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July 22, 2024

Via Online Submission
California Labor & Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Via Certified U.S. Mail – Return Receipt Requested
EBS Enterprises LLC dba AirSculpt
17877 Von Karman Ave., Suite 350
Irvine, CA 92614

Via Certified U.S. Mail – Return Receipt Requested
EBS Enterprises LLC
111 Lincoln Rd., Suite 802
Miami Beach, FL 33139

Re: Notice Pursuant to California Labor Code § 2699.3
Employee: Aleah Sanatra
Employers: EBS Enterprises LLC and Elite Body Sculpture, Inc. dba AirSculpt

To Whom It May Concern:

This office represents Aleah Sanatra ("Ms. Sanatra"), who was employed by EBS Enterprises LLC and Elite Body Sculpture, Inc. dba AirSculpt ("AirSculpt") as a Licensed Vocational Nurse in Irvine, California from approximately June 12, 2023 to June 10, 2024. Pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order No. 4-2001, which Ms. Sanatra alleges AirSculpt has violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against AirSculpt in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against AirSculpt. Pursuant to Labor Code § 2699.3, subdivisions (a)(1)(B) and (c)(1)(B), our office is submitting a $75.00 filing fee to the Accounting Unit of the Department of Industrial Relations.

We are investigating a potential class and representative action on behalf of AirSculpt's current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest breaks to employees in violation of Labor

Code §§ 226.7 and 512 and Wage Order No. 4-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee's regular rate of compensation for each workday that a meal or rest break is not provided in violation of Labor Code § 226.7 and Wage Order No. 4-2001, §§ 11(B) and 12(B); failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197 and 1197.1 and Wage Order No. 4-2001, § 4; failure to pay employees overtime wages in violation of Labor Code §§ 510 and 1194 and Wage Order No. 4-2001, § 3; failure to timely pay employees all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5 and Wage Order No. 4-2001, § 7; and unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 223 and 224.

The allegations made by Ms. Sanatra on behalf of herself and all other current and former non-exempt employees of AirSculpt in the State of California during the four years preceding the date of this notice are based on the following facts and theories: meal periods were less than thirty minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after ten hours of work), or interrupted; rest breaks were less than ten minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay at the regular rate of pay for each workday a meal period was not provided; employees were not provided one hour of pay at the regular rate of pay for each workday a rest break was not authorized and permitted; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.[1] Given the overtime, meal period and rest break violations and AirSculpt's failure to compensate its employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California law. In short, AirSculpt's unlawful employment practices and policies have deprived their employees of earned wages and other compensation.

<u>Failure to Provide Meal Periods</u>

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 4-2001 § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided.

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty, and 2) the parties have agreed in writing to on duty meal periods.

[1] "[T]he statement that defendant has not provided its employees with proper rest breaks states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

Ms. Sanatra and other aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 4-2001 § 11. AirSculpt failed to provide its employees timely and uninterrupted thirty-minute meal periods. In fact, Ms. Sanatra's and other aggrieved employees' meal periods were short (less than thirty minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed.

AirSculpt consistently failed to provide Ms. Sanatra and other aggrieved employees meal periods because Ms. Sanatra and other aggrieved employees were given too much work to perform to take meal periods. Ms. Sanatra and other aggrieved employees were often interrupted during their meal periods and asked work-related questions and/or required to return to work. In addition, AirSculpt supervisors often adjusted the time records of Ms. Sanatra and other aggrieved employees to reflect that a meal period had been taken prior to the fifth hour of work, even though Ms. Sanatra and other aggrieved employees were not able to take a meal period until after the fifth hour. Finally, Ms. Sanatra and other aggrieved employees were not provided a second 30-minute meal period when they worked shifts over 10 hours in length.

AirSculpt further violated Labor Coder § 226.7 and Wage Order No. 4-2001 by failing to compensate Ms. Sanatra and other aggrieved employees who were not provided meal periods in accordance with California law one additional hour of pay at each employee's regular rate of compensation for each workday a meal period was not provided.

Failure to Authorize and Permit Rest Periods

Pursuant to Labor Code § 226.7 and Wage Order No. 4-2001, § 12, an employer is required to provide rest breaks to its employees. An employer must provide a ten (10) minute rest break for every four (4) hours worked or major action thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each workday a rest break is not authorized and permitted.

