



May 9, 2024

VIA LWDA WEBSITE

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

Re: *Kelsey De Medeiros v. Forward Management Long Beach, Inc., dba
Keller Williams Pacific Estates*

To Whom It May Concern:

Please be advised that this law firm represents Kelsey De Medeiros in claims arising from her employment with Forward Management Long Beach, Inc., dba Keller Williams Pacific Estates; and Does 1 through 100 (collectively “KWPE”). Ms. De Medeiros is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to KWPE’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

Ms. De Medeiros commenced employment with Defendants as a non-exempt employee (intentionally misclassified as salary-exempt), in the position of “Assistant Market Center Administrator” from around September 2020, until her wrongful termination around September 10, 2020. Plaintiff typically worked from Monday through Friday from 4:30 pm until around 11:30 p.m., and frequently later. Despite this reality, KWPE failed to record the hours worked of Ms. De Medeiros and other aggrieved employees whatsoever. Ms. De Medeiros’s job duties revolved around tasks such as collecting debt owed from agents/vendors, ensuring that agents were paid their commissions, and general accounting functions. Due to KWPE’s policy/practice of intentionally understaffing its workforce and intentionally misclassifying its employees as salary exempt, Ms. De Medeiros and other aggrieved employees were typically required to be on-duty during the entire duration of their shifts without any time for meal periods, rest periods, or any other breaks. The “aggrieved employees” whom Ms. De Medeiros seeks to represent are the other current and former non-exempt employees of KWPE who were subject to the Labor Code violations as alleged herein as well as all salaried and/or exempt employees who should have been classified as non-exempt but were willfully and unlawfully misclassified as salary-exempt.

Specifically, KWPE willfully and intentionally misclassified its employees, including, but not limited to, those employees in positions similar to Ms. De Medeiros.

Indeed, KWPE engaged in an intentional policy/practice of both i) misclassifying Ms. De Medeiros and other aggrieved employees who did not fall within any recognized salary exemption as salaried exempt; and ii) intentionally compensating Ms. De Medeiros and other aggrieved employees less than the statutory minimum salary. Upon information and belief, this intentional and willful misclassification resulted in the systemic underpayment of wages to those individuals employed by KWPE in California.

Pursuant to *Huff v. Securitas Security Services*, (2018) 23 Cal.App.5th 745, 751, an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the State not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. De Medeiros has standing to pursue penalties on behalf of the State for violations affecting all of the aggrieved employees at KWPE, regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor/staffing agency.

Ms. De Medeiros and other aggrieved employees routinely worked in excess of 8 hours per workday and/or 40 hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Ms. De Medeiros conservatively estimates that she worked at least 42 hours per week, thus entitling her to overtime compensation, but due to KWPE's practice of intentionally misclassifying her as salary-exempt, KWPE failed to issue Ms. De Medeiros and other aggrieved employees for the requisite overtime compensation on those occasions that they worked in excess of the hourly/weekly overtime thresholds as set forth in the California Labor Code. Furthermore, KWPE paid Ms. De Medeiros and other aggrieved employees commission earnings, non-discretionary bonuses, and other forms of non-discretionary pay that are not excludable from the regular rate of pay (hereinafter the aforementioned forms of pay are referred to as "Incentive Pay"). Despite KWPE's payment of Incentive Pay to Ms. De Medeiros and other aggrieved employees, KWPE failed to properly calculate the regular rate of pay, thereby causing Ms. De Medeiros and other aggrieved employees to be underpaid all required overtime wages. Due to KWPE's stated practice/policy of intentionally misclassifying non-exempt employees as exempt and failing to record their hours worked, KWPE failed to pay all overtime wages due to Ms. De Medeiros and other aggrieved employees.

During Ms. De Medeiros and other aggrieved employees' employment with KWPE, Ms. De Medeiros and other aggrieved employees were not provided all required meal periods due to KWPE's meal period policies/practices which fail to provide uninterrupted, duty-free 30-minute meal periods prior to the sixth hour of work commencing. Indeed, due to the mistaken belief that they weren't entitled to meal periods due to KWPE intentionally misclassifying them as salary exempt, Ms. De Medeiros and the aggrieved employees would rarely, if ever, exercise their right to a meal period. Instead, Ms. De Medeiros and other aggrieved employees would be generally working for the entirety of their shifts without any time or opportunity to exercise a compliant meal period. As a result of this policy/practice, Ms. De Medeiros and other aggrieved

employees were not permitted to take off-duty meal periods because KWPE intentionally did not provide them the opportunity to do so.

