representative Action on behalf of the State of California
10 with respect to herself and all individuals who are or previously were employed by B.S.D.
11 Capital, Inc. and/or Fund California, LLC and/or Lendistry SBLC, LLC in California,
12 including any employees staffed with B.S.D. Capital, Inc. and/or Fund California, LLC
13 and/or Lendistry SBLC, LLC by a third party, and classified as non-exempt employees
14 ("AGGRIEVED EMPLOYEES") during the time period of March 2, 2022 until a date as
15 determined by the Court (the "PAGA PERIOD").

16 40. On March 2, 2023, PLAINTIFF gave written notice by electronic mail to the
17 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
18 employer of the specific provisions of this code alleged to have been violated as required by
19 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
20 herein (*PAGA Notices only without draft complaint*). The statutory waiting period for
21 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
22 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
23 pursuant to Section 2699 as the proxy of the State of California with respect to all
24 AGGRIEVED EMPLOYEES as herein defined.

25 41. The policies, acts and practices heretofore described were and are an unlawful
26 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
27 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
28 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,

1 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
2 required expenses, and (f) failed to provide wages when due, all in violation of the
3 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
4 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
5 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
6 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the
7 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
8 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
9 Labor Code Private Attorney General Act of 2004 as the representative of the State of
10 California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
11 EMPLOYEES.

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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1
2 **PRAYER FOR RELIEF**

3 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
4 severally, as follows:

5 1. On behalf of the State of California and with respect to all AGGRIEVED
6 EMPLOYEES:

7 A) Recovery of civil penalties as prescribed by the Labor Code Private
8 Attorneys General Act of 2004; and,

9 B) An award of attorneys' fees and cost of suit, as allowable under the
10 law, including, but not limited to, pursuant to Labor Code §2699.

11 Dated: August 7, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
12 LLP

13
14 By: Nicholas J. De Blouw
Nicholas J. De Blouw (Aug 7, 2024 09:32 PDT)
15 Norman B. Blumenthal
Nicholas J. De Blouw
16 *Attorneys for Plaintiff*
17
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28

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

March 2, 2023

CA 2895

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

B.S.D. Capital, Inc.
Certified Mail #70223330000181863579
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by B.S.D. Capital, Inc. and/or Fund California, LLC and/or Lendistry SBLC, LLC in California, including any employees staffed with B.S.D. Capital, Inc. and/or Fund California, LLC and/or Lendistry SBLC, LLC by a third party, and classified as non-exempt employees during the time period of March 2, 2022 until a date as determined by the Court. Our offices represent Plaintiff Gina Burciaga (“Plaintiff”) and other Aggrieved Employees in a lawsuit against B.S.D. Capital, Inc. and/or Fund California, LLC and/or Lendistry SBLC, LLC in California, including any employees staffed with B.S.D. Capital, Inc. and/or Fund California, LLC and/or Lendistry SBLC, LLC (“Defendant”). Plaintiff was employed by Defendant in California from December of 2020 to June of 2022. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and

Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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March 2, 2023

CA 2895

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Fund California, LLC
Certified Mail #70223330000181863555
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

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Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by B.S.D. Capital, Inc. and/or Fund California, LLC and/or Lendistry SBLC, LLC in California, including any employees staffed with B.S.D. Capital, Inc. and/or Fund California, LLC and/or Lendistry SBLC, LLC by a third party, and classified as non-exempt employees during the time period of March 2, 2022 until a date as determined by the Court. Our offices represent Plaintiff Gina Burciaga (“Plaintiff”) and other Aggrieved Employees in a lawsuit against B.S.D. Capital, Inc. and/or Fund California, LLC and/or Lendistry SBLC, LLC in California, including any employees staffed with B.S.D. Capital, Inc. and/or Fund California, LLC and/or Lendistry SBLC, LLC (“Defendant”). Plaintiff was employed by Defendant in California from December of 2020 to June of 2022. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and

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Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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WRITERS EXT:

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March 2, 2023

CA 2895

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Labor and Workforce Development Agency
Online Filing

Lendistry SBLC, LLC
Certified Mail #70223330000181863562
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

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Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Christine T. LeVu, am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On August 7, 2024, I served the document(s) described as:

1. FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT

(BY ELECTRONIC SERVICE): I provided the documents referenced above electronically via electronic mail (e-mail) to counsel for Defendants at the following e-mail address(es):

LITTLER MENDELSON P.C.

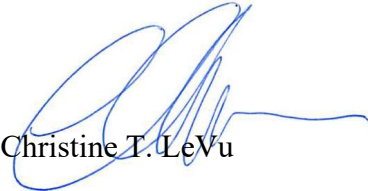
Timothy Wojcik
Jon Miller
Karla Garcia
18565 Jamboree Rd. Suite 800
Irvine, CA 92612
Tel: 949-705-3013
Fax: 949-724-1201
Email:sss

TWojcik_littler.com
jmiller_littler.com
kgarcia_littler.com

CC: Heather Hauck
HHauck_littler.com

(State): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 7, 2024, at San Diego, California.


Christine T. LeVu