Clarkson

Glenn A. Danas, Esq.
Partner

Clarkson Law Firm P.C.
22525 Pacific Coast Highway
Malibu, CA 90265
Tel: (213) 788-4050
Direct: (213) 786-1071
Fax: (213) 788-4070
gdanas@clarksonlawfirm.com

April 14, 2023

<u>VIA ONLINE ELECTRONIC SUBMISSION</u>

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102
SUBMITTED ONLINE

Re: Notice Pursuant to California Labor Code § 2699.3 re Beachbody LLC

Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code § 2698, et seq., Ms. Jessica Lyons provides this notice on behalf of herself and other aggrieved employees in the State of California to the Labor and Workforce Development Agency ("LWDA") and Beachbody LLC (now also known as "BODi" and "Beachbody on Demand", and including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively, ‘‘Beachbody’’) of Labor Code and Industrial Welfare Commission ("IWC") Wage Order violations committed by Beachbody. Please allow this letter to serve as notice and a request pursuant to § 2699.3 of the California Labor Code that your agency investigate the claims described below. If the agency does not intend to investigate the alleged violations, we ask that you please notify us of that fact. If your agency decides not to investigate the below-described claims, Ms. Lyons intends to pursue civil penalties through a court action and/or in arbitration, on behalf of herself and the other aggrieved employees against whom Labor Code and Wage Order violations were committed by Beachbody.

Introduction

Beachbody (now also doing business as "BODi" and/or "Beachbody on Demand") is headquartered in El Segundo, California. Beachbody develops and sells in-home fitness and weight loss products online. Pursuant to Beachbody's business model, it establishes explicit relationships with various individuals known as "Coaches" or "Partners" who market and sell

Beachbody products for Beachbody, establishing and managing a broad range of employment policies and procedures for these "Team Beachbody Coaches." Despite calling these salespeople "Coaches" or "Partners" but designating them independent contractors, these "Coaches" or "Partners" are in fact employees under California law. Beachbody has violated numerous provisions of the California Labor Code and applicable IWC Wage Order by denying its Coaches and/or "Partners" the compensation, other benefits and statutory entitlements that they are owed.

One of the many individuals whom Beachbody employs as a Coach and/or Partner is Ms. Lyons. Ms. Lyons worked for Beachbody as a Team Beachbody Coach from approximately December 2016 to March 2023 in California. During that entire time, Ms. Lyons was under Beachbody's control, selling and marketing Beachbody products online in accordance with strict guidelines.

Unless the agency decides to investigate and issue citations for Beachbody's numerous Labor Code and Wage Order violations, Ms. Lyons intends to bring a representative action in court and/or in arbitration seeking civil penalties for violations of the Labor Code that are recoverable under PAGA on behalf of the State of California and all other aggrieved employees. The aggrieved employees on whose behalf Ms. Lyons will file a PAGA civil action include all current and former Beachbody "Coaches" and/or "Partners" who sold Beachbody products and services in the State of California during the relevant statutory period, and any other individuals who are actually non-exempt employees of Beachbody under California law.

As set forth below, Beachbody has violated and/or continues to violate, among other provisions of the California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 226.8, 510, 512(a), 1194, 1997, 1997.1, 2802, and IWC Wage Orders, including inter alia, Wage Order No. 4.

Willful Misclassification of an Individual as an Independent Contractor

California law prohibits the willful misclassification of an individual as an independent contractor when he or she is in fact an employee under California law. Cal. Lab. Code § 226.8(a). "Willful misclassification" means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor. Cal. Lab. Code § 226.8(i)(4). When an employer willfully misclassifies an individual as an independent contractor, the employer is subject to civil penalties. Cal. Lab. Code § 226.8(b)–(c). Beachbody willfully misclassified Ms. Lyons and other aggrieved employees as independent contractors, because it has been clear for several years now under California law that its "Coaches" or "Partners" are in fact employees under Cal. Lab. Code § 2775, insofar as such "Coaches" or "Partners" are under Beachbody's control in performing their selling duties, the selling duties that "Coaches" or "Partners" do is within the usual course of Beachbody's business, and they are not engaged in an independently established trade, occupation or business. Even under a looser definition of "employee," "Coaches" or "Partners" would also be considered employees because Beachbody controls the manner and means through which Ms. Lyons and other aggrieved employees carry out their duties, including but not limited to restricting advertising, restricting what channels products may be sold through, and providing proprietary lists and direct customer leads.

Failure to Provide Meal Periods and Rest Periods

California law requires employers to provide their employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a); Wage Order No. 4. A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a); Wage Order No. 4. Further, an employer must provide an uninterrupted rest period of no less than ten (10) minutes for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7; Wage Order No. 4. When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Beachbody failed to provide Ms. Lyons or the other aggrieved employees with an opportunity to take timely, uninterrupted meal and rest periods of the requisite length, free from employer control. Beachbody also failed to compensate Ms. Lyons and the other aggrieved employees properly for the non-compliant meal and rest periods including, inter alia, missed, short, late, and/or interrupted meal and rest periods. Beachbody also failed to pay premium wages for the many meals and rest breaks that Ms. Lyons and the aggrieved employees were deprived of. Indeed, Beachbody did not provide any meal or rest breaks or premium compensation for missed breaks to Ms. Lyons or other aggrieved employees, since Beachbody improperly classified its Coaches as independent contractors who were not entitled to meal or rest breaks.

