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California Labor and Workforce Development Agency
Office of the Director
800 Capitol Mall, MIC-55
Sacramento, California 95814
Filed at: https://cadir.my.site.com/wcsearch

Re: Notice of Labor Code Violations Pursuant to Labor Code § 2699.3 (Private Attorneys General Act of 2004) — Aggrieved Employee: Lisa Goldberg

To Whom It May Concern:

Pursuant to Labor Code section 2699.3, this firm, on behalf of aggrieved employee Lisa Goldberg (the "Aggrieved Employee") and on behalf of other current and former aggrieved employees, hereby provides written notice to the California Labor and Workforce Development Agency ("LWDA") and to the addressee employer entities — ADVANTAGE SOLUTIONS INC. and DAYMON WORLDWIDE INC. (together, jointly and severally, the "Employer") — of the Labor Code violations described below for which the Aggrieved Employee intends to seek civil penalties under the Private Attorneys General Act (Lab. Code §§ 2698 et seq.) ("PAGA").

I. Aggrieved Employee and Employer.

Lisa Goldberg was misclassified as an independent contractor and performed in-store product demonstrations at Whole Foods Market ("WFM") locations throughout Los Angeles County that were scheduled, assigned, and managed through the Employer's Daymon Interactions portal. Advantage Solutions Inc. operates the Daymon Interactions demo-scheduling portal on behalf of WFM, appears on the Aggrieved Employee's pay records as an employer of record, and exercised substantial control over the scheduling and working conditions of demo representatives. The Employer is Advantage Solutions Inc. and Daymon Worldwide Inc. (which operates the Daymon Interactions demo-scheduling and onboarding platform), together with any affiliated or successor entities, who functioned as joint employers of the Aggrieved Employee and the other aggrieved employees. Any individual who, as an owner, director, officer, or managing agent, violated or caused to be violated the Labor Code provisions below is personally liable under Labor Code section 558.1.

Ms. Goldberg personally suffered each of the Labor Code violations alleged herein during her employment with the Employer, thereby establishing her standing as an "aggrieved employee" under Labor Code section 2699(c) and the standing requirements of the 2024 PAGA reforms (SB 225/AB 2288).

II. Other Aggrieved Employees.

On information and belief, the Employer engaged in the violations below uniformly with respect to similarly situated current and former demo representatives and brand ambassadors classified as independent contractors and scheduled through the Daymon Interactions portal in California, the number of whom is presently unknown but believed to be substantial, subject to discovery and amendment.

III. Labor Code Violations and Supporting Facts.

§§ 226.8, 2775 (Willful Misclassification of Independent Contractors). The Employer willfully and systemically misclassified the Aggrieved Employee and other aggrieved demonstration and brand-ambassador representatives as independent contractors when they are employees under the IWC Wage Order definitions adopted in Martinez v. Combs (2010) 49 Cal.4th 35 and under the ABC test codified at Labor Code section 2775 (Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903). The Employer is an employer because it employs the aggrieved employees directly or indirectly, or through an agent or any other person, exercises control over their wages, hours, and working conditions, suffers or permits them to work, and engages them; no exception under Labor Code sections 2776 through 2787 applies to in-store demonstration and brand-ambassador work. The misclassification is willful within the meaning of Labor Code section 226.8 (avoiding employee status by voluntarily and knowingly misclassifying the individual as an independent contractor), and was undertaken to evade, and did evade, the Employer's obligations under Labor Code sections 1182.12, 1194, 1197, and 1197.1 (minimum wage); 510 and 1194 (overtime); 226.7 and 512 (meal and rest periods); 2802 (business-expense indemnification); 226(a), 1174, and 1174.5 (records and wage statements); and 201, 202, 203, and 204 (timely payment of wages). Each such provision is enumerated and asserted as a violation flowing from, and independent of where so noted, the misclassification.

