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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/11/2023 at 09:32:24 AM
Clerk of the Superior Court
By Joseph Callier III, Deputy Clerk

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

FREDERICK HUTCHINSON, individually and
on behalf of all others similarly situated and the
State of California under the Private Attorneys
General Act,

Plaintiff,

vs.

BDS CONNECTED SOLUTIONS, LLC and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00034897-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff FREDERICK HUTCHINSON, individually and on behalf of all others similarly
2 situated and the State of California under the Private Attorneys General Act (“Plaintiff”), brings this
3 REPRESENTATIVE ACTION COMPLAINT against Defendants BDS CONNECTED
4 SOLUTIONS, LLC and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as
5 follows:

6 **INTRODUCTION**

7 1. The aggrieved employees in this PAGA action worked for Defendants BDS Solutions,
8 LLC. Defendants underpaid aggrieved employees’ wages by failing to include all forms of
9 remuneration, including bonuses and commissions, in their hourly overtime, sick pay, and premium
10 rates, resulting in underpayment of wages.

11 2. Additionally, Defendants failed to pay at least the minimum wage for all hours worked
12 because Defendants paid Plaintiff and other aggrieved employees lower than the applicable local
13 minimum wage for drive time, and Defendants required Plaintiff and aggrieved employees to answer
14 work communications after hours, amounting to off-the-clock uncompensated work.

15 3. Further, Defendants failed to provide timely, uninterrupted, 30-minute meal periods
16 and 10-minute rest periods.

17 4. Finally, Defendants required Plaintiff and aggrieved employees to utilize their personal
18 cell phones to record time, communicate with supervisors, and navigate to worksites. Defendants did
19 not reimburse Plaintiff or the aggrieved employees for the employees’ personal cell phone data or
20 usage.

21 5. Plaintiff seeks to recover civil penalties and other recoverable amounts for these Labor
22 Code violations on behalf of the State of California and the aggrieved employees.

23 **JURISDICTION & VENUE**

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

26 7. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
27 the Superior Court.
28

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

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

PARTIES

A. Plaintiff Frederick Hutchinson

10. Plaintiff Hutchinson is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about September 2021 to April 2023. Plaintiff worked as a Retail Merchandising Specialist.

11. 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

12. Defendant BDS Connected Solutions, LLC is a Delaware limited liability company that maintains operations and conducts 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.

GENERAL ALLEGATIONS

17. The Plaintiff and aggrieved employees worked for Defendants as nonexempt employees and were compensated hourly. Plaintiff and aggrieved employees also earned other forms of remuneration in addition to their base hourly wages, including bonuses, commissions, and shift differentials. However, Defendants failed to factor these multiple forms of remuneration into the statutory rates of pay for overtime, sick leave, and premium wages.

18. For example, on Plaintiff's wage statement from July 1, 2022, Plaintiff earned shift differentials and other forms of remuneration in the same pay period as overtime. However, Defendants underpaid Plaintiff's overtime wages based on a deflated rate from his base hourly pay, excluding the extra forms of non-discretionary income.

19. On information and belief, Defendants also maintained this policy and practice of excluding some forms of non-discretionary income from the statutory rates of pay for sick leave and premiums, resulting in underpaid wages.

20. Further, Defendants did not pay Plaintiff and aggrieved employees at least the minimum wage for all hours worked. For example, Plaintiff and aggrieved employees were required to undergo mandatory pre and post shift security screenings, as well as communications with supervisors after the employees' shifts to discuss time reporting and project progress. Defendants did not compensate Plaintiff or aggrieved employees for either of these instances of off-the-clock work.

1 21. Likewise, Defendants failed to pay at least the applicable minimum wage for all hours
2 worked. For example, Plaintiff received an hourly rate of \$15.96 for drive time in 2023 even though
3 the applicable wage in San Diego County, where plaintiff worked, is \$16.30 as of 2023. As a result of
4 the above practices, Plaintiff and aggrieved employees suffered unpaid and underpaid wages.

5 22. Additionally, Defendants did not consistently provide compliant meal periods and rest
6 periods. For example, Defendants, through their supervisors, suggested to Plaintiff and the aggrieved
7 employees that the employees take their meal and/or rest periods while on duty or while driving to
8 different assignments on busier days. This practice resulted in Plaintiff and the aggrieved employees
9 suffering many late, short, missed, or interrupted meal and rest periods with no corresponding
10 premium payment. To the extent Defendants paid these premiums, such amounts were underpaid due
11 to Defendants' policy and practice of excluding some forms of non-discretionary income from the
12 regular rate of pay as discussed above.