Failure to Pay Minimum Wages and Failure to Pay Overtime Wages

Beachbody violated California Labor Code sections 1194, 1197, and 1197.1 and Wage Order No. 4 by failing to pay Ms. Lyons and other aggrieved employees at least minimum wages for all hours worked. Primarily, this was due to Beachbody having misclassified its Coaches and/or Partners as independent contractors rather than as employees. Ms. Lyons and other aggrieved employees were required or knowingly permitted to perform all their work duties off-the-clock, including but not limited to training, communicating with Beachbody, and selling and marketing Beachbody products and services. By failing to pay Ms. Lyons and other aggrieved employees any wages for their time spent performing work duties for Beach Body, Beachbody violated Labor Code sections 1194, 1197, and 1197.1 and Wage Order No. 4, which require employers to pay at least the legal minimum wage to their employees.

California Labor Code section 510 and Wage Order No. 4 require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek. During the relevant time period, Ms. Lyons and other aggrieved employees worked over 8 hours in a day and/or 40 hours in a week without overtime compensation because

Beachbody failed to pay them for their work duties, as described above. This was, in turn, due to Beachbody's unlawful misclassification of Coaches as independent contractors rather than as employees. On occasions when Ms. Lyons and other aggrieved employees had already worked eight hours in one day (performing all their work off-the-clock), Beachbody failed to pay them any overtime compensation due. Therefore, Ms. Lyons and the other aggrieved employees were entitled to receive overtime compensation from Beachbody that Beachbody failed to pay, violating Labor Code § 510 and Wage Order No. 4.

Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor more than the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant period, Beachbody failed to pay Ms. Lyons and other aggrieved employees all wages due to them, including minimum wages, overtime wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204. Moreover, Beachbody failed to pay Ms. Lyons or other aggrieved employees earned commissions in a timely and complete fashion.

Failure to Timely Pay Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant period, Beachbody willfully misclassified Ms. Lyons and other aggrieved employees as independent contractors rather than employees, and willfully failed to pay them overtime, or meal or rest break premiums for missed breaks, during their employment with Beachbody. When "Coaches" and/or "Partners" such as Ms. Lyons and other aggrieved employees were terminated or quit, Beachbody willfully failed to pay them all wages to which they were entitled. Moreover, Beachbody failed to pay Ms. Lyons and other aggrieved employees all commissions owed to them prior to their termination. Beachbody's willful failure to pay such commissions during employment carried on following termination of Ms. Lyons and other aggrieved employees' employment.

//

//

Failure to Keep Accurate Payroll Records

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant period, Beachbody failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages paid to Ms. Lyons and other aggrieved employees.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code section 226(a) and Wage Order No. 4 require an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, inter alia, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer. Beachbody failed to provide *any* wage statements to Ms. Lyons and other aggrieved employees, despite being required to do so. Accordingly, Beachbody is subject to civil penalties under Labor Code section 226.3.

Failure to Reimburse Necessary Business Expenses

Labor Code section 2802 and Wage Order No. 4 require employers to indemnify their employees for all necessary business expenses that they incur in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant period, Ms. Lyons and other aggrieved employees incurred necessary business- related expenses and costs that were not fully reimbursed by Beachbody. These costs include, but are not limited to, the use of personal cell phones and computers, Wi-Fi and internet connections, premium memberships for access to sites like youtube.com that “Coaches” and/or “Partners” were required to use to market and sell Beachbody services and products, home office equipment, ring lights other equipment for making content videos, among other expenses. Indeed, Ms. Lyons and the other aggrieved employees absorbed all the costs associated with marketing and selling Beachbody’s products and services at their own expense and without reimbursement by Beachbody. Ms. Lyons and the aggrieved employees are entitled to reimbursement for all such expenses.

* * *

Beachbody has violated, caused to be violated, or is currently violating, numerous provisions of the California Labor Code, as described above. Ms. Lyons respectfully requests that the agency investigate the above allegations, and, in any event, provide notice regarding its intent to investigate pursuant to Labor Code § 2699.3. If the agency does not intend to investigate the alleged violations, Ms. Lyons respectfully requests a letter confirming the same so that we may bring a civil action under PAGA against Beachbody for the violations described in this letter. Please know that we intend to file a civil complaint and to bring the appropriate claims under Labor Code § 2699 should your office decline to investigate, or investigate but decline to issue citations, within the time frames set out in Labor Code § 2699.3.

Should you require anything further or have questions, please do not hesitate to contact me. Thank you for your consideration.

Respectfully Submitted,

CLARKSON LAW FIRM, P.C.

Glenn A. Danas, Esq.