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VIA CERTIFIED U.S. MAIL

SEPTEMBER 25, 2023

TELECOM BROKERAGE, INC. [TBI, INC.]
REGISTERED AGENT: ILLINOIS CORPORATION SERVICE COMPANY
801 ADLAI STEVENSON DRIVE
SPRINGFIELD, IL 62703-4261

GEOFFREY SHEPSTONE [PRESIDENT OF TBI, INC.]
ATTN: SHERYL L. SKIBBE
1925 CENTURY PARK EAST, SUITE 1900
LOS ANGELES, CA 90067

CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY
(VIA ONLINE SUBMISSION)

**RE: CALIFORNIA LABOR CODE SECTION 2699 (PRIVATE ATTORNEYS GENERAL
ACT (PAGA)) NOTICE BY AGGRIEVED EMPLOYEES**

Dear PAGA Administrator and All Entities and Persons listed herein,

Our office represents Mary Beth Wendt and Jeanne Bartlett (“Aggrieved Employees”). This constitutes statutory notice pursuant to Labor Code section 2699.3(a)(1) for purposes of bringing a claim under the Private Attorneys General Act (“PAGA”), California Labor Code (“Cal. Lab. Code”) section 2699, et seq. Please consider this a request for the California Labor & Workforce Development Agency (“LWDA” or “Agency”) to take action against TELECOM BROKERAGE, INC. (dba “TBI, INC.”) (“Defendant”), and their agents, managers, supervisors, and/or owners – including, and without limitation, former president of TBI, INC., GEOFFREY SHEPSTONE – (“Individual Defendant”) for violations of the California Labor Code described below. On information and belief, the Individual Defendant had complete authority to implement and carry out the illegal wage violations at issue herein. As such, the Individual Defendant was on notice, whether actual or constructive, of all the violations described above, and failed to prevent or address them. Aggrieved Plaintiffs seek to assert a PAGA claim on behalf of the State of California and all other current and/or former employees who were employed by Defendants in California and were among those who were withheld the bonuses and/or wages due to them.

Further, pursuant to, and without limitation, California Labor Code sections 210, 558, 558.1, 1197.1, 2699(f) and other provisions of the Labor Code, please consider this a notice to Defendant and all other persons acting on behalf of Defendant – including, and without limitation, former president of TBI, Inc. Geoffrey Shepstone – who controlled and caused to be violated any provision of the California Labor Code or Wage Orders during the relevant time period by making illegal policies, implementing illegal policies, and/or failing to correct illegal policies.

This investigation request and notice of California Labor Code violations concerns the systematic failure by TBI, Inc. to pay current and former California employees in conformance with provisions set out in the California Labor Code and in Wage Orders promulgated by the Industrial Welfare Commission. At the core of TBI, Inc.’s violations, is a practice of fraudulent and/or promissory inducement for the purpose of employee retention, and the subsequent failure to pay and provide all wages owed upon separation from employment, and failure to provide accurate wage statements. These violations are uniformly applied among all employees at TBI, Inc. who unilaterally and contractually agreed to TBI, Inc.’s promised employee bonuses – I.e., non-discretionary bonuses.

Non-discretionary bonuses are contractually required bonuses to be paid, upon the satisfaction of a specific result. (*See* Division of Labor Standards Enforcement (DLSE) Glossary: Bonus). This includes terms that induce employees to remain in the employ of the employer for a certain period of time. *Id.* The term “non-discretionary payments” are payments for an employee’s work that are owed “pursuant to [a] prior contract, agreement, or promise,” not “determined at the sole discretion of the employer.” (DLSE), Update of the DLSE Enforcement Policies and Interpretations Manual (rev. 2019) § 49.1.2.4(3), p. 49-3 (2019 DLSE Manual), citing 29 C.F.R. §§ 778.211, 778.213 (2021); see C.F.R. § 778.211 (2021) [a payment is discretionary if “both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer ... and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly”]. The term “regular rate of compensation” in Cal. Lab. Code section 226.7(c) has the same meaning as “regular rate of pay” in section 510(a) and encompasses not only hourly wages but all non-discretionary payments for work performed by the employee.¹ Further, individual persons who unlawfully withhold wages owed to employees, in violation of Cal. Lab Code sections 212, 216, 221, 222, and 223, are personally liable under Cal. Lab. Code sections 2699(f) and 2699.5.

