PAGA Notice - Fernandez v. Atheneum Partners LLC, January 8, 2026

TO: California Labor and Workforce Development Agency Division of Labor Standards Enforcement Legal Unit

2031 Howe Avenue, Suite 100

Sacramento, CA 95825

VIA: Online PAGA Portal Submission

REFERENCE: PAGA Notice - Fernandez v. Atheneum Partners LLC

January 7, 2026

I. IDENTIFYING INFORMATION

A. Aggrieved Employee

Name: Marco Alejandro Fernandez

Address: 222 Matteson Crt, Danville, Ca. 94520

Employment Period: September 3, 2024 - Present Positions Held:

- Senior Associate, Client Delivery (9/3/24 - 6/30/25)

- Client Services Lead, (7/1/25 - Present)

B. Employer/Defendant

Legal Name: Atheneum Partners LLC

DBA/Trade Name: Atheneum

Business Address:

240 W 37th Street, Floor 8

New York, NY 10018

California Worksite Location:

San Francisco, California (within city limits)

Agent for Service of Process:

Dan McCarthy, Chief Executive Officer

Email: dan.mccarthy@atheneum.ai

Attorney: Littler, Curtis Graham

633 West 5th Street, 63rd Floor

L.A., Cal. 90071

Email: CAGraham@littler.com

C. Additional Employer/Co-Employer

Legal Name: Rippling PEO 1, Inc.

Business Type: Professional Employer Organization (PEO), 430 California Street, 11th Floor, San Francisco, Ca. 94104

Nature of Relationship: Co-employment arrangement established October 24, 2024

D. Counsel for Aggrieved Employee

Attorney: Louis A. Leone, Esq.

State Bar No: 09874

Law Firm: Leone Alberts & Duus

Address:1390 Willow Pass Road, Suite 700

Concord, CA 94520

Cell: (925) 330-2711

Email: lleone@leonealberts.com

II. SUMMARY OF VIOLATIONS

This Notice is provided pursuant to California Labor Code § 2699.3 to inform the Labor and Workforce Development Agency ("LWDA") of violations of the California Labor Code committed by Atheneum Partners LLC ("Atheneum") and Rippling PEO 1, Inc. (collectively, "Defendants") against Marco Alejandro Fernandez ("Aggrieved Employee") and other similarly situated current and former employees ("Aggrieved Employees").

Nature of Violations: Systematic and ongoing violations of California wage and hour laws, including but not limited to:

1. Misclassification of non-exempt employees as exempt 2. Failure to pay overtime wages 3. Failure to provide compliant meal periods 4. Failure to provide compliant rest breaks 5. Provision of non-compliant wage statements 6. Failure to provide required wage theft prevention notices 7. Violations of San Francisco paid sick leave ordinance.

Time Period: September 3, 2024 - Present (15+ months and ongoing)

Estimated Number of Aggrieved Employees: 20-30+ current and former employees in similar positions who performed work in California, particularly San Francisco.

Estimated Civil Penalties: $500,000 - $2,000,000+ (not including employee damages, liquidated damages, interest, or attorneys' fees.

III. LABOR CODE VIOLATIONS

VIOLATION #1: California Labor Code § 510(a)

FAILURE TO PAY OVERTIME COMPENSATION

Legal Requirement

Labor Code § 510(a) requires employers to compensate non-exempt employees at one and one-half times the regular rate of pay for:

- All hours worked in excess of eight hours in any workday

- All hours worked in excess of 40 hours in any workweek

- The first eight hours worked on the seventh consecutive day of work in any workweek

Double time compensation is required for:

- All hours worked in excess of 12 hours in any workday

- All hours worked in excess of eight hours on the seventh consecutive day of work in any workweek

Facts Establishing Violation

Misclassification as Exempt:

- Defendants classified Mr. Fernandez and similarly situated employees as exempt from overtime despite failing to meet the legal requirements for exemption

- Mr. Fernandez' salary ($70,000 from 9/3/24-6/30/25; $73,000 from 7/1/25-present) fell below San Francisco's mandatory exempt salary threshold of $75,171.20 (effective 7/1/24) and $77,667.20 (effective 7/1/25)