13 23. Defendants also required Plaintiff and aggrieved employees to incur personal expenses
14 in furtherance of the aggrieved employees' job duties. Plaintiff and the aggrieved employees needed
15 to use their personal cell phones to clock in and out, navigate between worksites, and communicate
16 with both coworkers and supervisors. To carry out these necessary job tasks, Defendants required
17 Plaintiff and the aggrieved employees to download several apps and use personal cell-phone data to
18 engage in work communications. Defendants did not reimburse Plaintiff or aggrieved employees for
19 these expenses.

20 24. Because of the aforementioned violations, Defendants failed to provide accurate,
21 itemized wage statements that included the accurate gross or net wages. Defendants paid overtime,
22 premiums, and sick leave at inaccurate hourly wage rates (*i.e.*, the base rate instead of the regular rate)
23 which violates the wage statement requirement to include the correct hourly rate in effect each pay
24 period along with the correct number of hours.

25 25. Specifically, Defendants also failed to provide corresponding rates and hours for
26 current earnings on several of the aggrieved employees' wage statements. For example, Plaintiff's
27 wage statement from July 29, 2022, shows current wages earned in the pay period for "Drive Time"
28

1 but does not list an hourly rate or hours worked for that category. Therefore, Defendants have provided
2 inaccurate and non-compliant wage statements to the aggrieved employees.

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

5 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

16 29. Plaintiff reserves the right to amend, supplement, or add to this description of the
17 aggrieved employees, according to proof.

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

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

1 32. Labor Code section 2699(f) provides: “For all provisions of this code except those for
2 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
3 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
4 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
5 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
6 each subsequent violation.”

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

10 34. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
11 penalties under the PAGA.

12 35. On or about **June 6, 2023**, Plaintiff paid the requisite PAGA filing fee and provided
13 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
14 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
15 violations.

16 36. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
17 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
18 forth herein (the “PAGA notice”).

19 37. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
20 written PAGA notice from the LWDA.

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

24 39. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
25 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
26 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
27 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*
28

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

- 4 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
5 1197, 1198; IWC Wage Orders.
- 6 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
7 Orders.
- 8 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 9 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
10 1198; IWC Wage Orders.
- 11 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
12 1198; IWC Wage Orders.
- 13 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
14 §§ 204, 204b, 210.
- 15 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
16 Labor Code §§ 201, 202, 203, 256.
- 17 h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 18 i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- 19 j. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432,
20 1174, 1198.5; IWC Wage Orders.
- 21 k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
22 Wage Orders.

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

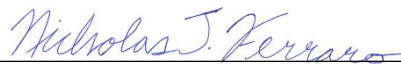
PRAYER

Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For recovery of all civil and statutory penalties and liquidated damages;
- d. For disgorgement of all amounts wrongfully obtained;
- e. For this action to be maintained as a representative action under the PAGA;
- f. 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;
- g. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- h. For restitution and injunctive relief;
- i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802, 2699, and Code of Civil Procedure section 1021.5; and
- j. For such other relief the Court deems just and proper.

Dated: August 11, 2023

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Frederick Hutchinson

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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June 6, 2023

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

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

BDS Connected Solutions, LLC
4450 E. Adamo Dr. Ste. 501
Tampa, Florida 33605

- 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 **FREDERICK HUTCHINSON** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

BDS CONNECTED SOLUTIONS, LLC

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 continues 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 operate a nationwide marketing agency employing aggrieved employees like Plaintiff in the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders. Plaintiff HUTCHINSON worked for Defendants during the PAGA Period in the position of Retail Merchandising Specialist from about September 2021 through April 2023.

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 Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and

Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Plaintiff and the aggrieved employees were often required to undergo mandatory employment tasks before clocking into their shifts such as bag checks and security screenings. Further, Plaintiff and the aggrieved employees were required to engage in phone calls with supervisors after clocking-out to discuss time reporting and project progress. Defendants did not compensate Plaintiff or the aggrieved employees for this off-the-clock work.

Second, as seen in Plaintiff’s wage statement below, Defendants did not observe the correct minimum wage for San Diego County, where Defendants required Plaintiff to work. As of Jan. 1, 2023, San Diego County requires a minimum wage of \$16.30 for hourly workers like Plaintiff and the aggrieved employees. Defendants unlawfully paid Plaintiff a rate of \$15.90 in 2023 for Drive Time hourly wages. Defendants equally violated other local minimum wage ordinances, to the extent aggrieved employees earned driving time at a rate less than the applicable minimum wage in effect in those other jurisdictions as well.

