STANSBURY BROWN
LAW PC

August 12, 2024

VIA LWDA WEBSITE

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

Re: *Terrea McGill v. Professional Exchange Service Corporation, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Terrea McGill ("Ms. McGill") in claims for Labor Code violations arising from her employment with Professional Exchange Service Corporation ("PESC"); and DOES 1 through 100 (collectively referred to herein as "Employers"). Ms. McGill is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq*., due to Employers' 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.

For purposes of this letter, the "aggrieved employees" whom Ms. McGill seeks to represent are the other non-exempt employees of Employers who performed work in California at any time during the one year preceding the date of this letter through the present.

Employers are in the business of providing call center and administrative services. Ms. McGill worked for Employers between approximately April 2023 and November 5, 2023 as a dispatcher. Ms. McGill's job responsibilities included providing an answering service for medical offices and tow truck companies. Ms. McGill was generally scheduled to work 5 to 6 and sometimes 7 days per week from approximately 4:30 p.m. to 2:30 a.m., but she often worked longer.

Throughout the duration of Ms. McGill's employment with Employers, Ms. McGill and other aggrieved employees were not paid for all hours worked as Employers did not accurately keep track of all hours worked. Ms. McGill and other aggrieved employees were entitled to pay increases per shift in the amount of 5% or 10% per hour depending on how late at night they worked, i.e. working after 6:00 p.m. might entitle an employee to a 5% increase in his or her hourly rate for the duration of the shift and working after midnight might entitle an employee to a 10% increase in his or her hourly rate for the duration of the shift. Ms. McGill and other aggrieved employees were also entitled to occasional $25 call-in bonuses. Additionally, Ms. McGill and other aggrieved employees were entitled to gift cards earned through passing quizzes taken on the Paylocity app. Upon information and belief, the time records maintained by Employers were not reflective of the actual number of hours that Ms. McGill and other aggrieved employees actually worked. Employers required Ms. McGill and other aggrieved employees to clock in and out through the Paylocity app on their personal cellular phones. However, upon information and belief, Employers shaved time off of Ms. McGill's time worked. As an example, Ms. McGill noted that when she worked 120 hours in a pay period, her paycheck merely reflected pay for 110 hours in the pay period.

Furthermore, Ms. McGill and other aggrieved employees worked overtime hours, but did not receive all overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. Employers also maintained a policy/practice of not compensating Ms. McGill and other aggrieved employees for all their hours worked in the pay period. Further, upon information and belief, Employers did not compensate Ms. McGill and other aggrieved employees at the correct regular rate for all overtime hours worked as the regular rate did not factor in the bonuses received by Ms. McGill and other aggrieved employees or the night pay increases per shift or the gift cards. As discussed above, upon information and belief, Employers maintained a policy/practice of shaving time worked off of the paystubs of Ms. McGill and other aggrieved employees. Additionally, when Ms. McGill and other aggrieved employees were required to work seven consecutive days in a workweek, they were not paid an overtime rate of pay for the first eight hours worked on the seventh consecutive day worked during a workweek or double their regular rate of pay for work in excess of eight hours on the seventh day of the workweek worked. As a result, Employers failed to ensure that Ms. McGill and other aggrieved employees were being paid at least the minimum wage for all hours worked, and failed to ensure that Ms. McGill and other aggrieved employees received proper overtime wages for all overtime hours worked.

Ms. McGill and other aggrieved employees were not authorized to take all legally required rest periods. This practice was pervasive throughout Ms. McGill's employment. Ms. McGill and other aggrieved employees almost never received a full, uninterrupted rest period because there was no one available to cover or relieve them during their shifts to answer the phones. Employers also instructed Ms. McGill and other aggrieved employees that they had to be available to address concerns raised and therefore, when they took their rest periods, they could not leave the premises. Employers further required Ms. McGill and other aggrieved employees to keep their radios/walkie talkies on them during work hours, including during break hours. Even though Ms. McGill often worked more than 10 hours in one day, Ms. McGill almost never received a full, uninterrupted first, second or third rest period throughout her employment with Employers. Despite Employers' failure to authorize and permit Ms. McGill and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Employers almost never provided Ms. McGill and other aggrieved employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Employers maintained no payroll code or another mechanism for the payment of rest period premiums in the event Ms. McGill and other aggrieved employees were not authorized to take lawful rest periods.