- San Francisco minimum wage controls for work performed within San Francisco city limits pursuant to Cal. Code Regs. tit. 8, § 11040(1)(A)(3)

- Mr. Fernandez' actual job duties consisted of non-exempt work involving execution of established procedures with minimal independent judgment or discretion

- Mr. Fernandez had no management, supervisory, or budgetary authority

Unpaid Overtime Hours:

- Mr. Fernandez regularly worked 50+ hours per week (approximately 10 hours of overtime weekly)

- Typical schedule: Monday-Friday, 8:30 AM - 6:30 PM (10 hours/day) plus additional off-hours work

- Additional work from home in evenings and at weekends to meet client demands and performance quotas

- Overtime work was necessary, expected, and known to management

- Total unpaid overtime: 660+ hours over 15-month period

No Overtime Compensation Paid:

- Defendants paid Mr. Fernandez and similarly situated employees on a salary basis only

- No overtime premium compensation paid for any hours worked in excess of 8 per day or 40 per week

- No tracking of daily or weekly hours worked despite non-exempt status

Aggrieved Employees

All current and former employees in the following positions who performed work in California from September 2024 to the present:

- Senior Associate, Client Delivery

- Client Services Lead

- Associate, Client Delivery

- Similar client-facing, non-supervisory positions

Estimated number: 20-30+ employees.

PAGA Penalties

Pursuant to Labor Code § 2699(f):

- Initial violation: $100 per aggrieved employee per pay period

- Subsequent violations: $200 per aggrieved employee per pay period

Conservative Calculation:

- 25 aggrieved employees (midpoint estimate)

- 30 pay periods average (15 months × 2 pay periods/month)

- First pay period: 25 employees × $100 = $2,500

- Subsequent 29 pay periods: 25 employees × 29 periods × $200 = $145,000

- Subtotal § 510 Penalties: $147,500

VIOLATION #2: California Labor Code § 512(a)

FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

Legal Requirement

Labor Code § 512(a) and IWC Wage Order 4-2001 § 11 require employers to provide non-exempt employees:

First meal period:

- At least 30 minutes

- Duty-free and uninterrupted

- Must commence before the end of fifth hour of work

- Unpaid when employee completely relieved of duty

Second meal period:

- At least 30 minutes

- Duty-free and uninterrupted

- Must commence before the end of the tenth hour of work

- Required when the employee works more than 10 hours

Employers must not impede, discourage, or dissuade employees from taking meal periods.

Facts Establishing Violation

Systematic Meal Period Violations:

- Mr. Fernandez regularly worked 10-hour days, requiring two meal periods

- Meal periods were frequently missed, shortened, interrupted, or delayed beyond legal timeframes

- Defendants failed to implement, monitor, or enforce meal period policies for Mr. Fernandez and similarly situated employees (treated as exempt)

- Work environment and performance expectations made compliant meal periods impracticable

Specific Circumstances Causing Violations:

- Back-to-back client consultation calls scheduled by management without breaks

- Urgent client requests requiring immediate response during mealtimes

- Performance quotas requiring continuous work throughout day

- Supervisor expectations of availability during traditional lunch hours

- No timekeeping system to track meal period compliance

- No meal period attestation procedures

Pattern and Practice:

- Violations occurred regularly throughout the employment period

- Conservative estimate: 2 missed/non-compliant meal periods per week

- Defendants never provided a compliant meal period policy until PEO agreement (October 2024), after 2 months of employment

- Even after PEO agreement, no enforcement or compliance tracking occurred

Aggrieved Employees

Same class of employees identified in Violation #1 (20-30+ employees)

PAGA Penalties

Pursuant to Labor Code § 226.7(c), an employee is entitled to one hour of pay at the regular rate for each workday violation. This is also a Labor Code violation subject to PAGA penalties under § 2699(f).

