

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

October 12, 2023

VIA LWDA WEBSITE

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

Re: *Jose Bonito v. BYD Coach & Bus LLC, etc.*

To Whom It May Concern:

Please be advised that this law firm represents Jose Bonito (Mr. Bonito) in claims arising from his employment with BYD Coach & Bus LLC, BYD Motors LLC, and BYD Motors, Inc., and Does 1 through 100 (“Defendants”). Mr. Bonito is an “aggrieved employee” within the meaning of Labor Code § 2699.3 as to all of the violations alleged herein. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754 (“any Labor Code penalties recoverable by state authorities may be recovered in a PAGA action by a person who was employed by the alleged violator and affected by at least *one* of the violations alleged in the complaint.”)(emphasis added). The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants manufacture battery-electric buses and coaches in Lancaster, California. Mr. Bonito was employed by Defendants as a non-exempt “Autobody Tech” from approximately September 2021 to April 2023. Mr. Bonito’s primary job duties included performing body work and fiberglass on newly manufactured buses. Unless otherwise specified, all factual allegations contained below occurred during Mr. Bonito’s employment with Defendants.

Defendants systematically failed to compensate Mr. Bonito and other aggrieved employees for all hours actually worked, resulting in unpaid minimum wages and overtime wages. Specifically, after arriving at the facility in the morning, Mr. Bonito was required to don personal protective equipment (“PPE”) including a respirator, gloves, and safety glasses. Mr. Bonito was also required to inspect his station each morning before commencing work. This inspection process included cleaning the area and blowing any remaining fiberglass and dust off the work service. Once completed, Mr. Bonito then had to navigate to the timeclock before he was able to clock in each morning. As a result of

these unlawful timekeeping practices, Mr. Bonito and other aggrieved employees were not credited with all hours actually worked and were not paid all minimum and overtime wages earned.

Defendants failed to provide Mr. Bonito and other aggrieved employees with all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices that failed to provide timely, duty-free 30-minute first meal periods commencing before the end of the fifth hour of work. Mr. Bonito began his shift as early as 5:00 a.m. each day. However, Defendant regularly failed to provide Mr. Bonito and other aggrieved employees with a 30-minute uninterrupted meal period before 10:00 a.m. (the fifth hour of work) due to lack of coverage and the time sensitive nature of working with paint. Defendants also failed to provide a second 30-minute meal period to Mr. Bonito and other aggrieved employees when they worked shifts in excess of 10.0 hours. On occasions when Mr. Bonito and other aggrieved employees were not provided with all lawful meal periods to which they were entitled, Defendants failed to pay Mr. Bonito and other aggrieved employees an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants failed to maintain pay codes for the payment of meal period premium payments as required by Labor Code § 226.7.

California law requires that an employer provide 10 minutes of "net rest" to employees for rest periods, and "the rest period begins when the employee reaches an area away from the workstation that is appropriate for rest." See *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th at 111-112 (citing DLSE Manual § 45.3.3 for this proposition) Upon information and belief, Defendants' break room was located multiple minutes away from Mr. Bonito and other aggrieved employees' area of work. Because Defendants only authorized exactly 10 minutes per rest break, Mr. Bonito and other aggrieved employees were not provided adequate time to travel to the break room and utilize the full 10 minutes before being required to travel back to their workstation. This policy also applied to meal periods in the context of Defendants failure to provide 30 minutes of "net rest." Additionally, because Mr. Bonito and other aggrieved employees wore PPE while working, they did not have adequate time to remove the PPE and travel to the break room during rest breaks. This led to Mr. Bonito and other aggrieved employees being "tied" to their workstation during breaks. As a result, Defendants exercised some control over rest periods, rendering them unlawful. See *Augustus v. ABM Security Svcs.* (2016) 2 Cal.5th 257, 260 ("[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time.") On occasions when Mr. Bonito and other aggrieved employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendants failed to compensate Mr. Bonito and other aggrieved employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants

failed to maintain pay codes for the payment of rest period premium payments as required by Labor Code § 226.7.

As a result of Defendants' failure to compensate Mr. Bonito and other aggrieved employees for all minimum wages, overtime wages, and all meal and rest period premium wages, Defendants failed to pay Mr. Bonito and other aggrieved employees all wages owed at the time of their separation of employment with Defendants.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Minimum Wage Violations

Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes Defendants' failure to pay Mr. Bonito and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 1. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

Overtime Wage Violations

Defendants were required to properly pay Mr. Bonito and other aggrieved employees for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Defendants caused Mr. Bonito and other aggrieved employees to work overtime hours but did not compensate Mr. Bonito or other aggrieved employees at one and one-half times their regular rate of pay for all such hours.

Meal Period Violations

As alleged above, Defendants failed to provide Mr. Bonito and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As a result, Mr. Bonito and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of

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

Rest Period Violations

As described above, Defendants also failed, and continue to fail, to authorize and permit Mr. Bonito and similarly aggrieved employees to take all required and compliant rest periods. See Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As a result, Mr. Bonito and similarly aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that all rest periods were not authorized and permitted. *See* Labor Code § 226.7.

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Bonito and other aggrieved employees with complete and accurate wage statements with respect to gross wages earned, net wages earned, in violation of Labor Code § 226 *et seq.* Defendants' failures in furnishing Mr. Bonito and other aggrieved employees with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all meal and rest period premium wages and deprived them of the information necessary to identify the discrepancies in Defendants' reported data and whether they have been paid all wages earned.

Waiting Time Penalties

Defendants failed to timely pay Mr. Bonito and other aggrieved employees all final wages due to them at the time of their separation which includes, among other things, unpaid overtime and minimum wages, and meal and rest period premium wages. Further, Mr. Bonito is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay other aggrieved employees all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Mr. Bonito and other aggrieved employees their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due.

As an “aggrieved employee,” Mr. Bonito will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations alleged herein. Based on Mr. Bonito's own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 204, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Bonito and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Bonito and other aggrieved employees all overtime compensation earned;
- c. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide all meal periods as required by law and failing to pay meal premiums to Mr. Bonito and similarly aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Bonito and similarly aggrieved employees to take all of their statutorily-mandated, duty-free rest periods and failing to pay rest premiums at these employees' respective regular rates of pay for rest period violations;
- e. Defendants violated Labor Code § 226 by failing to furnish Mr. Bonito and other aggrieved employees with accurate and compliant itemized wage statements;
- f. Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Bonito and other aggrieved employees;
- g. Defendants violated Labor Code § 204 by failing to pay Mr. Bonito and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Bonito and other aggrieved employees.

Pursuant to Labor Code § 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC


Fletcher W. Schmidt

cc: BYD Coach & Bus LLC, c/o Steven Pickett, 5716 Corsa Ave Suite 110, West Lake Village, CA (via certified mail)

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