§§ 1182.12, 1194, 1197, 1197.1, 226.2 (Minimum Wage; Defective Piece-Rate/Per-Demo Compensation). The Employer compensated the aggrieved employees on a per-demonstration (piece-rate) basis that paid only for scheduled demonstration shifts and did not separately compensate all the work the Employer required, including pre-shift stock-check calls and emails and related coordination, or the associated nonproductive time and rest periods. Because the Employer's piece-rate/per-demo structure failed to compensate this required work at no less than the applicable minimum wage and failed to separately compensate nonproductive time and rest periods as required for piece-rate employees under Labor Code section 226.2, the Employer suffered or permitted off-the-clock work without paying minimum wage for all hours worked, in violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 226.2 and the applicable Wage Order.

§§ 510, 1194 (Overtime). The Employer's scheduling of back-to-back demo shifts, aggregated with uncompensated off-the-clock time, caused work for which premium overtime pay was due and not paid.

§§ 226.7, 512 (Meal Periods); § 226.7 (Rest Periods). The Employer failed to provide compliant off-duty meal periods and failed to authorize and permit compliant rest periods—demo assignments framed in four-hour increments triggered rest-period obligations—and paid no premium, which must be calculated at the regular rate of compensation (Ferra v. Loews Hollywood Hotel, LLC (2021) 11 Cal.5th 858).

§ 226(a) (Inaccurate Wage Statements — Independent Violation). Independent of, and in addition to, any underreporting that derives from the unpaid wages described above, the Employer failed to furnish wage statements that comply with Labor Code section 226(a) on their face. Because the Employer treated the Aggrieved Employee and other aggrieved employees as independent contractors and paid against invoices, it did not furnish itemized wage statements containing the information section 226(a) requires—including, among other items, total hours worked, all applicable hourly rates and the corresponding hours worked at each rate, the inclusive dates of the pay period, net and gross wages earned, and the name and address of the legal entity employer. These statements (to the extent any were provided) are facially deficient regardless of whether the correct amount of wages is separately determined, and the failure was knowing and intentional within the meaning of section 226(e). This violation stands on its own and does not depend on proof of any other wage violation.

§§ 201–204 (Untimely Payment of Wages — Independent Violation). Independent of, and in addition to, any nonpayment of wages, the Employer failed to pay wages within the time and on the pay schedule the Labor Code requires. Section 204 requires that wages earned be paid on regular, semimonthly paydays designated in advance; sections 201 and 202 require that all wages be paid immediately upon discharge or within seventy-two hours upon resignation. By treating the Aggrieved Employee and other aggrieved employees as independent contractors paid only upon submission and processing of invoices—rather than on a compliant, designated payroll schedule—the Employer failed to pay wages when due during employment under section 204, and failed to pay all wages due at the time of separation under sections 201 and 202, regardless of whether the amounts ultimately paid were complete. The Employer's failure to pay timely wages at separation was willful within the meaning of section 203, entitling aggrieved employees to waiting-time penalties. These timing violations are independent and do not depend on proof of any underpayment.

§ 2802 (Business-Expense Reimbursement). As a matter of **willful and systemic** policy, the Employer required the use of personal cellular telephones for business communications and failed to reimburse employees for these necessary expenditures. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal.App.4th 1137.

§§ 1174, 1174.5 (Failure to Keep Required Records). The Employer failed to keep and maintain the records required by Labor Code section 1174, including accurate records of hours worked and wages paid, as a result of treating the aggrieved employees as independent contractors and paying against invoices rather than maintaining compliant payroll records, in violation of Labor Code sections 1174 and 1174.5. This recordkeeping failure is independent of the wage-statement violations and supports civil penalties.

§§ 245–249 (Paid Sick Leave) and L.A. Mun. Code §§ 187.02–187.04 (Los Angeles Paid Sick Time). The aggrieved employees performed work within the City of Los Angeles, including at the Venice store. As a result of misclassifying them as independent contractors, the Employer failed to provide the paid sick time, written notice of available sick leave, and recordkeeping required by California's Healthy Workplaces, Healthy Families Act (Labor Code sections 245–249) and by the Los Angeles Minimum Wage Ordinance (L.A. Mun. Code sections 187.02–187.04).