Penalty Calculation:

- 25 aggrieved employees (midpoint estimate)

- 260 workdays per year average

- 15 months = approximately 325 workdays

- Conservative violation rate: 40% of workdays (130 days per employee)

- 25 employees × 130 days = 3,250 total violations

- First violation: $100 × 25 employees = $2,500

- Subsequent violations: 3,250 violations × $200 = $650,000

Subtotal § 512/226.7 Penalties: $652,500

*Note: These figures represent PAGA civil penalties only and do not include the premium wages owed to employees under § 226.7(c) (one hour of pay per violation), which are separately recoverable.

VIOLATION #3: California Labor Code § 226.7(b)

FAILURE TO PROVIDE COMPLIANT REST BREAKS

Legal Requirement

IWC Wage Order 4-2001 § 12 requires employers to authorize and permit 10-minute paid rest periods for non-exempt employees:

- One rest break for every four hours worked or major fraction thereof

- “Major fraction” means any period greater than two hours

- Rest breaks should occur in middle of each work period insofar as practicable

- Must be uninterrupted and duty-free

- Employee remains compensated during rest break

Labor Code § 226.7(b) imposes penalty for failure to provide compliant rest breaks.

Facts Establishing Violation

Systematic Rest Break Violations:

- Mr. Fernandez’ typical 10-hour workday entitled him to two 10-minute paid rest breaks

- Rest breaks were frequently skipped, shortened, or interrupted due to:

  - Back-to-back client calls and meetings

  - Continuous client service demands

  - Performance expectations incompatible with taking breaks

  - Lack of coverage during breaks

- Pressure to remain available and responsive

Employer Failures:

- No rest break policy provided to Mr. Fernandez (treated as exempt)
- No tracking or monitoring of rest break compliance
- No meal/rest break attestation in timekeeping
- Work environment structured to prevent compliant rest breaks
- Performance metrics and workload incompatible with authorized rest breaks

Pattern and Practice:

- Violations occurred regularly throughout employment
- Conservative estimate: 1 rest break violation per week (significantly understated)
- Defendants created disincentives to taking rest breaks through performance monitoring and workload assignments

Aggrieved Employees

Same class of employees identified in Violation #1 (20-30+ employees)

PAGA Penalties

Penalty Calculation:

- 25 aggrieved employees (midpoint estimate)
- 260 workdays per year average
- 15 months = approximately 325 workdays
- Conservative violation rate: 30% of workdays (98 days per employee)
- 25 employees × 98 days = 2,450 total violations
- First violation: $100 × 25 employees = $2,500
- Subsequent violations: 2,450 violations × $200 = $490,000

Subtotal § 226.7(b) Penalties: $492,500.

*Note: These figures represent PAGA civil penalties only and do not include the premium wages owed to employees under § 226.7(c) (one hour of pay per violation), which are separately recoverable.

VIOLATION #4: California Labor Code § 226(a)

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

Legal Requirement

Labor Code § 226(a) requires employers to furnish accurate itemized wage statements showing:

1. Gross wages earned

1. Total hours worked (for non-exempt employees) 2. Number of piece-rate units and rates (if applicable) 3. All deductions 4. Net wages earned 5. Inclusive dates of period for which employee is paid 6. Name of employee and last four digits of SSN or employee ID 7. Name and address of legal employer 8. All applicable hourly rates and corresponding hours worked at each rate.

Facts Establishing Violation

Wage Statement Deficiencies:

Because Defendants misclassified Mr. Fernandez and similarly situated employees as exempt, the wage statements provided throughout employment failed to include information required for non-exempt employees:

Missing Required Information:

- Total hours worked each pay period (§ 226(a)(2))

- Overtime hours worked (§ 226(a)(9))

- Overtime rate of pay (§ 226(a)(9))

- Regular hourly rate of pay (§ 226(a)(9))

- Breakdown showing hours worked at regular rate vs. overtime rate (§ 226(a)(9))

Knowing and Intentional Violations:

- Defendants' PEO agreement (October 2024) acknowledged uncertainty about overtime applicability and classification status

- Despite this acknowledgment, Defendants continued providing deficient wage statements

- No corrective action taken after PEO agreement identified compliance obligations

