



June 9, 2023

VIA LWDA WEBSITE

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

Re: *Jessica Uribe v. Auto Driveaway Franchise Systems, LLC, et al.*

To Whom It May Concern:

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

ADFS is in the transportation business and employs employees to transport vehicles. Ms. Uribe worked for ADFS between approximately October 1, 2020 until approximately November 16, 2022 when she went on disability leave. Ms. Uribe’s job duties revolved around delivering vehicles to customers throughout Northern, Central and Southern California. Ms. Uribe generally worked Monday through Friday for an average of 70 hours per week. However, as discussed below, Ms. Uribe worked considerably more hours than she was credited for by ADFS, who intentionally shaved hours worked off of the timesheets of Ms. Uribe and other aggrieved employees, and falsely manipulated their hours to reflect that they exercised 30-minute unpaid meal periods that in reality they were unable to take.

For purposes of this letter, the “aggrieved employees” whom Ms. Uribe seeks to represent are the other non-exempt employees of ADFS who performed work for ADFS in California at any time during the one year preceding the date of this letter through the present.

Throughout the duration of Ms. Uribe’s employment with ADFS, Ms. Uribe and other aggrieved employees were not paid for all hours worked as their supervisors intentionally acted to deprive them of compensation that they were duly entitled to through rounding, time shaving, and otherwise manipulating their hours to reflect that they worked fewer hours than they actually did. Ms. Uribe clocked in and out on her personal cellular

phone using an application called “Paylocity” at the express direction of ADFS. Ms. Uribe would clock in when she entered her company vehicle at the beginning of her work day, and clocked out upon exiting the company vehicle at the end of her workday. However, upon information and belief, the time records maintained by ADFS were not reflective of the actual number of hours that Ms. Uribe and other aggrieved employees actually worked. For example, during the week of June 6, 2022, Ms. Uribe worked 21.05 hours, but was only compensated for 20.85 hours. This practice was pervasive throughout Ms. Uribe’s employment and was the subject of frequent complaints from Ms. Uribe and other aggrieved employees. Ms. Uribe does not recall being made to confirm or sign off on her hours worked.

Furthermore, Ms. Uribe and other aggrieved employees worked overtime hours, based on the requirements of Wage Order 9, but did not receive overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. Upon information and belief, ADFS systemically failed to pay overtime compensation due to Ms. Uribe and other aggrieved employees when they worked the requisite number of hours to be entitled to such pay. Instead, Ms. Uribe and other aggrieved employees would either be paid their normal hourly rate for overtime hours worked, or simply not paid for these hours worked at all. ADFS also failed to provide “Reporting Time Pay” to Ms. Uribe and other aggrieved employees on those occasions where they were required to report to ADFS’s worksite but not provided with at least half a day of work. Despite maintaining a policy that required its employees to report to the worksite every day regardless of how many work hours would be assigned, ADFS failed to provide any sort of compensation to Ms. Uribe and the other aggrieved employees on those occasions where they reported to the worksite but were assigned minimal or no work at all in violation of the “Reporting Time Pay” requirements as set forth in Wage Order 9 § 4. As a result of ADFS’s policy/practice of manipulating the time records of Ms. Uribe and other aggrieved employees in a manner that served to intentionally undercompensate them, ADFS failed to ensure that Ms. Uribe and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Ms. Uribe and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 9.

Ms. Uribe and other aggrieved employees were not authorized to take all legally required rest periods. Ms. Uribe does not recall ever receiving a rest period throughout her employment with ADFS. Instead, she would be made to work generally throughout the entirety of her shifts without interruption. For example, on Ms. Uribe’s wage statement with a representing the pay period between 04/23/22 and 05/07/22, Ms. Uribe’s records (which as explained above are under representative of her actual hours worked) indicate that she worked over 12 hours on 4/25/22, which should have entitled her to three rest periods. However, despite not being able to exercise any rest periods on this date, Ms. Uribe was not provided with a corresponding rest period premium. This practice was pervasive throughout Ms. Uribe’s employment. Despite ADFS’s failure to authorize and permit Ms. Uribe and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, ADFS did not provide Ms. Uribe and other

aggrieved employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, ADFS maintained no payroll code or another mechanism for the payment of rest period premiums in the event Ms. Uribe and other aggrieved employees were not authorized to take lawful rest periods.