§ 558.1. Each owner, officer, director, or managing agent who violated or caused to be violated the provisions above is personally liable. Atempa v. Pedrazzani (2018) 27 Cal.App.5th 809.

III-A. The Employer's Knowledge of, and Willful Indifference to, These Violations.

The Employer's violations are not inadvertent. The Employer has been named as a defendant in numerous California wage-and-hour actions asserting the same categories of Labor Code violations alleged here—including unpaid minimum and overtime wages, missed meal and rest periods, unreimbursed business expenses, inaccurate wage statements, and late final wages. These include, among others, currently pending matters such as Mejicanos v. Advantage Sales & Marketing, LLC, L.A. Super. Ct. No. 24STCV06439 (PAGA and wage-and-hour), Gonzales v. The Retail Odyssey Company LLC, SAS Retail Services, LLC, and Daymon Worldwide, Inc., L.A. Super. Ct. No. 26STCV09526 (class and PAGA), and Castro v. Advantage Sales & Marketing LLC, Stanislaus Super. Ct. No. CV-26-000861, as well as prior actions including Smith v. Advantage Solutions, Inc., San Mateo Super. Ct. No. 23-CIV-00884, and Foster v. Advantage Sales & Marketing, LLC, N.D. Cal. No. 3:18-cv-07205. This litany of substantially similar wage-and-hour litigation demonstrates that the Employer is keenly aware of its wage-and-hour obligations and of recurring allegations that it fails to satisfy them, yet it has continued the unlawful policies and practices described above—and has shown no regard for correcting them as to the misclassified demonstration and brand-ambassador workforce at issue here. The Employer's knowledge of these recurring problems, coupled with its failure to reclassify or to implement compliant meal-period, rest-period, overtime, expense-reimbursement, wage-statement, and final-pay practices, establishes that its violations are knowing and willful, warranting the maximum civil penalties available under the Labor Code and foreclosing any reduction based on a purported good-faith or reasonable belief that its conduct was lawful.

The governing law is not new or unsettled. The employee-favoring "suffer or permit" and "exercise of control" definitions of employment were confirmed by the California Supreme Court in Martinez v. Combs (2010) 49 Cal.4th 35 more than fifteen years ago, and the ABC test for independent-contractor classification has been the law since Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903 and its codification in Labor Code section 2775 (operative January 1, 2020). The Employer cannot claim a reasonable, good-faith basis to believe that a workforce whose hours and assignments it controls through its own scheduling system is exempt from these long-settled rules.

Under Naranjo v. Spectrum Security Services, Inc. (2024) 16 Cal.5th 93, the only defense to the heightened penalties at issue—the "willful" standard of Labor Code section 203 and the "knowing and intentional" standard of Labor Code section 226—is an objectively reasonable, good-faith belief in compliance, and the Supreme Court treated those standards as substantively the same inquiry. That defense is narrow: it is available only where the governing legal question was genuinely unsettled and the employer had an objectively reasonable basis for its position. It is unavailable here, where the controlling classification and wage-order rules are long-settled and the Employer has been repeatedly sued on the very same obligations. The same good-faith inquiry that would defeat sections 203 and 226 penalties is the inquiry that bears on the Employer's scienter for enhanced civil penalties under PAGA; on these facts it cuts decisively against the Employer.