- Pattern continued for the entire 15-month employment period

Aggrieved Employees

Same class of employees identified in Violation #1 (20-30+ employees)

PAGA Penalties

Pursuant to Labor Code § 226(e):

- Initial violation: $50 per employee (first pay period)

- Subsequent violations: $100 per employee per pay period (each additional pay period)

- Maximum: $4,000 per employee

Penalty Calculation:

- 25 aggrieved employees (midpoint estimate)

- 30 pay periods on average (semi-monthly for 15 months)

- Initial violation: 25 employees × $50 = $1,250

- Subsequent violations: 25 employees × 29 periods × $100 = $72,500

- **Subtotal § 226(a) Penalties: $73,750**

Additionally, Labor Code § 2699(f) provides separate PAGA penalties:

- First violation: $100 × 25 employees = $2,500

- Subsequent violations: 25 employees × 29 periods × $200 = $145,000

- Additional PAGA Penalties: $145,000

Total § 226(a) Penalties: $218,750

VIOLATION #5: California Labor Code § 2810.5

FAILURE TO PROVIDE WRITTEN WAGE THEFT PREVENTION NOTICE

Legal Requirement

Labor Code § 2810.5(a) requires employers to provide written notice to employees at time of hiring containing:

1. Rate or rates of pay and basis thereof 2. Allowances, if any, claimed as part of minimum wage. 3. Regular payday. 4. Name of employer, including any “doing business as” names. 5. Physical address of employer’s main office or principal place of business. 6. Mailing address of employer (if different.) 7. Telephone number of employer. 8. Name, address, and

telephone number of employer's workers' compensation carrier. 9. Any other information the Labor Commissioner deems material and necessary.

Employers must also provide written notice of changes to information within seven days (or before the change takes effect).

Facts Establishing Violation

Complete Failure to Provide § 2810.5 Notice:

At Initial Hiring (September 2024):

- Offer letter dated July 31, 2024, did not contain required wage notice
- Offer letter stated "Annual compensation will be $70,000" but failed to provide:
  - Hourly rate or salary basis
  - Overtime rate (if applicable)
  - Exempt or non-exempt classification
  - Workers' compensation carrier information
- No separate wage notice document provided on or before first day of work (September 3, 2024)

At Promotion (July 2025):

- Promotion letter dated July 1, 2025, changed compensation to $73,000
- No updated wage notice provided despite material change
- § 2810.5(c) requires notice within seven calendar days before change
- Promotion letter similarly lacked the required information

PEO Co-Employment (October 2024):

- Worksite Employee Acknowledgment did not constitute a compliant § 2810.5 notice
- Failed to specify the employee's rate of pay, classification, or overtime eligibility
- Used conditional language ("if overtime is applicable to you")

Three Employment Documents, Zero Compliant Notices: Over 15 months and three separate employment documents (offer letter, PEO acknowledgment, promotion letter), Defendants never provided Mr. Fernandez with a compliant wage notice containing the information required by § 2810.5.

Aggrieved Employees

Same class of employees identified in Violation #1 (20-30+ employees)

Each employee would have experienced:

- Failure to receive notice at hiring (one violation per employee)

- Failure to receive notice of changes (additional violations for promotions, raises, etc.)

PAGA Penalties

Labor Code § 2810.5(f) provides a civil penalty of $250 per initial violation and $1,000 per subsequent violation per aggrieved employee.

Additionally, § 2699(f) provides PAGA penalties for Labor Code violations.

Penalty Calculation:

- 25 aggrieved employees (midpoint estimate)

- Initial violation (at hiring): 25 employees × $250 = $6,250

- Subsequent violation (failure to update): 25 employees × $1,000 = $25,000

- Subtotal § 2810.5 specific penalties: $31,250.

Additional PAGA penalties under § 2699(f):

- First violation: $100 × 25 employees = $2,500

- Subsequent violations: 25 employees × $200 = $5,000

- Additional PAGA Penalties: $7,500

Total § 2810.5 Penalties: $38,750

VIOLATION #6: California Labor Code § 1198

FAILURE TO COMPLY WITH MINIMUM WAGE REQUIREMENTS (San Francisco Local Minimum Wage)

Legal Requirement

Labor Code § 1198 requires employers to comply with local minimum wage ordinances. San Francisco Administrative Code Chapter 12R establishes minimum wage rates for work performed within San Francisco city limits.