Earnings	rate	hours	this period
Drive Time	15.9600	.89	14.24
L2 Admin	16.3000	1.56	25.47
L2 Hours	16.3000	23.88	389.26
Bonus			
Daily OT			
Sick			
Training			
Gross Pay			\$428.97

Plaintiff’s pay stub from 02/10/2023

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 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” The regular rate of pay mentioned in Labor Code section 510 “encompasses all nondiscretionary payments, not just hourly wages.” *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Rather than paying Plaintiff the lawful regular rate of pay, inclusive of all wage rates, commissions, and bonuses, Defendants calculated an overtime amount lower than the Plaintiff’s regular rate of compensation. As seen in the wage statements below, Defendants incorrectly calculated the overtime based on a rate of \$15.00, when in fact Plaintiff’s lawful regular rate of pay for the period was higher. Defendants engaged this practice for Plaintiff and the aggrieved employees throughout their employment.

Filing Status: Single/Married filing separately
 Exemptions/Allowances:
 Federal: Standard Withholding Table

Social Security Number: XXX-XX-6723

Earnings	rate	hours	this period
Regular	15.8100	21.92	346.66
Regular	15.8900	26.15	415.48
Daily OT	7.5000	1.47	11.03
Drive Time	14.3700	.76	10.92
Drive Time	14.8800	1.81	26.94
Regular Add	15.6600	2.19	34.30
Regular Add	15.6900	2.15	33.74
OT Premium			
Bonus			
Training			
Gross Pay			\$879.07

Plaintiff's pay stub from 07/01/2022 showing an overtime amount of \$7.50/hr instead of the higher rate due

Additionally, as seen below, Plaintiff and the aggrieved employees earned commissions, bonuses, and other nondiscretionary forms of remuneration. To the extent the aggrieved employees earned commission or bonuses in the same periods where they earned overtime pay, the aggrieved employees were not paid at the lawful regular rate of pay inclusive of extra remuneration.

Earnings	rate	hours	this period	year to date
Bonus			15.00	29.00
Drive Time	15.9600	2.68	42.81	776.21
L1 Admin	15.4800	.16	2.48	66.07

Plaintiff's pay stub from 09/23/2022 reflecting that Plaintiff earns bonus pay

Earnings	rate	hours	this period	year to date
Commission			108.00	108.00
Drive Time	15.9600	2.90	46.33	956.36
L1 Admin	15.9600	.08	1.28	84.05

Plaintiff's pay stub from 11/18/2022 reflecting that Plaintiff earns commission pay

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 558 (\$50/\$100), 1199 / "Penalties" section of the IWC Wage Orders) (\$50/\$100), and 2699

(\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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.

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.”

On information and belief, Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Based on the unlawful calculations as mentioned above for Plaintiff and the aggrieved employees’ “regular rate”, any sick leave Defendants paid was not calculated at the regular rate of pay inclusive of all bonuses, commissions, and rate averaging across the various wage categories.

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.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal

period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages").

Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided.

Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants did not consistently provide meal periods to Plaintiff and the aggrieved employees. Defendants, through their training supervisor, suggested that Plaintiff take his meal period while on duty or driving to different assignments throughout shifts as the training supervisor did. This supervisory example, combined with the impracticability of taking a meal period while completing all required projects in a single shift, resulted in Plaintiff suffering multiple missed, late, short, or interrupted meal periods.

When Plaintiff and the aggrieved employees attempted to end their shift for the day, they had to mark that they took a lunch break, even if they did not, or they had to otherwise "waive" the meal break on the timekeeping app for the day to properly clock out. Despite these deficiencies, Plaintiff and the aggrieved employees were not paid a meal premium for missed, late, short, or interrupted meal periods.

To the extent Defendants paid any meal premiums, the premiums were not paid at the "regular rate of compensation," but at a lesser amount because, as explained above, Defendants failed to properly calculate Plaintiff and the aggrieved employee's regular rate of compensation.

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.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages").

Due to staffing issues, job responsibilities, and the labor-intensive project load given each shift, Plaintiff and the aggrieved employees were not always authorized and permitted to take all their rest periods. When Defendants failed to authorize or permit Plaintiff and the aggrieved employees to take their full due rest periods, Defendants did not pay Plaintiff and the aggrieved employees the appropriate premium.