The Employer's indifference is further shown by the volume of substantially identical wage-and-hour litigation against its own affiliated retail-services entities arising from the same in-store retail labor and the same Daymon-administered scheduling operation—brought by workers the Employer acknowledges to be employees. These include, among others, multiple pending representative and class actions against SAS Retail Services, LLC (a Daymon/Advantage entity) asserting the identical violations alleged here—e.g., Gomez v. SAS Retail Services, LLC, L.A. Super. Ct. Nos. 23STCV21786 (PAGA) and 23STCV07028 (class); Marbley v. SAS Retail Services, LLC, L.A. Super. Ct. No. 24STCV06509 (PAGA); and Miranda v. SAS Retail Services, LLC, L.A. Super. Ct. No. 24STCV19524 (PAGA, including failure to provide notice of paid sick time under Labor Code section 246)—together with earlier actions such as Jackson v. SAS Retail Services, LLC, L.A. Super. Ct. No. BC570744 (class). That the Employer faces recurring claims of the same meal-period, rest-period, overtime, minimum-wage, expense-reimbursement, wage-statement, sick-pay-notice, and final-pay failures—as to its concededly employed retail workforce scheduled through the same system—confirms that the Employer is fully aware of these obligations and has chosen not to extend them to the demonstration and brand-ambassador workers it misclassifies as independent contractors. This is knowing and willful conduct, not honest mistake.

IV. Theories of Liability.

Liability attaches under (a) direct employer liability; (b) **joint-employer** liability under Martinez v. Combs (2010) 49 Cal.4th 35; (c) the **integrated-enterprise** theory of liability; and (d) personal liability under Labor Code section 558.1. All named and affiliated entities are jointly and severally liable for the full scope of penalties sought.

V. Relief Sought.

The Aggrieved Employee seeks civil penalties on behalf of herself, the LWDA, and all other Aggrieved Employees under Labor Code sections 2699(f), 2699(g), 558, 1197.1, 226.3, 226.8, and other applicable provisions, plus interest, costs, and reasonable attorneys' fees under Labor Code section 2699(g)(1). The Aggrieved Employee currently intends to pursue parallel class action claims for the same violations in the Los Angeles County Superior Court. The Aggrieved Employee also seeks injunctive relief under PAGA requiring the Employer to correct the unlawful practices described above, including by properly classifying the affected workers as employees, implementing compliant pay, meal- and rest-period, expense-reimbursement, recordkeeping, paid-sick-leave, and timely-payment practices going forward, and issuing corrected, Labor Code section 226(a)-compliant wage statements for the periods at issue to the maximum extent the records permit.

Because the Employer's violations were knowing, willful, and systematic—as further evidenced by the Employer's failure to maintain legally mandated investigatory and employment records—the Aggrieved

Employee asserts that the maximum civil penalties per pay period and per violation are warranted under the Labor Code. The Aggrieved Employee opposes any reduction in penalties, as the Employer cannot demonstrate a good faith or reasonable belief that its conduct was lawful. The Employer cannot satisfy the narrow good-faith defense recognized in Naranjo v. Spectrum Security Services, Inc. (2024) 16 Cal.5th 93, because the governing law is long-settled and the Employer has been repeatedly sued on these same obligations; accordingly, no reduction of penalties is warranted and the maximum civil penalties should be assessed.

VI. Statutory Waiting Period.

This notice commences the statutory waiting period under Labor Code section 2699.3(a). Should the LWDA elect not to investigate, or fail to provide notice of intent to investigate within the statutory period, the Aggrieved Employee intends to amend her individual civil complaint to add a PAGA cause of action.

VII. Preservation Demand.

This notice further constitutes a continuing demand to preserve evidence under Cedars-Sinai Medical Center v. Superior Court (1998) 18 Cal.4th 1, including all Daymon Interactions portal records, scheduling and assignment data, payroll registers, wage statements, 1099s, schedules, electronic communications, and personnel and complaint files relating to the matters described above. The Employer must suspend any auto-delete or document-destruction practice immediately.

If you have any questions, please contact this office at (747) 233-1600 or info@benowitzlaw.com.

Sincerely,

Louis Benowitz

cc: Lisa Goldberg (via email)
Genna Walsh (Genna@BenowitzLaw.com)

ATTACHMENT A — INDIVIDUAL ADDRESSES

ADVANTAGE SOLUTIONS INC.
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