Earned bonuses are considered wages under Cal. Lab. Code section 200. *Id.* Here, the alleged earned bonuses are non-discretionary and are subject to the relevant penalties under PAGA, including, and without limitation, waiting time penalties (Cal. Lab. Code § 203), wage scale penalties for failure to pay for contracted wages (Cal. Lab. Code § 223), and wage statement penalties (Cal. Lab. Code § 226)².

Additional facts and allegations are set forth in Aggrieved Employees’ complaint. Liability under the PAGA may be based on a wide variety of Labor Code predicate provisions, including but not limited to sections 200, 201, 202, 203, 210, 216, 218, 218.6, 223, 225, 226, 226.2, 226.7, 510, 512, 2810.5, 6400, 6401, 6401.7, 6402, 6403, 6404, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1199, 2673.1(a), and 2802, Industrial Welfare Commission Wage Orders, sections 2699 et seq. and all of the provisions listed in Labor Code section 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serve as the

¹ See *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858 (2021)

² See *Naranjo et. al v. Spectrum Sec. Servs., Inc.*, 13 Cal.5th 93, 121 (2022) [failure to report an accurate itemized wage statement expressed by statute, including “all amounts earned and now owing, not just those amounts paid... [where] a wage statement that conceals the amounts earned, on the grounds that they also were not paid, is not an accurate statement, and it does not comply with the wage-statement statute... [and] makes an employer liable to § 203 waiting time penalties and § 226 wage statement penalties.”].

basis for a PAGA claim by an aggrieved employee on behalf of themselves and other current and former employees.

In particular, the practices described above, and the violations set forth below relate to all employees who were employed by TBI, Inc. for at least ten years, and those who satisfied performance standards for qualification, in California:

1. TBI, Inc., failed to pay all wages earned and now owing (as described above), including non-discretionary earned bonuses, immediately or within 72 hours upon separation from employment.
2. TBI, Inc., failed to provide accurate wage statements that reflect actual hours worked and amounts earned as employees' wage statements failed to include the paid and/or unpaid non-discretionary bonuses in violation of Cal. Lab. Code sections 203, 226, 226.2, 1174, and applicable Wage Orders.

The above provisions do not include all of the derivative PAGA penalties associated with the above provisions, which are listed throughout the California Labor Code.

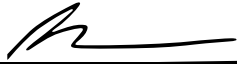
Aggrieved Employees Mary Beth Wendt and Jeanne Bartlett may be contacted through our office:

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If no action is taken by the Agency within 65 days, we will assume that we may pursue this action under the theories described above against TBI, Inc., and the Individual Defendant, Geoffrey Shepstone, described above, and their managers, agents, owners, and other liable persons and entities (pursuant to, and without limitation, Labor Code sections 210, 558, 1197.1, 2699(f) (and other provisions)).

PLEASE TAKE NOTICE THAT THIS IS ALSO A GENERAL LITIGATION PRESERVATION NOTICE to preserve all documents relating to all employees, including but not limited to all timekeeping and payroll records in paper form, native electronic form and any other format in which they are generated and maintained in the regular course of business; all databases and computer or electronic systems that are used for timekeeping and payroll; all records and evidence in any way related to the facts and claims asserted in this letter; all records and evidence in any way related to claims of Aggrieved Plaintiffs, the state, and other current or former employees under the California Labor Code Private Attorney General (including underlying Labor Code and IWC orders), the California Government Code, and the Equal Employment Opportunity Act. These documents include but are not limited to all schedules (both current and former employees), all timekeeping records, all rest and meal period records, all duty and responsibility records, all records which include employee signatures or initials, all payroll records, all state or federal withholding records, all personnel files and other employment records, all records concerning the payment or non-payment of wages, or provision or non-provision of state mandated labor code protections, as well as all documents pertaining to harassment or discrimination against employees, all communications relating to these records and documents, and all emails relating to these records and documents.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stan S. Mallison', positioned above a horizontal line.

Stan S. Mallison, Esq.
MALLISON & MARTINEZ