



PAYNE NGUYEN LLP

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VIA ONLINE FILING

Labor and Workforce Development Agency
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RE: *Dennis Bullard v. Aptive Environmental, LLC, et al.*

Dear Representative:

This office represents Dennis Bullard ("**Mr. Bullard**") with respect to his claims under the California Labor Code against Aptive Environmental, LLC and Aptive Environmental GP, LLC; ("**Employer**"). This letter is being sent simultaneously to Employer by certified mail.

Employer employed Mr. Bullard from approximately May 2022 to February 2023, as an hourly, non-exempt employee. During his employment with Employer, Mr. Bullard was employed as a pest control technician.

Mr. Bullard intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 ("**PAGA**"). Mr. Bullard is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of Employer ("**Aggrieved Employees**"). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employer violated several of California's wage and hour laws during Mr. Bullard's employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and the Industrial Welfare Commission Wage Orders ("IWC Wage Order") including *inter alia*, IWC Wage Order No. 5. The claims made on behalf of Mr. Bullard and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Mr. Bullard and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.



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First, Employer regularly required Mr. Bullard and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Bullard and Aggrieved Employees to: (1) respond to Employer and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Mr. Bullard and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Bullard and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Mr. Bullard and Aggrieved Employees to perform work off-the-clock without compensation, Employer also utilized time rounding practices that resulted in the systematic underpayment of wages to Mr. Bullard and Aggrieved Employees, including minimum wages, straight time wages and overtime wages. Employer also failed to accurately record the actual time worked by Mr. Bullard and Aggrieved Employees, which resulted in a failure to pay Mr. Bullard and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Mr. Bullard and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employer has failed to pay Mr. Bullard and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Mr. Bullard and Aggrieved Employees will therefore seek unpaid wages; PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; compensation pursuant to Labor Code Section 1194; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employer failed to provide Mr. Bullard and Aggrieved Employees with legally-compliant 30-minute meal periods. Mr. Bullard and Aggrieved Employees were required by Employer to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Mr. Bullard and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Mr. Bullard and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Mr. Bullard and Aggrieved Employees did take a meal



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period, their meal periods were frequently interrupted or cut short.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Bullard and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Mr. Bullard and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Mr. Bullard and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Bullard and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Mr. Bullard and other Aggrieved Employees remain on-call and respond to work-related requests at all times, including during meal periods, which included in-person verbal interruptions; and (7) Employer's policy and culture prevented Mr. Bullard and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees right to receive timely, uninterrupted, and duty-free meal periods.

Mr. Bullard and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), 512(a) and 1198.

Mr. Bullard and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employer failed to authorize and permit Mr. Bullard and Aggrieved Employees to take legally-compliant 10-minute rest periods. Employer required Mr. Bullard and Aggrieved Employees to work through rest periods. Mr. Bullard and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Bullard and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Bullard and Aggrieved Employees



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were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Bullard and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Mr. Bullard and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Mr. Bullard and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Bullard and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Mr. Bullard and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included in-person verbal interruptions; and (7) Employer's policy and culture prevented Mr. Bullard and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees right to receive rest periods.

Mr. Bullard and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), and 1198.

Mr. Bullard and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

As to each pay period, Employer has failed to timely pay all wages earned because Mr. Bullard and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).

Mr. Bullard and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.



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5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Mr. Bullard and Aggrieved Employees never included the actual hours worked, the actual gross wages earned, the correct rates of pay, and meal and rest premiums owed. Accordingly, Employer violated California Labor Code section 226(a).

Mr. Bullard and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employer has failed to maintain accurate records relating to Mr. Bullard and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 1198 and 1174(d).

Mr. Bullard and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 5 require employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Mr. Bullard and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, utilizing their own construction related tools, personal vehicles, and personal cellphones to fulfill their duties and responsibilities.

Accordingly, Employer violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.

Mr. Bullard and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5 and attorneys' fees and costs.



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8. FAILURE TO PAY VACATION TIME

Pursuant to California Labor Code section 227.3, “. . . whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.” During the relevant time period, Employer failed to pay Mr. Bullard and other Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment. Accordingly, Employer has violated California Labor Code section 227.3.

Mr. Bullard and Aggrieved Employees will therefore seek PAGA default penalties; California Labor Code section 227 penalties; and attorneys’ fees and costs.

9. FAILURE TO PAY SICK TIME

Pursuant to California Labor Code sections 245.5 and 246(i), “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employer’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with employee’s payment of wages.” Section 245.5 defined “paid sick days” as “time that is compensated at the same wage as the employee normally earns during regular work hours and is provided by an employer to an employee.” Moreover, Labor Code section 246(l)(1) states that “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time.” During the relevant time period, Employer failed to provide Mr. Bullard and other Aggrieved Employees with the amount of sick leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage statements described in Section 226 that it issues to Mr. Bullard and other Aggrieved Employees. Therefore, Employer has violated California Labor Code section 245.5.

Mr. Bullard and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys’ fees and costs.

10. FAILURE TO PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

Upon the termination of employment, Mr. Bullard and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employer’s practices of requiring Mr. Bullard and Aggrieved Employees to work off-the-clock without compensation, unlawful rounding practices, failure to



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properly calculate regular rates, and failure to accurately record all hours actually worked, Employer failed to pay Mr. Bullard and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employer also failed to pay Mr. Bullard and Aggrieved Employees for meal period premiums, rest period premiums, and accrued sick time they were owed, amongst other wages. Accordingly, Employer violated California Labor Code sections 201 and 202.

Mr. Bullard and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

Therefore, on behalf of himself, the State of California and all Aggrieved Employees, Mr. Bullard may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very Truly Yours,

Cody Payne

Notice provided to Employer via Certified Mail (7020 1290 0000 6695 7660)

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