For exempt employee classification, salary must equal at least two times the local minimum wage for full-time employment (2,080 hours annually).

Facts Establishing Violation

Failure to Meet San Francisco Exempt Salary Threshold:

Period 1 (September 3, 2024 - June 30, 2025):

- SF minimum wage: $18.07/hour (effective 7/1/24)

- Required exempt salary: 2 × $18.07 × 2,080 hours = $75,171.20 annually

- Mr. Fernandez’ salary: $70,000 annually

- Shortfall: $5,171.20 annually ($430.94/month)

Period 2 (July 1, 2025 - Present):

- SF minimum wage: $18.67/hour (effective 7/1/25)

- Required exempt salary: 2 × $18.67 × 2,080 hours = $77,667.20 annually

- Mr. Fernandez’ salary: $73,000 annually

- Shortfall: $4,667.20 annually ($388.94/month)

Legal Consequences:

- Defendants’ failure to pay required exempt salary threshold renders employees non-exempt as matter of law

- All hours worked over 8 per day and 40 per week must be compensated at overtime rate

- This violation directly caused the unpaid overtime violations under § 510

Aggrieved Employees

All employees in similar positions performing work in San Francisco whose salaries fell below the required exempt threshold (estimated 50-100+ employees)

PAGA Penalties

This violation is subject to PAGA civil penalties under § 2699(f):

- First violation: $100 per employee

- Subsequent violations: $200 per employee per pay period

Penalty Calculation:

- 25 aggrieved employees (midpoint estimate)

- 30 pay periods on average

- First violation: 25 employees × $100 = $2,500

- Subsequent violations: 25 employees × 29 periods × $200 = $145,000

- Subtotal § 1198 Penalties: $147,500

VIOLATION #7: San Francisco Administrative Code Chapter 12W

PAID SICK LEAVE VIOLATIONS

Legal Requirement

San Francisco Administrative Code Chapter 12W requires employers to:

- Provide paid sick leave to employees performing work in San Francisco

- Allow usage of at least 72 hours of paid sick leave per year

- Provide notice of available sick leave on wage statements or separate writing

- Not interfere with, restrain, or deny exercise of rights under ordinance

Facts Establishing Potential Violation

- Mr. Fernandez' offer letter provided "21 days vacation" but made no mention of separate sick leave entitlement

- If Defendants limited sick leave usage below San Francisco's 72-hour annual requirement, violation occurred

- Investigation may reveal whether adequate sick leave was provided and properly noticed

- Discovery will confirm whether wage statements included required sick leave balance information

Aggrieved Employees

All employees performing work in San Francisco (estimated 50-100+ employees)

PAGA Penalties

Violations of local ordinances incorporated into Labor Code § 1198 are subject to PAGA penalties:

- $50-$500 per violation depending on circumstances

- Conservative estimate: $250 per violation

Penalty Calculation (if violation confirmed):

- 25 aggrieved employees

- 30 pay periods with potential violations (notice deficiencies)

- 25 employees × 30 periods × $250 = $187,500

- Potential § 12W Penalties: $187,500

VIOLATION #8: California Business & Professions Code § 16600

UNLAWFUL NON-COMPETE AND NON-SOLICITATION AGREEMENTS (Related Labor Code Violation)

Legal Requirement

Business & Professions Code § 16600 voids contracts that restrain anyone from engaging in lawful profession, trade, or business. This includes non-compete agreements and, in most circumstances, non-solicitation agreements.

Labor Code § 2699 authorizes civil penalties for violations of provisions affecting employee rights and working conditions.