In addition, to KWPE's failure to provide Ms. De Medeiros and other aggrieved employees with all legally required first meal periods, KWPE also failed to provide second meal periods to Ms. De Medeiros and other aggrieved employees when they worked shifts in excess of 10.0 hours.

On those occasions when Ms. De Medeiros and other aggrieved employees were not provided with all legally compliant meal periods to which they were entitled, KWPE failed to compensate Ms. De Medeiros and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Further, during at least a portion of the time period in question, KWPE maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Ms. De Medeiros and other aggrieved employees.

Ms. De Medeiros and other aggrieved employees were also not authorized and permitted to take all required rest periods due to KWPE's rest period policies/practices, which fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. As stated above, Ms. De Medeiros and other aggrieved employees were constantly required to attend to their work duties, without interruption of breaks, and therefore, KWPE failed to authorize and permit Ms. De Medeiros and other aggrieved employees off-duty rest periods that were completely free of employer control, in violation of California law. For example, Ms. De Medeiros and the aggrieved employees were not at any point during their employment with KWPE informed of their right to take rest periods and weren't able to exercise the use of them. Ms. De Medeiros and other aggrieved employees were at no point ever advised of nor afforded the use of a lawful rest period and instead would be on-the-clock and working for the entirety of their shifts. On those occasions when Ms. De Medeiros and other aggrieved employees were not authorized and permitted to take all legally compliant rest periods to which they were entitled, KWPE failed to compensate Ms. De Medeiros and other aggrieved employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Furthermore, upon information and belief, during at least a portion of the time period in question, KWPE maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to Ms. De Medeiros or other aggrieved employees.

KWPE failed to adequately reimburse Ms. De Medeiros and other aggrieved employees for all reasonable and necessary work expenditures, including failing to reimburse for the use of their personal cellular phones despite requiring Ms. De Medeiros and other aggrieved employees to conduct all work-related business on their personal phones. At no point were Ms. De Medeiros and the aggrieved employees ever reimbursed

for the use of their personal cellular phones in furtherance of Defendants business activities. Furthermore, Ms. De Medeiros and other aggrieved employees were required to purchase and utilize their own computers in the furtherance of KWPE's business interests without any reimbursement.

KWPE failed to meet its obligations to provide paid sick leave to Ms. De Medeiros and other aggrieved employees under Labor Code § 245.5(b) which requires that employers authorize and permit its employees who worked 30 or more days within a year to accrue paid sick leave, and to allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting all of the statutory requirements for being able to accrue and utilize paid sick leave, Ms. De Medeiros and other aggrieved employees were not provided paid sick leave on all of those occasions where they needed to take a "sick day" in violation of Labor Code § 245.5(b).

As a result of KWPE's failure to pay all minimum and overtime wages and meal/rest period premium wages, KWPE maintained inaccurate payroll records, and issued inaccurate and facially deficient wage statements. Furthermore, for at least a portion of Ms. De Medeiros and other aggrieved employees' employment, KWPE issued facially deficient wage statements that did not include the overtime rate of pay in violation of Labor Code § 226(a), which requires that all applicable hourly rates in effect during a pay period be included on wage statements.

KWPE failed to properly pay its hourly-paid or non-exempt employees (and intentionally misclassified salary exempt employees) for all hours worked, failed to properly provide or compensate minimum and overtime wages, failed to provide all lawful meal and rest periods (or provide premium pay in lieu thereof), failed to issue compliant wage statements, and failed to timely pay all final wages due to its employees at the time of separation resulting in the systemic untimely payment of wages.

Furthermore, KWPE violated Labor Code § 204 by failing to pay Ms. De Medeiros and other aggrieved employees all wages earned at least twice during each calendar month.

Additionally, KWPE violated Labor Code § 226.8, in addition to the above Labor Code sections enumerated above, by willfully misclassifying its salaried and/or exempt aggrieved employees.

Finally, KWPE failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Ms. De Medeiros and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the employer; vi) the address of the legal entity that is the employer; vii) the telephone number of the employer; viii) identifying information for the employer's workers' compensation insurance carrier; and ix) information informing the

employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Ms. De Medeiros and other aggrieved employees, KWPE failed to do so in violation of Labor Code § 2810.5.

