

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

January 8, 2024

VIA LWDA WEBSITE

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

Re: *Carlos Khan v. KDC/One Chatsworth, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Carlos Khan (“Mr. Khan”) in claims arising from her employment with KDC/One Chatsworth, Inc, a Delaware Corporation; KDC/One Socal Laboratories, LLC, a Delaware Limited Liability Company, and Does 1 through 100 (“Defendants”). Mr. Khan is an “aggrieved employee” within the meaning of Labor Code section 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’ employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants are a cosmetics and beauty product laboratory and manufacturer. Mr. Khan was employed by Defendants as a non-exempt employee from approximately June 2022 to July 2023. Mr. Khan’s job duties involved collecting and storing chemical waste products. Unless otherwise specified, all allegations herein occurred during Mr. Khan’s employment with Defendants.

Defendants utilized timekeeping practices that resulted in Mr. Khan not being compensated for all hours actually worked. Specifically, Mr. Khan and other aggrieved employees would frequently be clocked out for meal periods but would be interrupted during their meals and asked to perform work without clocking back in, such as when trucks arrived and needed to be unloaded immediately. As a result of this practice, Mr. Khan and other aggrieved employees were not paid all minimum and overtime wages owed to them.

Defendants also failed to provide Mr. Khan and other aggrieved employees with

compliant meal periods, as meals were frequently not provided until after the end of the fifth hour of work, were cut short, missed altogether, or were interrupted as described above. In addition, Defendants failed to provide Mr. Khan and other aggrieved employees with a “net” of 30-minutes for their meal periods after factoring in the time it takes to navigate to and from the meal area, as described below in the following paragraph. Defendants also failed to provide Mr. Khan and other aggrieved employees with an additional hour of premium pay at their regular rate of pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7.

Mr. Khan was not authorized and permitted to take a rest period for every 4 hours worked (or major fraction thereof) due to Defendants’ rest period policies/practices. Specifically, Mr. Khan was frequently denied the opportunity to take rest periods throughout the workday. In addition, when employees did have the opportunity to take a rest period, they were not authorized and permitted to take a “net” of 10 minutes, after factoring in the time it took employees to navigate to and from the break area. Under California law, Defendants are required to authorize and permit a “net” rest period of 10-minutes that does not begin until the employee reaches a rest area away from his or her workstation and must be uninterrupted during the duration of the rest period. *See e.g.*, Division of Labor Standards Enforcement Manual (“DLSE Manual”) §45.3.3; *Vaquero v. Stoneledge Furniture LLC*, (2017) 9 Cal.App.5th 98, 111-112 (citing DLSE Manual § 45.3.3 for the proposition that “the rest period begins when the employee reaches an area away from the workstation that is appropriate for rest”); *Augustus v. ABM Security Services, Inc.*, (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”). However, Defendants only authorized and permitted Mr. Khan and other non-exempt employees to take a total of 10 minutes away from their work area for rest periods. Defendants also failed to provide Mr. Khan and other non-exempt employees with an additional hour of premium pay at their regular rate of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

Defendants also failed to pay Mr. Khan and other aggrieved employees all reporting time wages owed. During Mr. Khan’s employment with Defendants, Mr. Khan and other aggrieved employees were regularly sent home after reporting to work as scheduled on the basis that there was no work available. On occasions when Mr. Khan and other aggrieved employees were scheduled and reported to work, but were furnished less than half of their usual or scheduled day’s work, Defendants failed to pay Mr. Khan and other aggrieved employees with half their usual or scheduled day’s work (but in no event less than two hours nor more than four hours), at their regular rate of pay in violation of Wage Order 1 § 5 and Labor Code § 1198.

Defendants also required Mr. Khan and other aggrieved employees to use their personal cellular phones for a variety of necessary work purposes. However, for at least a portion of the liability period, Defendants did not reimburse Mr. Khan or other aggrieved employees for a reasonable portion of their cellular phone expenses, as mandated by

Cochran v. Schwan's Home Service, Inc., 228 Cal. App. 4th 1137 (2014), and Labor Code § 2802.

