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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Matthew Husino, as a private attorney general under the Private Attorneys General Act, Plaintiff, vs. MH Sub I, LLC and Does 1 through 10, Defendants.	**Case No.** 24TRCV02508 **Complaint for Recovery of Civil Penalties Pursuant to the California Private Attorneys General Act**

Plaintiff Matthew Husino ("Plaintiff"), as a private attorney general pursuant to the California Private Attorneys General Act, alleges:

1. Plaintiff is a California resident and was employed by Defendants MH Sub I, LLC in California from around April 2023 until April 2024. Plaintiff was a non-exempt employee eligible for overtime pay. Defendants paid Plaintiff hourly compensation and overtime. In addition to

Plaintiff's regular hourly pay, Defendants paid Plaintiff compensation in the form of commissions and other incentive compensation.

2. Defendants MH Sub I, LLC is a limited liability company with its principal place of business located in Los Angeles County, California.

3. Plaintiff does not presently know the true names and capacities of the defendants named as Does 1 through 10 and therefore sues such defendants by these fictitious names. Each of the Defendants has been or is the principal, officer, director, agent, employee, joint employer, representative and/or co-conspirator of each of the other defendants and in such capacity or capacities participated in the acts or conduct alleged herein and incurred liability therefor. At an unknown time, some of the defendants conspired with other defendants to commit the wrongful acts described herein. These wrongful acts were committed in furtherance of such conspiracy. Defendants aided and abetted each other in committing the wrongful acts alleged herein. Each of the defendants acted for personal gain or in furtherance of their own financial advantage by committing the acts alleged herein. Plaintiff will request leave of Court to amend this Complaint to set forth their true names, identities, and capacities when Plaintiff ascertains them. The named defendants and the Doe defendants are hereinafter referred to collectively as "Defendants."

4. PAGA Employees include all employees of Defendants who worked in California during the applicable limitations period. Defendants are the employers of the PAGA Employees.

5. One or more of the alleged violations set forth below were committed against Plaintiff and other PAGA Employees.

6. Defendants did not compensate PAGA Employees for all hours worked, including overtime, meal and rest period premiums, sick pay, PTO, and vacation pay, *inter alia*, to which they were entitled at the correct rate. Defendants paid overtime pay, meal period premiums, rest period premiums, sick pay, PTO, and/or vacation pay to PAGA Employees without properly calculating the regular rate based on all compensation received, including commissions and other incentive compensation. Defendants did not pay all the commissions and other compensation owing to PAGA Employees pursuant to the commission agreements between Defendants and such employees.

7. Defendants did not provide PAGA Employees with the requisite duty-free, timely, and number of meal and rest periods of the legally required duration. Because of the nature of PAGA Employees' work, PAGA Employees were unable to take meal periods and/or rest periods at the time required by law. Although Defendants paid meal period premiums to PAGA Employees, Defendants did not pay them at the proper rate because Defendants only paid such premiums at the base hourly rate and did not include the commissions and other compensation earned by them in calculating the premiums.

8. Defendants violated Labor Code sections 201 or 202 as to PAGA Employees whose employment terminated by failing to pay the wages earned and unpaid upon the termination of their employment at the proper rate within the required time. Defendants violated section 203 as to PAGA Employees by willfully failing to pay the wages owing to them under section 201 or 202.

9. Defendants violated section 226(a)(1) by failing to provide PAGA Employees with statements of wages that accurately showed gross wages earned as alleged above. Defendants violated section 226(a)(3) by failing to provide PAGA Employees with statements of wages that accurately showed how the commissions and other piece rate earnings earned were calculated. Defendants violated section 226(a)(5) by failing to provide PAGA Employees with statements of wages that accurately showed net wages earned as alleged above. Defendants violated section 226(a)(6) by failing to provide PAGA Employees with statements of wages that accurately showed the inclusive dates of the period for which the employee is paid. For example, PAGA Employees received wage statements reflecting commissions and overtime on such commissions, but the wage statements did not accurately reflect the beginning and ending dates of the period over which the commissions and the overtime thereon were earned. Defendants violated section 226(a)(9) by failing to provide PAGA Employees with statements of wages that accurately showed the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by failing to accurately show the actual number of hours worked at the applicable hourly rate at which they should have been paid. For example, meal period premiums paid did not reflect the accurate hourly rate of the premiums, but only the base rate. Also, when Defendants paid overtime on

commissions, it did not reflect the hours worked at the hourly rate in effect used to calculate overtime on the commissions but simply an "OT Commission" amount with no designation of the hours or rate used to calculate such overtime.

10. Defendants required PAGA Employees to incur necessary expenditures in direct consequence of the discharge of their duties or at the obedience to the direction of Defendants that included, without limitation, using cellular phones and home internet charges for work-related purposes. Defendants did not properly reimburse PAGA Employees for such expenditures.

11. PAGA Employees who met the statutory requirements were not provided with sick pay by Defendants. Defendants required PAGA Employees who met certain statutory requirements and took sick time to use PTO when they were sick rather than sick pay to which they were entitled. Defendants violated section 246(i) by failing to provide the information required to be provided thereunder to PAGA Employees. Defendants failed to pay all sick pay owing PAGA Employees at the properly calculated rate of pay by failing to include commissions and other compensation in the calculation of the sick pay that was paid.

12. PAGA Employees whose employment terminated earned and were paid accrued vacation time by Defendants upon their termination, but the vacation pay Defendants paid was not paid at the employees' "final rate" because the rate at which they were paid did take into account the commissions and other compensation paid to them.

13. Defendants did not timely pay PAGA Employees all wages owing as required by section 204 because Defendants did not pay all wages owing at the properly calculated rate of pay as set forth above. Moreover, Defendants did not pay commissions and other compensation earned by PAGA Employees within seven calendar days following the close of the payroll period. For example, Plaintiff received a commission check dated April 19, 2024 for the period "March 31, 2024 – March 31, 2024" for commissions earned during the month of March.

14. Defendants required PAGA Employees to agree in writing to an agreement that contained the following provision:

> I agree that during the period of my employment and for a period of one (1) year after my employment ends for any reason, I shall not, directly or indirectly, solicit or induce (i) any

> person employed by the Company to terminate his or her employment (without the express written approval of the Chief Executive Officer of the Company) . . .

15. This non-solicitation agreement violates California Business & Professions Code section 16600. Defendants or an agent, manager, superintendent, or officer of Defendants knew that the non-solicitation provision was prohibited by law.

16. On May 22, 2024, Plaintiff's attorney gave written notice to the Labor and Workforce Development Agency ("LWDA") and to Defendants MH Sub I, LLC by certified mail identifying violations set forth in this complaint and 65 days have passed from the date of the provision of such notice.

17. Plaintiff has incurred attorneys' fees and costs in pursuing this claim.

WHEREFORE, Plaintiff demands that judgment be entered against all Defendants as follows:

1. Penalties recoverable under the PAGA;
2. Prejudgment interest;
3. Reasonable attorneys' fees;
4. Costs as allowed by law;
5. Such other relief as this Court shall deem just and proper.

Dated: July 29, 2024

THE DION-KINDEM LAW FIRM

BY: Peter Dion-Kindem

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