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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF LOS ANGELES**

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

16 Plaintiff,

17 vs.

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

23 Defendants.

Case No. 23STCV10241

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).

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 for herself, and on behalf of all current and former aggrieved employees that worked
10 for DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

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

23 THE PARTIES

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

26 5. Fund California, LLC is a limited liability company that at all relevant times
27 mentioned herein conducted and continues to conduct substantial business in the state of
28

1 California.

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

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

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

12 9. PLAINTIFF was employed by DEFENDANT in California from December 28,
13 2020 to June of 2022 and was at all times classified by DEFENDANT as a non-exempt
14 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
15 payment of minimum and overtime wages due for all time worked.

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

24 11. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES
25 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
26 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
27 DEFENDANT’s violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
28 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,

1 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
2 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the
3 applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED
4 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

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

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

22 23 THE CONDUCT

24 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
25 was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time
26 worked, meaning the time during which an employee is subject to the control of an
27 employer, including all the time the employee is suffered or permitted to work.
28 DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without

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

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

24 16. The second component of PLAINTIFF's and the AGGRIEVED
25 EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that
26 paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their
27 performance for DEFENDANT. The non-discretionary incentive program provided all
28 employees paid on an hourly basis with incentive compensation when the employees met the

1 various performance goals set by DEFENDANT. However, when calculating the regular
2 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
3 the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
4 compensation as part of the employees' "regular rate of pay" for purposes of calculating
5 overtime pay and meal and rest break premium pay. Management and supervisors described
6 the incentive program to potential and new employees as part of the compensation package.
7 As a matter of law, the incentive compensation received by PLAINTIFF and the
8 AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to
9 do so has resulted in a underpayment of overtime compensation and meal and rest break
10 premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by DEFENDANT.

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

23 18. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
24 EMPLOYEES were also required from time to time to work in excess of four (4) hours
25 without being provided ten (10) minute rest periods. Further, these employees were denied
26 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
27 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
28 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,

1 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
2 hours or more from time to time. PLAINTIFF and the AGGRIEVED EMPLOYEES were
3 also not provided with one hour wages in lieu thereof. Additionally, the applicable
4 California Wage Order requires employers to provide employees with off-duty rest periods,
5 which the California Supreme Court defined as time during which an employee is relieved
6 from all work related duties and free from employer control. In so doing, the Court held that
7 the requirement under California law that employers authorize and permit all employees to
8 take rest period means that employers must relieve employees of all duties and relinquish
9 control over how employees spend their time which includes control over the locations
10 where employees may take their rest period. Employers cannot impose controls that prohibit
11 an employee from taking a brief walk - five minutes out, five minutes back. Here,
12 DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED EMPLOYEES from
13 unconstrained walks and is unlawful based on DEFENDANT's rule which states
14 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
15 their rest period.

16 19. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
17 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
18 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
19 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for
20 all time worked, meaning the time during which an employee was subject to the control of
21 an employer, including all the time the employee was permitted or suffered to permit this
22 work. DEFENDANT required these employees to work off the clock without paying them
23 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or
24 should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under
25 compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED
26 EMPLOYEES forfeited time worked by working without their time being accurately
27 recorded and without compensation at the applicable minimum wage and overtime wage
28 rates. To the extent that the time worked off the clock does not qualify for overtime

1 premium payment, DEFENDANT fails to pay minimum wages for the time worked off-the-
2 clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

26 in [I]n addition to, and entirely independent and apart from, any other penalty provided
27 this article, every person who fails to pay the wages of each employee as provided in
28 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
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

1 (\$200) for each failure to pay each employee, plus 25 percent of the amount
2 unlawfully withheld.

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

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

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

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

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

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

9 28. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
10 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred
11 by the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of
12 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
13 2802, employers are required to indemnify employees for all expenses incurred in the course
14 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
15 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
16 employee in direct consequence of the discharge of his or her duties, or of his or her
17 obedience to the directions of the employer, even though unlawful, unless the employee, at
18 the time of obeying the directions, believed them to be unlawful."

19 29. In the course of their employment PLAINTIFF and the AGGRIEVED
20 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
21 personal cellular phones as a result of and in furtherance of their job duties as employees for
22 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
23 associated with the use of their personal cellular phones for DEFENDANT's benefit.
24 Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were required by
25 DEFENDANT to use their personal cellular phones. As a result, in the course of their
26 employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES
27 incurred unreimbursed business expenses which included, but were not limited to, costs
28

1 related to the use of their personal cellular phones all on behalf of and for the benefit of
2 DEFENDANT.

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

9 31. DEFENDANT knew or should have known that PLAINTIFF and other
10 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
11 when it did not interfere with the performance of their duties, and that DEFENDANT did
12 not provide suitable seating and/or did not allow them to sit when it did not interfere with
13 the performance of their duties.

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

21 33. The employment of PLAINTIFF and some AGGRIEVED EMPLOYEES has
22 terminated and DEFENDANT has not tendered payment of all wages owed as required by
23 law. Additionally, at all times during the term of PLAINTIFF's employment with
24 DEFENDANT, PLAINTIFF and AGGRIEVED EMPLOYEES earned and accrued vested
25 vacation and holiday time on the date of their termination pursuant to DEFENDANT's
26 uniform vacation policies and applicable California law. The amount of vacation pay
27 PLAINTIFF and the other AGGRIEVED EMPLOYEES earned and accumulated is
28 evidenced by DEFENDANT's business records. Additionally, DEFENDANT also underpaid

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

26 34. All of the conduct and violations alleged herein occurred during the PAGA
27 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
28 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations

1 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
2 2018 AJDAR 12157 (Certified for Publication 12/19/18).

3
4 **JURISDICTION AND VENUE**

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

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

13
14 **FIRST CAUSE OF ACTION**

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

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

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

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

20 38. PAGA is a mechanism by which the State of California itself can enforce state
21 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
22 the state's labor law enforcement agencies. An action to recover civil penalties under
23 PAGA is fundamentally a law enforcement action designed to protect the public and not to
24 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
25 but to create a means of "deputizing" citizens as private attorneys general to enforce the
26 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
27 public interest to allow aggrieved employees, acting as private attorneys general to recover
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1 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
2 claims cannot be subject to arbitration.

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

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

21 41. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
23 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
24 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
25 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
26 required expenses, and (f) failed to provide wages when due, all in violation of the
27 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
28 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,

1 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
2 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the
3 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
4 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
5 Labor Code Private Attorney General Act of 2004 as the representative of the State of
6 California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
7 EMPLOYEES.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
11 severally, as follows:

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

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

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

18 Dated: May 8, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
19 LLP

20
21 By: /s/ Nicholas De Blouw
22 Norman B. Blumenthal
23 Nicholas J. De Blouw
24 *Attorneys for Plaintiff*

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26
27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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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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“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

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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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