Ms. Sanatra and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and Wage Order No. 4-2001. AirSculpt failed to authorize and permit their employees to take required rest breaks. Specifically, AirSculpt maintained a policy or practice of not authorizing and permitting Ms. Sanatra and other aggrieved employees to take one 10-minute rest break for shifts 3.5-6.0 hours, a second rest break for shifts greater than 6 hours and less than or equal to 10 hours, and a third rest break for shifts in excess of 10 hours.

AirSculpt consistently failed to authorize and permit Ms. Sanatra and other aggrieved employees to take rest breaks because Ms. Sanatra and other aggrieved employees were given too much work to perform to take rest breaks. In addition, Ms. Sanatra and other aggrieved employees were often interrupted during their rest breaks and asked work-related questions and/or required to return to work. Finally, Ms. Sanatra and other aggrieved employees were not provided a third 10-minute rest break when they worked shifts over 10 hours in length.

AirSculpt further violated Labor Code § 226.7 and Wage Order No. 4-2001 § 12 by failing to pay Ms. Sanatra and other aggrieved employees one additional hour of pay at each employee's regular rate of compensation for each workday a rest break was not authorized and permitted.

Failure to Pay Minimum Wages

Pursuant to Labor Code §§ 1194 and 1197 and Wage Order No. 4-2001 § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Ms. Sanatra and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1194 and 1197 and Wage Order No. 4-2001, § 4. AirSculpt failed to pay Ms. Sanatra and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Ms. Sanatra and other aggrieved employees to work off-the-clock; requiring, suffering or permitting Ms. Sanatra and other aggrieved employees to work through their meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Ms. Sanatra and other aggrieved employees; unlawfully rounding the time of Ms. Sanatra and other aggrieved employees; failing to properly calculate the regular rate of pay for purposes of calculating overtime compensation and meal and rest break premium payments; and other methods to be discovered.

AirSculpt's conduct violates Labor Code §§ 1194 and 1197, and Wage Order No. 4-2001 § 4.

Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 4-2001 § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Ms. Sanatra and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510 and 1194 and Wage Order No. 4-2001. AirSculpt failed to compensate Ms. Sanatra and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No. 4-2001 § 3, including but not limited to failing to include all remuneration in the calculation of the regular rate of pay for overtime purposes; requiring, suffering or permitting Ms. Sanatra and other aggrieved employees to work off-the-clock; requiring, suffering or permitting Ms. Sanatra and other aggrieved employees to work through meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Ms. Sanatra and other aggrieved employees;

unlawfully rounding the time of Ms. Sanatra and other aggrieved employees; and other methods to be discovered.

In violation of California law, AirSculpt has refused to perform its obligations to compensate Ms. Sanatra and other aggrieved employees for all wages earned and all hours worked. AirSculpt's conduct violates Labor Code §§ 510 and 1194, and Wage Order No. 4-2001 § 3.

Failure to Timely Pay All Wages Earned

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

AirSculpt failed to pay Ms. Sanatra and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, AirSculpt required Ms. Sanatra and other aggrieved employees to work off-the-clock without compensation, and required Ms. Sanatra and other aggrieved employees to work through required meal periods without compensation. Additionally, AirSculpt failed to pay Ms. Sanatra and other aggrieved employees premium wages owed for each workday a meal period was not provided and each workday a rest break was not authorized and permitted.

AirSculpt also failed to pay Ms. Sanatra and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. AirSculpt knew it was required to pay overtime wages, yet on many occasions failed to pay Ms. Sanatra and other aggrieved employees overtime wages on any payday.

Failure to Pay All Wages Due Upon Separation

Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits her or her employment, unless the employee provided 72 hours previous notice of her or her intention to quit, in which case the employee is entitled to her or her wages at the time of quitting. Finally, Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

AirSculpt willfully failed to pay accrued wages and other compensation to Ms. Sanatra and other aggrieved employees in accordance with Labor Code §§ 201 and 202. Because AirSculpt required Ms. Sanatra and other aggrieved employees to work off-the-clock without compensation and through required meal periods without compensation and failed to pay Ms. Sanatra and other aggrieved employees the proper premium wages for all meal periods which were not provided and all rest breaks which were not authorized or permitted, AirSculpt failed and continues to fail to pay the full earned and unpaid wages due to aggrieved employees upon separation.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of her or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

AirSculpt failed to provide Ms. Sanatra and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity or entities employing Ms. Sanatra and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and Wage Order No. 4-2001 § 7.