As a result of Defendants' failure to pay all minimum wages, overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records, issued inaccurate wage statements, and failed to pay all final wages to Mr. Khan and other non-exempt employees upon their separation of employment.

Overtime Wage Violations

Defendants were required to properly pay Mr. Khan 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 all hours worked in excess of eight (8) hours" per work day and/or in excess of 40 hours of work in the workweek. Defendants caused Mr. Khan and other aggrieved employees to work overtime hours but did not compensate Mr. Khan or other aggrieved employees at one and one-half times their regular rate of pay for all such hours.

Minimum Wage Violations

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. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. Defendants failed to conform their pay practices to the requirements of the law by failing to pay Mr. Khan 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.

Meal Period Violations

As alleged above, Defendants failed to provide Mr. Khan 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. Khan 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 to authorize and permit Mr. Khan and other 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. Khan and other 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.

Failure to Reimburse Necessary Business Expenses

Defendants failed to indemnify Mr. Khan and other aggrieved employees for all necessary business expenses incurred, including, among other things, personal cellular phone usage. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, Mr. Khan and other aggrieved employees are entitled to damages, attorneys' fees and costs of suit, and interest thereon, in sums to be shown according to proof at trial, pursuant to Labor Code § 2802.

Failure to Pay Reporting Time Pay

Defendants failed to pay Mr. Khan and other non-exempt employees all reporting time wages owed. During Plaintiff's employment with Defendants, Plaintiff and other aggrieved employees were regularly sent home after reporting to work as scheduled on the basis that there was no work available. On occasions when Plaintiff and other aggrieved employees were scheduled and reported to work, but were furnished less than half of their usual or scheduled day's work, Defendants failed to pay Plaintiff and other non-exempt employees with half their usual or scheduled day's work (but in no event less than two hours nor more than four hours), at their regular rate of pay in violation of Wage Order 1 § 5 and Labor Code § 1198.

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Khan and other aggrieved employees with complete and accurate wage statements with respect to gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226 *et seq.* Defendants' failures in furnishing Mr. Khan 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 overtime and minimum wages as well as 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

Labor Code §§ 201-203 require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her intent to quit, said employee's wages become due and payable no later than 72 hours upon said employee's last date of employment. Defendants failed to timely pay Mr. Khan and other aggrieved employees all final wages due to them at the time of their separation, which includes, among other things, overtime and minimum wages, meal and rest period premium wages, and underpaid sick pay wages. Further, as a matter of uniform policy and practice, Defendants continue to fail to pay aggrieved employees all earned wages at the end of employment in a timely manner pursuant to 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. Khan 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. Khan 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. Khan'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, 510, 558, 1194 and 1198 by failing to pay Mr. Khan and other aggrieved employees all overtime compensation earned;
- b. Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Khan and other aggrieved employees the statutory minimum wage for all hours worked;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558, by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Khan and other 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. Khan and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to Mr. Khan and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;

- e. Defendants violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Khan and other aggrieved employees for all work-related expenses incurred;
- f. Defendants violated Labor Code § 1198 by failing to pay Mr. Khan and other aggrieved employees all reporting time wages owed;
- g. Defendants violated Labor Code § 226 by failing to furnish Mr. Khan and other aggrieved employees with accurate and compliant itemized wage statements;
- h. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final wages due to Mr. Khan and other aggrieved employees;
- i. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Khan and aggrieved employees; and
- j. Defendants violated Labor Code § 204 by failing to pay Mr. Khan and other aggrieved employees all wages earned at least twice during each calendar month.

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: KDC/One Chatsworth, Inc., c/o Capitol Corporate Services, Inc, 455 Capitol Mall #217, Sacramento, CA 95814 (via certified mail)

KDC/One Social Laboratories, LLC, c/o Capitol Corporate Services, Inc, 455 Capitol Mall #217, Sacramento, CA 95814 (via certified mail)