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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/28/2023 at 02:15:00 PM

Clerk of the Superior Court
By Katie Winburn, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

LISSET TREDO, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

ADEMCO INC.; RESIDEO TECHNOLOGIES,
INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00027207-CU-OE-CTL

*Assigned to the Hon. Carolyn Caietti
Department C-70*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages
2. Untimely Payment of Wages
3. Wage Statement Violations
4. Waiting Time Penalties
5. Unfair Competition
6. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

Action Filed: June 29, 2023

1 Plaintiff LISSET TRED0, individually and on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants and
4 DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a class and representative actions brought under California Code of Civil
7 Procedure section 382 for Defendants’ violations of the California Labor Code and Business and
8 Professions Code.

9 2. Plaintiffs also seek civil penalties under the Private Attorneys General Act of 2004 for
10 Defendants’ violations of the California Labor Code.

11 3. Defendants underpaid the class members’ wages by failing to include all forms of
12 remuneration, including shift differentials, into the regular rate of pay calculation (or other appropriate
13 lawful method) for sick pay.

14 4. Defendants’ employment policies and practices and payroll administration systems
15 enabled and facilitated these violations on a company-wide basis with respect to the class members.

16 **JURISDICTION & VENUE**

17 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
18 California Constitution as the causes of action are premised upon violations of California law.

19 6. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
20 the Superior Court.

21 7. This Court has jurisdiction over Defendants because, upon information and belief,
22 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
23 themselves to the California economy so as to render the exercise of jurisdiction over them by the
24 California courts consistent with traditional notions of fair play and substantial justice.

25 8. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
26 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
27 of the alleged violations in this county.

PARTIES

A. Plaintiff Lisset Tredo

9. Plaintiff Tredo is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about February 2022. Plaintiff worked as a Quality Inspector.

10. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

B. Defendants

11. Throughout the respective statutory periods, the Defendants were the legal employer of Plaintiff and the class members.

12. Defendants Ademco Inc. and Resideo Technologies, Inc. are corporations that maintain operations and conduct business throughout the State of California, including in this county.

13. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

14. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

15. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

16. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

17. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

18. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

19. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys

1 who have substantial experience prosecuting, defending, resolving, and
2 litigating wage and hour class, collective, and representative actions in
3 California state and federal courts.

4 d. Superiority: A class action is superior to other means for adjudicating this
5 dispute. Individual joinder is impractical. Class treatment will allow for
6 common issues to be resolved in a single forum, simultaneously, and without
7 duplication of effort and expense.

8 e. Public Policy Considerations: Certification of this lawsuit as a class action
9 advances the State of California's strong public interest in ensuring its
10 approximately millions of employed residents are properly paid the wages they
11 earned for the hours they worked. Class actions provide a mechanism for
12 enforcement of labor laws and allow for vindication of employee rights by
13 unnamed class members.

14 20. Common questions of law and fact as to the class members predominate over questions
15 affecting only individual members. The common questions of law and fact exist as to whether the
16 employment policies and practices formulated by Defendants and applied to the class members
17 constitute violations of California law.

18 **GENERAL ALLEGATIONS**

19 21. Plaintiff and class members worked for Defendants and were compensated on an hourly
20 basis as nonexempt employees. In addition to earning hourly compensation, Defendants paid Plaintiff
21 and the class members other forms of non-discretionary remuneration, including shift differentials and
22 other forms of additional pay. When Defendants paid these additional earnings to Plaintiff and the
23 class members, Defendants failed to include those amounts in the statutory rate due for sick pay.

24 22. For example, in the pay period of February 20, 2023, to March 5, 2023, Plaintiff earned
25 \$80.57 in shift differential pay in addition to Plaintiff's base hourly rate. Plaintiff also used paid sick
26 leave in this period, which was paid her straight hourly rate, rather than at the regular rate of
27 compensation, which would have included the shift differential payment in the calculation of her sick
28 leave rate.

23. Further, on all of Plaintiff and class members' wage statements, Defendants failed to list the proper name and address the employer. Instead, Defendants improperly listed a shorthand name, "Resideo" instead of the legal employer, in violation of Labor Code § 226(a)(8).