Specifically, AirSculpt had knowledge it was not providing employees with proper meal and rest breaks; nevertheless, AirSculpt knowingly failed to include in the wage statements the extra hour of compensation at the regular rate of pay owed for each workday a meal period was not provided and each workday a rest break was not authorized and permitted. In addition, AirSculpt had knowledge it was requiring employees to work off-the-clock and were not properly compensating their employees for all hours worked, yet AirSculpt knowingly failed to include this time worked in the wage statements. As a result, Ms. Sanatra and other aggrieved employees lost wages. AirSculpt also did not properly calculate the regular rate of pay of Ms. Sanatra and other aggrieved employees. Further, AirSculpt failed to list a calculation of the total hours worked during the pay period in the wage statements, and failed to include vacation and holiday time. As a result, Ms. Sanatra's and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Failure to Maintain Required Records

AirSculpt failed to maintain records as required under Labor Code §§ 226 and 1174 and Wage Order No. 4-2001 § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, AirSculpt had knowledge it was not providing employees with proper meal and rest breaks; nevertheless, AirSculpt knowingly failed to include in the wage statements the extra hour of compensation at the regular rate of pay owed for each workday a meal period was not provided and each workday a rest break was not authorized and permitted. In addition, AirSculpt had knowledge it was requiring employees to work off-the-clock and were not properly compensating their employees for all hours worked. In addition, AirSculpt did not properly calculate Ms. Sanatra's and other aggrieved employees' regular rate of pay. As a result, AirSculpt failed to maintain accurate records of the total daily hours worked by each employee, meals periods, and when each employees began and ended each work period.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her duties, or of her obedience to the directions of the employer. AirSculpt failed to indemnify Ms. Sanatra and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of AirSculpt, including but not limited to expenses for cell phones, uniforms, and other employment-related expenses, in violation of Labor Code § 2802.

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This notice is hereby given to AirSculpt and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of AirSculpt, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice shall further represent Ms. Sanatra's reasonable attempt to settle her dispute with AirSculpt prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, this notice serves to apprise AirSculpt of Ms. Sanatra's aforementioned grievances and the proposed remedies as detailed below, while affording AirSculpt reasonable opportunity to meet Ms. Sanatra's demands.

Demand is hereby made that AirSculpt shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. AirSculpt shall pay Ms. Sanatra and all other similarly-situated persons employed by AirSculpt at any time during the past 48 months back pay and compensation for the above-referenced violations.

2. AirSculpt shall comply with all California labor laws and ensure that its non-exempt employees are paid proper overtime compensation and given required meal and rest breaks.

3. AirSculpt shall conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of meal periods which were not provided, the number of rest breaks which were not authorized and permitted, and the number of employees who were required to pay for cell phones, uniforms, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. AirSculpt shall pay each employee one hour of pay for each work day he or she was not provided one or more meal periods and each work day he or she was not authorized and permitted one or more rest breaks, as required by Labor Code § 226.7.

5. AirSculpt shall reimburse those employees who were forced to pay for any business expenses incurred for AirSculpt's benefit, including but not limited to expenses for cell phones and uniforms.

6. AirSculpt shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.

7. AirSculpt shall pay accrued interest to all employees at the rate of 10% per annum for said unpaid wages.

8. AirSculpt shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq*., including but not limited to penalties under Labor Code §§ 206.5, 210, 225.5, 226.3, 558, 1174.5, 1182.12, 1197.1, 1198, 1199 and 2699 and Wage Order No. 4-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to Matern Law Group, PC, 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266. Additionally, please advise us if the LWDA or AirSculpt require additional information regarding Ms. Sanatra's allegations.

Thank you for your prompt attention to this matter.

Very truly yours,

MATERN LAW GROUP, PC

Kristen B. Doyan