Facts Establishing Violation

Unlawful Restrictive Covenants in Employment Agreements:

From Offer Letter (July 31, 2024):

- 1-year non-compete restriction

- Void under § 16600

From Loyalty and Arbitration Agreement (August 15, 2024):

- 9-month customer non-solicitation restriction (Section 4)

- 9-month employee non-solicitation restriction (Section 5)

- Both void under § 16600 per recent California law

Impact on Working Conditions:

- Unlawful restrictions chill employee mobility and bargaining power
- Create coercive employment environment
- Reduce employee leverage by requesting lawful compensation
- Violate public policy favoring employee freedom

Aggrieved Employees

All employees who signed agreements containing unlawful restrictive covenants (estimated 20-30+ employees)

PAGA Penalties

While § 16600 violations are not directly subject to Labor Code penalties, the inclusion of unlawful provisions in employment agreements may constitute unfair business practices subject to civil penalties and demonstrates pattern of disregard for employee rights relevant to other violations.

IV. TOTAL ESTIMATED PAGA CIVIL PENALTIES

Summary of Penalties by Violation

Violation	Labor Code Section	Estimated Penalties
Failure to Pay Overtime	§ 510(a)	$147,500
Meal Period Violations	§ 512(a) / § 226.7(c)	$635,000
Rest Break Violations	§ 226.7(b)	$492,000
Wage Statement Violations	§ 226(a)	$218,750
Wage Notice Violations	§ 2810.5	$38,750
Minimum Wage / Exemption	§ 1198	$147,500
SF Sick Leave	§ 1198 / SF Admin Code 12W	$187,500

TOTAL ESTIMATED PAGA CIVIL PENALTIES: $1,867,000

Distribution of Penalties

Pursuant to Labor Code § 2699(i):

- 75% to California Labor and Workforce Development Agency

- 25% to Aggrieved Employees

V. ADDITIONAL RECOVERABLE DAMAGES (NOT PAGA PENALTIES)

In addition to PAGA civil penalties payable to the State and aggrieved employees, the following damages are separately recoverable in individual and class claims:

A. Unpaid Wages

- Unpaid overtime wages: Estimated $2,000,000 - $4,000,000 (class-wide)

- Meal period premium wages (§ 226.7): Estimated $500,000 - $1,000,000

- Rest break premium wages (§ 226.7): Estimated $300,000 - $600,000

B. Waiting Time Penalties

- Labor Code § 203: Continuation of wages for up to 30 days for willful failure to pay all wages due upon termination

Applicable to separated employees

C. Liquidated Damages

- Labor Code § 1194.2: Equal to unpaid overtime for willful violations

- Estimated $2,000,000 - $4,000,000 (if proven willful)

D. Prejudgment Interest

- Labor Code § 218.6: 10% per annum on unpaid wages

- Estimated $200,000 - $400,000

E. Attorneys' Fees and Costs

- Labor Code §§ 218.5, 226(e)(1), 1194(a), 2699(g)(1)

- Prevailing employees are entitled to reasonable attorneys' fees

- Estimated $500,000 - $1,500,000 (depending on litigation complexity)

VI. DESCRIPTION OF AGGRIEVED EMPLOYEES

A. Named Aggrieved Employee

Marco Alejandro Fernandez

- Employment: September 3, 2024 - Present

- Positions: Senior Associate, Client Delivery; Client Services Lead

- Work Location: San Francisco, California

- Subject to all violations described herein

B. Other Aggrieved Employees

Scope of Class:

All current and former employees of Atheneum Partners LLC and/or Rippling PEO 1, Inc. who:

1. Were employed in California (particularly San Francisco) 2. Held positions as Associates, Senior Associates, Leads, or similar client-facing, non-supervisory roles 3. Were classified as exempt from overtime 4. Performed work at any time from September 3, 2021 to present (PAGA statute of limitations: 5 years before notice, extending back through continuing violations)

Estimated Size: 20-30+ aggrieved employees

Positions Likely Affected:

- Associate, Client Delivery

- Senior Associate, Client Delivery

- Client Services Lead

- Client Success Associate

- Research Associate

- Similar titles in client services, research, or delivery functions

Common Characteristics:

- Paid annual salaries below San Francisco exempt threshold ($75,171.20 - $77,667.20 depending on period)