24. Because of the aforementioned violations, Defendants failed to provide accurate itemized wage statements that included the accurate gross or net wages and the proper name and address of the employer. Likewise, paid sick leave was paid at inaccurate hourly wage rates (*i.e.* the base rate instead of the regular rate) which violates the wage statement requirement to include the correct hourly rate in effect each pay period along with the correct number of hours. Therefore, Defendants have provided inaccurate and non-compliant wage statements to class members.

25. These violations create derivative liability for failure to pay all wages owed each payday or upon separation of employment.

26. As a result of the forgoing violations, Defendants also failed to timely pay all wages as they were due to Plaintiff and the class members while they were employed and also failed to timely pay all wages due to the Plaintiff and the class members at their separation of employment.

27. Through this action, Plaintiffs seek to enforce the rights of the State of California, through the LWDA, to enforce the Labor Code and collect civil penalties for Defendant's Labor Code violations.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

Violation of Labor Code §§ 200, 218

28. All outside paragraphs of this Complaint are incorporated into this section.

29. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiff and a paid sick leave subclass in violation of Labor Code section 246 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay”].)

30. Based on Defendants' failure to provide sick pay at the lawful rate, Defendants are liable for the underlying wages pursuant to Labor Code §§ 200 and 218.

31. Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

[A]n employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

32. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one of the lawful rates set forth in the statute because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiff and class members.

33. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19 Supplemental Sick Leave wages to class members at the correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

34. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to

1 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022
2 to September 30, 2022, and may be extended thereafter.

3 35. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental
4 Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period,
5 (2) state minimum wage, (3) local minimum wage.

6 36. Under Labor Code section 248.2, non-exempt employees must be paid supplemental
7 paid sick leave according to the highest of the following four methods:

8 (I) Calculated in the same manner as the regular rate of pay for the workweek in which
9 the covered employee uses COVID-19 supplemental paid sick leave, whether or not
10 the employee actually works overtime in that workweek.

11 (II) Calculated by dividing the covered employee's total wages, not including
12 overtime premium pay, by the employee's total hours worked in the full pay periods
13 of the prior 90 days of employment.

14 (III) The state minimum wage.

15 (IV) The local minimum wage to which the covered employee is entitled.

16 37. Labor Code section 248.6 requires employers to pay supplemental sick leave using
17 either method (I) or (II), as identified above.

18 38. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
19 Leave in the manner described above because Defendants failed to include in their sick leave
20 calculation the additional remuneration received by class members.

21 39. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class
22 members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs, pursuant to
23 Labor Code § 200 and 218.

24 **SECOND CAUSE OF ACTION**

25 **UNTIMELY PAYMENT OF WAGES**

26 **Violation of Labor Code §§ 204, 210, 218**

27 40. All outside paragraphs of this Complaint are incorporated into this section.
28

41. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

42. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid pay, earned by Plaintiff and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

43. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

THIRD CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

44. All outside paragraphs of this Complaint are incorporated into this section.

45. This cause of action is brought by a wage statement subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

46. Defendants knowingly and intentionally failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and class members. Specifically, the wage statements issued to Plaintiff and class members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

47. Defendants' unlawful acts and omissions deprived Plaintiff and class members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

48. As a result, Plaintiff and class members are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

FOURTH CAUSE OF ACTION

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 *et seq.*

49. All outside paragraphs of this Complaint are incorporated into this section.

50. This cause of action is brought by a waiting time subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

51. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and class members immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

52. Plaintiff and class members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

53. All outside paragraphs of this Complaint are incorporated into this section.

1 54. Defendants have engaged and continue to engage in unfair and/or unlawful business
2 practices in the State of California in violation of California Business and Professions Code § 17200
3 by committing the foregoing wage and hour violations alleged throughout this Complaint.

4 55. Defendants' dependence on these unfair and/or unlawful business practices deprived
5 Plaintiff and continue to deprive other class members of compensation to which they are legally
6 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
7 Defendants over competitors who have been and/or are currently employing workers in compliance
8 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
9 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

10 56. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
11 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
12 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
13 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

14 57. Plaintiff does not have an adequate remedy at law for past or future violations, to the
15 extent the statute of limitations on each of the alleged causes of action do not extend to the four year
16 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
17 violations do not provide a private right of action.