To the extent Defendants paid any rest premiums, the premiums were not paid at the "regular rate of compensation," but at a lesser amount because, as explained above, Defendants failed to properly calculate Plaintiff and the aggrieved employee's regular rate of compensation.

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 by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that Defendants made any retroactive payments to Plaintiff or the aggrieved employees, such amounts are untimely in violation of these payday statutes.

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 premiums 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.

As explained above, Defendants underpaid Plaintiff and other aggrieved employees’ regular overtime, sick, and premium pay, including at the lawful regular rate of compensation/pay. Defendants are separately liable for not paying the full amount owed to Plaintiff and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

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.

Because Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment and failed to properly pay regular and overtime wages at the lawful respective rates, Defendants failed to timely pay all wages owed upon separation of employment. 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, in relevant part, (1) gross wages earned, (5) net wages earned, 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 premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements.

Likewise, 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. For example, as seen on the wage statement below, Defendants did not consistently provide hours and applicable rates for each pay period.

Social Security Number: 7667767676

Earnings	rate	hours	this period	year to date
Drive Time	15.4600	1.97	30.45	576.23
Drive Time	15.9600	1.59	25.39	
Drive Time			6.90	
L1 Admin	15.0000	.33	4.95	26.19
L1 Admin	15.3600	.67	10.29	
L1 Hours	15.0000	1.12	16.80	143.87
L1 Hours	15.4800	3.81	58.97	
L2 Admin	16.0000	2.69	43.04	79.68
L2 Hours	16.0000	25.62	409.92	754.24

Plaintiff's pay stub from 07/29/2022 showing wages earned in the pay period for “Drive Time” but no rate or hours worked for that wage category.

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.

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.

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)); *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 568 (holding “necessary” in the context of section 2802, is not synonymous with “mandatory” but rather “reasonable under the circumstances”).

Labor Code section 2804 affirms that “[a]ny 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.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

Plaintiff and the aggrieved employees were required to use their personal cell phones to clock in and out of their shifts. Defendants, through its supervisors, instructed Plaintiff and the aggrieved employees to download the apps BDS and LILO to their personal cell phones to clock in and out. Further, Plaintiff and the aggrieved employees needed to use their personal cell phone for generating navigation data to drive between each of the different project

locations. Finally, Plaintiff and the aggrieved employees were also subject to multiple off-clock supervisor calls on their personal cell phones regarding work-related matters. Defendants did not provide any form of reimbursement for their personal cell phone use.

Plaintiff and the aggrieved employees were not given company issued tablets or phones to complete the required task of clocking in and out for every shift, navigating between locations, or communicating with supervisors after shifts. The use of a personal cell phone was “necessary, i.e. reasonable under the circumstances.” *See Mejia v. Adco Roofing* 21STCV02148 (L.A. Super. Ct., Nov. 14, 2022) (holding it was “necessary, i.e. reasonable” for employees to use their own cell phones to clock in, either because employer did not provide devices or because time could not consistently be kept in some other manner).

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.

Failure to Provide Employee Records
Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Labor Code section 432 states that “[i]f an employee ... signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” Labor Code section 1198.5 grants “[e]very current and former employee, or his or her representative, ... the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available “time records showing when the employee begins and ends each work period” as well as time records showing “[m]eal periods, split shift intervals, and daily hours worked[.]” Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all records upon Plaintiff’s request. Defendants did not produce any of Plaintiff’s time records displaying when Plaintiff began and ended each work period and meal period, despite Defendants requiring that Plaintiff report these intervals throughout his employment. When Defendants refused to provide this information to Plaintiff’s representative on May 9, 2023, Defendants violated Section 7(A) of the IWC Wage Orders as well as Labor Code § 226(b), which authorize the inspection and/or production of time records upon request.

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), 1174.5 (\$500), 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

Because of the violations set forth in this notice, including Defendants' failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders. Defendants did not maintain accurate payroll records showing all hourly rates in effect, hours worked at those rates, and the lawful wages paid to each employee. As a result, Defendants are liable for a civil penalty of \$500 per employee to Plaintiff and each aggrieved employee pursuant to Labor Code section 1174.5.

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 of 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,



Nicholas J. Ferraro

REJ

Cc Plaintiff Frederick Hutchinson

Daniel Chammas
dchammas@fordharrison.com