- Required to work regular schedules exceeding 8 hours/day and 40 hours/week

- Performed non-exempt duties: executing established procedures, following supervisor instructions, client service tasks

- Lacked management, supervisory, or independent decision-making authority

- Subject to performance metrics and quotas

- Received deficient wage statements lacking required hourly rate and overtime information

- Never received compliant wage notices under § 2810.5

C. Time Period

Primary Period: September 3, 2024 - Present (15+ months)

Extended PAGA Period: September 3, 2021 - Present (PAGA allows recovery for one year prior to notice date, with continuing violations extending exposure)

Ongoing Violations: Violations continue to present date, with additional civil penalties accruing daily. **Moreover, since the employer was notified of PAGA and Labor Code violations, it undertook systematic layoffs of potential class members withholding any severance package unless a full release was executed.**

VII. FACTUAL BASIS FOR VIOLATIONS

A. Employment Structure and Classification

Initial Hiring (September 2024):

- Mr. Fernandez hired as “Senior Associate, Client Delivery”

- Annual salary: $70,000 ($5,833.33/month; $33.65/hour)

- No written classification as exempt or non-exempt provided

- Offer letter silent on overtime eligibility

- No job duties description provided

Co-Employment Arrangement (October 2024):

- Rippling PEO 1, Inc. became co-employer

- Worksite Employee Acknowledgment used conditional language: “if overtime is applicable to you”

- Document provided non-exempt policies (meal breaks, rest breaks, timekeeping)

- Document prohibited “off-the-clock work” (only relevant for non-exempt)

- Document stated hours must be “captured and reported…for payment” (hourly treatment)

- No definitive classification provided

Promotion (July 2025):

- Promoted to “Client Services Lead”

- New annual salary: $73,000 ($6,083.33/month; $35.10/hour)

- Again, no written classification provided

- No job duties description provided

- Minimal change in actual duties (added informal mentoring; no supervisory authority)

Pattern: Over 15 months and three employment documents, Defendants never classified Mr. Fernandez as exempt or non-exempt, never provided written job descriptions, and never clarified overtime eligibility.

B. Failure to Meet Exempt Salary Test

San Francisco Minimum Wage Standards:

Work performed in San Francisco is subject to San Francisco’s local minimum wage ordinance (Administrative Code Chapter 12R). California law requires exempt employees to earn at least twice the local minimum wage for full-time employment.

Period 1 (9/3/24 - 6/30/25):

- SF minimum wage: $18.07/hour

- Required exempt salary: $75,171.20/year

- Actual salary: $70,000/year

- Failed by $5,171.20/year

Period 2 (7/1/25 - Present):

- SF minimum wage: $18.67/hour

- Required exempt salary: $77,667.20/year

- Actual salary: $73,000/year

- Failed by $4,667.20/year

Legal Consequence: Automatic non-exempt status as matter of law. Duties test is irrelevant when salary test fails.

C. Failure to Meet Exempt Duties Tests

Even if salary threshold were met (which it was not), Mr. Fernandez’ duties do not qualify for any white-collar exemption:

Actual Job Duties:

- Responding to client requests for expert consultations
- Searching internal database for suitable experts
- Contacting potential experts via phone and email
- Scheduling consultation calls
- Following established procedures for service delivery
- Documenting interactions in CRM system
- Attending team meetings and training
- Processing billing and payment information
- Meeting quantitative performance metrics (revenue targets, interviews completed)
- Responding to daily task assignments from supervisor

Supervisory/Management Authority: None

- No authority to hire, fire, or discipline
- No employees reporting to Mr. Fernandez
- “Lead” title was honorary; no actual supervisory duties
- All major decisions required supervisor approval

Independent Discretion: Minimal

- Work performed according to established procedures
- Supervisor assigned daily tasks and monitored completion
- Performance measured by quantitative metrics
- Required supervisor approval for non-routine matters

Professional Knowledge: Not required

- Position required no specialized degree or certification
- No prolonged specialized intellectual instruction required
- Skills trainable through on-the-job experience

Respectfully Submitted,

Louis A. Leone

Louis A. Leone Esq