18 58. Plaintiff and class members are entitled to injunctive relief against Defendants,
19 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
20 an ownership interest and to prevent future damage and the public interest under Business and
21 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
22 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
23 § 1021.5.

1 **SIXTH CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

3 **Violation of Labor Code §§ 2698 *et seq.***

4 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

5 59. All outside paragraphs of this Complaint are incorporated into this section.

6 60. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
7 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
8 codified as Labor Code section 2698 *et seq.*:

9 a. All current and former non-exempt employees who worked for Defendants in
10 California at any time from one year prior to the postmark date of the initial
11 PAGA notice through date of trial.

12 61. Plaintiff reserves the right to amend, supplement, or add to this description of the
13 aggrieved employees, according to proof.

14 62. The State of California, via the Labor and Workforce Development Agency
15 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
16 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
17 files suit is always the real party in interest.”])

18 63. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
19 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
20 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
21 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
22 action brought by an aggrieved employee on behalf of himself or herself and other current or former
23 employees pursuant to the procedures specified in Section 2699.3. “

24 64. Labor Code section 2699(f) provides: “For all provisions of this code except those for
25 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
26 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
27 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
28

1 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
2 each subsequent violation.”

3 65. Any allegations regarding violations of the IWC Wage Orders are enforceable as
4 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
5 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

6 66. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
7 penalties under the PAGA.

8 67. On or about **June 19, 2023**, Plaintiff paid the requisite PAGA filing fee and provided
9 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
10 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
11 violations.

12 68. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
13 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
14 forth herein (the “PAGA notice”), as amended and filed on June 21, 2023.

15 69. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
16 written PAGA notice from the LWDA.

17 70. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
18 Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant
19 providing a description of any actions taken to cure the alleged violations.

20 71. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
21 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
22 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
23 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

24 72. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
25 Complaint, Defendants committed the following violations and are liable for all corresponding civil
26 penalties:

27 a. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
28

- b. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- c. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- d. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- e. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

73. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For recovery of damages in amount according to proof;
- e. For all recoverable pre- and post-judgment interest;
- f. For recovery of all civil and statutory penalties and liquidated damages;
- g. For disgorgement of all amounts wrongfully obtained;
- h. For this action to be maintained as a representative action under the PAGA;
- i. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- j. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- k. For restitution and injunctive relief;

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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June 21, 2023

VIA EMAIL & CERTIFIED U.S. MAIL

Ademco Inc.
2 Corporate Center Drive
Melville, New York 11747

Resideo Technologies, Inc.
8825 N. 23rd Avenue
Suite 100
Phoenix, Arizona 85021

Re: LWDA Notice dated June 19, 2023 - Plaintiff Lisset Tredo

To Whom It May Concern:

Please be advised that our office filed and mailed the enclosed Notice of Labor Code Violations to **Ademco Inc.** (D/B/A Resideo Technologies, Inc.) on behalf of Plaintiff Lisset Tredo.

This letter is provided individually to each company—**Resideo Technologies, Inc.** and **Ademco Inc.**—to provide direct notice of their inclusion in the original Notice as defendant employers and as such each liable for civil penalties under the PAGA for the claims alleged in the Notice.

Please contact our office if you have any questions.

Sincerely,



Nicholas J. Ferraro

Enclosure – LWDA Notice, dated June 19, 2023

Cc Lauren N. Vega (lauren@ferrarovega.com)

Kristin Graham

Kristin.graham@resideo.com

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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June 19, 2023

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

**Ademco Inc. (d/b/a Resideo
Technologies, Inc.)**
2 Corporate Center Dr.
Melville, NY 11747

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **LISSET TREDO** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

ADEMCO INC. (D/B/A RESIDEO TECHNOLOGIES, INC.)

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Quality Inspector from about February 2022 to present. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Paid Sick Leave

Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid

sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate. The sick leave regular rate-based calculation mirrors the overtime calculation inclusive of supplemental pay, including shift differentials. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 869.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendant failed to comply with California’s paid sick leave laws with respect to the aggrieved employees by not paying Plaintiff and the aggrieved employees sick leave at the correct rate, which should have included the additional remuneration that Plaintiff was paid. Defendant paid sick leave at employees’ base hourly rate and failed to factor in additional compensation, like shift differentials. For example, as demonstrated in Plaintiff Tredo’s wage statement from 3/10/2023 below, Defendant improperly maintained a policy and practice of paying sick leave at only the base rate in violation of Labor Code Section 246.