As described above, KWPE committed the following violations of the Labor Code, and the IWC Wage Orders:

Minimum Wage Violations

KWPE was required to pay Ms. De Medeiros and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1182.12, 1194; 1194.2, 1197; the IWC Wage Orders. As alleged above, KWPE maintained and maintains timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Ms. De Medeiros and other aggrieved employee whether by rounding, time-shaving, willful misclassification, or otherwise. As a result of these policies/practices, which fail to compensate for all hours worked, Ms. De Medeiros and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

KWPE was required to pay Ms. De Medeiros and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. See Labor Code §§ 1194(a) and 1198; the IWC Wage Orders. According to Labor Code § 510(a), “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” However, as alleged above, KWPE failed to pay Ms. De Medeiros and other aggrieved employees for time worked in excess of 8 hours in a day/40 hours in a week, time that should have been compensated at an overtime rate of pay.

Meal Period Violations

As alleged above, KWPE failed to provide Ms. De Medeiros and other aggrieved employees with all required and compliant meal periods, due to KWPE’s meal period policies/practices that often fail to provide off-duty first meal periods before the end of the fifth hour of work or to provide second meal periods. See Labor Code §§ 226.7 and 512; the IWC Wage Orders. As a result, Ms. De Medeiros 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 alleged above, KWPE also failed to authorize and permit Ms. De Medeiros and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; the IWC Wage Orders. As a result, Ms. De Medeiros and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable 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 period is not provided.”)

Failure to Reimburse for Necessary Business Expense

At all relevant times herein, KWPE were subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...” Due to KWPE’s unlawful policy and practice of requiring employees to use their personal cellular phones and computers in the performance of their job duties, KWPE has violated Labor Code § 2802.

Wage Statement Violations

KWPE was required to furnish Ms. De Medeiros and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, total net wages earned, and the name and address of the legal entity that is the employer. *See* Labor Code §§ 226(a) and 1174(d); the IWC Wage Orders. As a result of KWPE’s failure to pay all overtime and minimum wages, and failure to pay all required meal and rest period premium wages, KWPE maintained inaccurate payroll records and issued inaccurate wage statements to Ms. De Medeiros and other aggrieved employees in violation of Labor Code § 226. KWPE’s failure to comply with its wage statement obligations was knowing and intentional, and Ms. De Medeiros and other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. KWPE failed to timely pay Ms. De Medeiros and other aggrieved employees all of their final wages at the time of separation, which included all minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, KWPE's failure to pay all final wages due to Ms. De Medeiros and other aggrieved employees was willful and, consequently, entitles Ms. De Medeiros and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day KWPE failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Ms. De Medeiros will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. De Medeiros's own investigation, and on information and belief, KWPE committed and continues to commit the following Labor Code violations:

- a. KWPE violated Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 by failing to pay Ms. De Medeiros and other aggrieved employees the statutory minimum wage for all hours worked;
- b. KWPE violated Labor Code §§ 204, 510, 1194 and 1198 by failing to pay Ms. De Medeiros and other aggrieved employees all overtime compensation earned;
- c. KWPE violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. De Medeiros and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. KWPE violated Labor Code §§ 226.7, 516, and 1198 by failing to authorize and permit Ms. De Medeiros and other aggrieved employees all required rest periods and failing to pay rest period premiums to Ms. De Medeiros and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. KWPE violated Labor Code § 226 by failing to furnish Ms. De Medeiros and other aggrieved employees with accurate and compliant itemized wage statements;
- f. KWPE violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Ms. De Medeiros and other aggrieved employees;

- g. KWPE violated Labor Code § 204 by failing to pay Ms. De Medeiros and other aggrieved employees all wages earned at least twice during each calendar month;
- h. KWPE violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Ms. De Medeiros and other aggrieved employees;
- i. KWPE violated Labor Code § 204 by failing to pay Ms. De Medeiros and other aggrieved employees all wages earned at least twice during each calendar month;
- j. KWPE violated Labor Code § 245.5 by failing to permit and authorize Ms. De Medeiros and other aggrieved employees to exercise the use of their accrued paid sick leave days;
- k. KWPE violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Ms. De Medeiros and other aggrieved employees.
- l. KWPE violated Labor Code § 2802 by failing to reimburse Ms. De Medeiros and other aggrieved employees for all necessary business expenditures; and
- m. KWPE violated Labor Code § 226.8, in addition to the above Labor Code sections enumerated above, by willfully misclassifying its salaried and/or exempt aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and KWPE if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
STANSBURY BROWN LAW, PC



Ethan C. Surls

cc: Forward Management Long Beach, Inc., dba Keller Williams Pacific Estates (via certified mail)