ADFS also did not provide Ms. Uribe and other aggrieved employees with a legally compliant first meal period when they worked shifts in excess of 6.0 hours. Ms. Uribe and other aggrieved employees rarely, if ever, were entitled to exercise the use of a thirty-minute uninterrupted meal period despite almost always working at least 6.0 hours in a day. Rather, Ms. Uribe and other aggrieved employees would generally work through their shifts without taking any time for a compliant meal period, instead opting to eat while driving, if at all. For example, on Ms. Uribe's wage statement representing the pay period between 04/23/22 and 05/07/22, Ms. Uribe's records indicate that she worked 8.25 hours on 4/25/22 before allegedly receiving a meal period meaning that she should have been provided with a meal period premium as the meal period she received, if she even was able to exercise it, was not taken until well after the 5th hour worked. Despite the fact that she experienced a meal period violation on this date, Ms. Uribe was not provided with any corresponding premium payments. This practice was pervasive throughout Ms. Uribe's employment with ADFS, such as on May 28, 2022, when after Ms. Uribe worked through her shift without being able to exercise any meal or rest periods, Ms. Uribe's supervisor Jonathan Mei sent Ms. Uribe a text stating, "I went ahead and adjusted the timesheet...I clocked you and Gilbert out at 3:00 p.m. for Thursday." Ms. Uribe responded "[t]hank you I don't think He took lunch either [sic]." Consistent with the text, Ms. Uribe's timesheet for Thursday, May 26, 2022 shows a clock out time of 3:00 p.m. and a lunch period from noon to 12:30 p.m. even though Ms. Uribe did not exercise any meal period, and worked beyond 3:00 p.m. Ms. Uribe and the other aggrieved employees were not informed by ADFS of their legal right to take duty-free uninterrupted meal periods before the conclusion of their fifth hour of work pursuant to Labor Code Section 512 and frequently complained about not receiving them. ADFS was not only aware of, but actively encouraged this practice. ADFS also failed to provide second meal periods when Ms. Uribe and other aggrieved employees worked shifts in excess of 10.0 hours. Ms. Uribe frequently worked in excess of 10 hours during her employment, but she cannot recall ever receiving a second meal period. For example, during her shifts on May 17, 23, 24, 25 and 31st, along with June 1, 2, 3, and 7th, Ms. Uribe worked in excess of 10.0 hours, but was only credited with having exercised one meal period (which, as discussed above, she did not actually have the opportunity to exercise). Despite ADFS's failure to provide Ms. Uribe and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, ADFS did not provide Ms. Uribe and other aggrieved employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

Furthermore, ADFS failed to adequately reimburse Ms. Uribe for all reasonable and necessary work expenditures, including but not limited to, requiring Ms. Uribe to utilize her personal cellular phone in the performance of her work duties at the express direction of her supervisors for the purpose of i) clocking in and out; ii) contacting

customers; and iii) using the GPS on her personal cellular phone for navigation while driving, all for the benefit of ADFS. Despite ADFS's requirement that Ms. Uribe and other aggrieved employees utilize their personal cellular phones in the performance of their job duties, at no point were they ever provided any reimbursement for their necessary use.

As a result of ADFS's failure to accurately compensate Ms. Uribe and other aggrieved employees for all hours worked, failure to pay all minimum and overtime wages, and failures to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof, ADFS have maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and issued inaccurate wage statements. Moreover, Defendants failed to timely pay all wages owed in violation of Labor Code § 204. For example, on Plaintiff's wage statement numbered 2511, Plaintiff was paid for work performed during the period of May 23, 2022, to June 7, 2022, but was paid on June 15, 2022. Labor Code § 204(a), provides that wages earned between the 16th and the last day of the month must be paid between the 1st and 10th day of the month. Labor Code § 204(d) provides that the requirements of Labor Code § 204 can be satisfied by biweekly payment of wages if the wages are paid not more than seven calendar days following the closing of the payroll period. Defendants failed to satisfy either requirement because the payment for work performed between the 16th day of the month and the last day of the month was not paid by the 10th day of the following month. Instead, the payment was not made until the 15th day of the following month. Moreover, Defendants failed to satisfy Labor Code § 204(d), because Plaintiff was not paid within seven calendar days following the close of the payroll period, and instead had to wait until at least 8 days after the end of the payroll period.