CO EMPLOYER ID 000000-000000
FCSJH2 243811
Cost Center: 48202220

Resideo
1985 Douglas Drive North
Golden Valley, MN 55422

Payroll questions: email HRAdvisor@Resideo.com

Earnings Statement

Page 001 of 002
Period Beg/End: 02/20/2023 - 03/05/2023
Advice Date: 03/10/2023
Advice Number: 0125087491
Batch Number: 000000002551

LISSET TREDO
Rada
Rada
Rada

Earnings					Other Benefits and Information		
	Rate	Hours/Units	Amount	Year-To-Date		This Period	Year-to-Date
Overtime paid	0.5	9.6209	0.18	1.73	Excess Life	0.48	2.40
Overtime paid	0.5	9.2501	0.35	3.24	Quota Summary	Earned	Used
Shift	.50		40.39	20.20	Sick Hours	72.00	33.93
Shift	.50		40.18	20.09	Payment Method	Amount	
Regular working	ti18.0000	40.04	720.72	205.15	Direct Deposit	841.88	
Regular working	ti18.0000	16.00	288.00	5,289.84	Direct Deposit	280.62	
Overtime paid	1.0	18.0000	0.35	6.30	YOUR federal taxable wages	1,379.88	
Overtime paid	1.0	18.0000	0.18	3.24	*Excluded from Federal Taxable Wages		
Holiday Pay				188.10			
Vacation Pay				720.00			
Sick pay	18.0000	24.00	432.00	1,042.74			
Gross Pay				1,495.52			
				7,686.65			

Because Defendants routinely failed to include shift differentials and other remuneration in sick pay calculations, Defendants underpaid Plaintiff and the aggrieved employees their sick leave in violation of California law.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and sick leave in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Specifically, Defendants failed to include all forms of remuneration in the regular rate of compensation, as noted above, resulting in an underpayment of wages each payday, in violation of the forgoing sections of the Labor Code.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and sick leave owed to aggrieved employees during their employment as set forth in this notice, and, on information and belief, also failed to timely pay those amounts to departing employees upon separation of employment. Specifically, Defendants failed to include all forms of remuneration in the regular rate of compensation, as noted above, resulting in an underpayment of wages each payday in violation of the forgoing sections of the Labor Code. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and sick leave wages that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements.

Further, as seen in Plaintiff’s wage notice and wage statements below, Defendants violated Labor Code section 226(a)(8) by not listing the correct legal name and address of the employer on Plaintiff and the aggrieved employees’ wage statements.

Plaintiff’s 2022 Notice to Employee states that her legal employer is “Ademco Inc.”

NOTICE TO EMPLOYEE <i>Labor Code section 2810.5</i>	
EMPLOYEE	
Employee Name: <u>Lisset Tredo</u>	
Start Date: <u>02/07/2022</u>	
EMPLOYER	
Legal Name of Hiring Employer: <u>Ademco Inc.</u>	
Is hiring employer a staffing agency/business (e.g., Temporary Services Agency; Employee Leasing Company; or Professional Employer Organization [PEO])? ☐ Yes ☒ No	
Other Names Hiring Employer is "doing business as" (if applicable): <u>Resideo Technologies Inc.</u>	

However, on Plaintiff's and the aggrieved employees' wage statements, the employer is listed as "Resideo" which differs from Defendants' stated legal name, and their "doing business as" name. Below is an example of the improper naming on Plaintiff's 05/07/2021 wage statement:

 resideo	CO	EMPLOYEE ID	000218-000207	Earnings Statement	
	FCSJH2	243811			
	Cost Center: 48201000				
	Resideo 1985 Douglas Drive North Golden Valley, MN 55422				
				Page	001 of 002
				Period Beg/End:	04/19/2021 - 05/02/2021
				Advice Date:	05/07/2021
				Advice Number:	0079387955

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

Finally, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records **Violation of Labor Code § 1174; IWC Wage Orders**

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate "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." Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Plaintiff Lisset Tredo

Kristin Graham

Kristin.graham@resideo.com