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

As described above, ADFS committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 9 ("Wage Order 9"):

Minimum Wage Violations

ADFS was required to pay Ms. Uribe and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1182.12, 1194; 1194.2, 1197; Wage Order 9 § 4. As alleged above, ADFS maintained and

maintains timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Ms. Uribe and other aggrieved employees whether by rounding, time-shaving, or otherwise. As a result of these policies/practices, which fail to compensate for all hours worked, Ms. Uribe and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

ADFS was required to pay Ms. Uribe and other aggrieved employees overtime wages for all overtime hours worked. *See* Labor Code §§ 1194(a) and 1198; Wage Order 9, § 3. Wage Order 9, § 3 requires an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order. At all times relevant herein, ADFS caused Ms. Uribe and other aggrieved employees to work overtime hours but did not compensate Ms. Uribe and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

ADFS was also required to pay Ms. Uribe and other aggrieved employees reporting time pay when ADFS required them to report to work, provided them with minimal hours of work and then failed to compensate them for at least half of the usual or scheduled day's work. *See* Wage Order 9 § 4 (A).

Meal Period Violations

As alleged above, ADFS failed to provide Ms. Uribe and other aggrieved employees with all required and compliant meal periods due to ADFS's meal period policies/practices that often fail to provide 30 minute off-duty first meal periods before the end of the fifth hour of work. *See* Labor Code §§ 226.7 and 512; Wage Order 9, § 10. As a result, Ms. Uribe and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, ADFS also failed to authorize and permit Ms. Uribe and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 9, § 11. As a result, Ms. Uribe and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required paid rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the

employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Failure to Reimburse Necessary Business Expense

ADFS was subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." ADFS was subject to Labor Code § 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." As alleged herein, due to ADFS's unlawful reimbursement practices, ADFS failed to indemnify Ms. Uribe and other aggrieved employees for all necessary business expenses incurred, including, among other things, use of their personal cellular phones in the performance of their work duties. Ms. Uribe and other aggrieved employees were not ever provided any reimbursement for its necessary use.

Wage Statement Violations

ADFS was required to furnish Ms. Uribe and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 9, § 6. As a result of ADFS's failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, ADFS maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Uribe and other aggrieved employees in violation of Labor Code § 226.

Waiting Time Penalties

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

As an "aggrieved employee," Ms. Uribe will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil

penalties resulting from the wage and hour violations alleged herein. Based on Ms. Uribe's own investigation, and on information and belief, ADFS committed and continues to commit the following Labor Code violations:

- a. ADFS violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Ms. Uribe and other aggrieved employees the statutory minimum wage for all hours worked;
- b. ADFS violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Uribe and other aggrieved employees all overtime compensation earned;
- c. ADFS violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. Uribe and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. ADFS violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Ms. Uribe and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Ms. Uribe and other aggrieved employees at their respective regular rates of compensation;
- e. ADFS violated Labor Code §§ 2802 and 2804 by failing to reimburse Ms. Uribe and other aggrieved employees for all work-related expenses incurred;
- f. ADFS violated Labor Code § 226 by failing to furnish Ms. Uribe and other aggrieved employees with accurate and compliant itemized wage statements;
- g. ADFS violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Ms. Uribe and other aggrieved employees;
- h. ADFS violated Labor Code § 204 by failing to pay Ms. Uribe and other aggrieved employees all wages earned at least twice during each calendar month;
- i. ADFS violated Labor Code § 205 by failing to pay Ms. Uribe and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday
- j. ADFS violated Labor Code § 245.5 by failing to permit and authorize Ms. Uribe and other aggrieved employees to exercise the use of their accrued paid sick leave days;
- k. ADFS violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Ms. Uribe and other aggrieved employees; and

1. ADFS violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Ms. Uribe and other aggrieved employees.

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

Very truly yours,
STANSBURY BROWN LAW, PC

Jessica Flores

cc: Auto Driveaway Franchise Systems, LLC (via certified mail)