Employers also almost never provided Ms. McGill and other aggrieved employees with a legally compliant first meal period when they worked shifts in excess of 5.0 hours or a legally compliant second meal period when they worked shifts longer than 10.0 hours. As described above, often, there were not enough employees available to cover Ms. McGill and other aggrieved employees during their meal periods. Additionally, even if there were employees available to provide coverage during meal periods, then Ms. McGill and other aggrieved employees experienced meal period interruptions because they had to be available to provide assistance during their meal periods to the aggrieved employee offering to provide coverage. Employers instructed Ms. McGill and other aggrieved employees that they could not leave the premises for their meal periods because the phones could not be left unattended and someone always had to be available to respond to phone calls. Further, Employers required Ms. McGill and other aggrieved employees to remain accessible by walkie talkies during work hours, including during their meal periods. Additionally, when Ms. McGill ate a meal, she often started her meal period after the fifth hour of her work day. Despite Employers' failure to provide Ms. McGill and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Employers almost never provided Ms. McGill and other aggrieved employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

Furthermore, Employers failed to adequately reimburse Ms. McGill and other aggrieved employees for all reasonable and necessary work expenditures, including, but not limited to, requiring Ms. McGill and other aggrieved employees to utilize their personal cell phones for necessary business purposes such as clocking in and out.

Employers have maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and failed to timely pay separating employees at the time of their separation, and issued inaccurate wage statements. This is in part a result of Employers' failure to accurately compensate Ms. McGill and other aggrieved employees for all minimum and overtime wages, and failure to pay premium pay for failing to provide all required meal periods and authorize all rest periods.

Employers failed to issue to Ms. McGill and other aggrieved employees accurate itemized statements 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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (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 his 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.

Finally, Employers failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Ms. McGill 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; v) the address of the legal entity that is the employer; vi) the telephone number of the employer; vii) identifying information for the employer's workers' compensation insurance carrier; and viii) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Ms. McGill and other aggrieved employees, Employers failed to do so, in violation of Labor Code § 2810.5.

As described above, Employers committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"):

<u>Minimum Wage Violations</u>

Employers were required to pay Ms. McGill 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; Wage Order 4 § 4. As alleged above, Employers maintained and maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Ms. McGill and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Ms. McGill and other aggrieved employees were deprived of all required minimum wages.

<u>Overtime Wage Violations</u>

Employers were required to pay Ms. McGill and other aggrieved employees overtime wages for all overtime hours worked. *See* Labor Code §§ 1194(a) and 1198; Wage Order 4, § 3. Wage Order 4, § 3 requires an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order. At all times relevant herein, Employers caused Ms. McGill and other aggrieved employees to work overtime hours but did not compensate Ms. McGill and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

<u>Meal Period Violations</u>

As alleged above, Employers failed to provide Ms. McGill and other aggrieved employees with all required and compliant meal periods due to Employers' meal period policies/practices that often fail to provide full, 30 minute off-duty first meal periods before the end of the fifth hour of work or a second meal period for shifts worked in excess of ten (10) hours. *See* Labor Code §§ 226.7 and 512; Wage Order 4, § 11. As a result, Ms. McGill 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, Employers also failed to authorize and permit Ms. McGill and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 4, § 12. As a result, Ms. McGill 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 paid 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 Necessary Business Expense

Employers 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." Employers were subject to Labor Code § 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." As alleged herein, due to Employers' unlawful reimbursement practices, Employers failed to indemnify Ms. McGill and other aggrieved employees for all necessary business expenses incurred, including, utilization of personal cell phones for necessary business purposes such as clocking in and clocking out. Ms. McGill and other aggrieved employees were not ever provided any reimbursement for these necessary business expenses.

Wage Statement Violations

As described above, Employers were required to furnish Ms. McGill 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, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 4, § 7. As a result of Employers' failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, Employers maintained inaccurate payroll records and issued inaccurate wage statements to Ms. McGill and other aggrieved employees in violation of Labor Code § 226.

<u>Waiting Time Penalties</u>

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

As an "aggrieved employee," Ms. McGill 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. McGill's own investigation, and on information and belief, Employers committed and continue to commit the following Labor Code violations:

a. Employers violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Ms. McGill and other aggrieved employees the statutory minimum wage for all hours worked;

b. Employers violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. McGill and other aggrieved employees all overtime compensation earned;

c. Employers 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. McGill and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

d. Employers violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Ms. McGill and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Ms. McGill and other aggrieved employees at their respective regular rates of compensation;

e. Employers violated Labor Code §§ 2802 and 2804 by failing to reimburse Ms. McGill and other aggrieved employees for all work-related expenses incurred;

f. Employers violated Labor Code § 226 by failing to furnish Ms. McGill and other aggrieved employees with accurate and compliant itemized wage statements;

g. Employers violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Ms. McGill and other aggrieved employees;

h. Employers violated Labor Code § 204 by failing to pay Ms. McGill and other aggrieved employees all wages earned at least twice during each calendar month;

i. Employers violated Labor Code § 205 by failing to pay Ms. McGill and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday;

j. Employers violated Labor Code § 245.5 by failing to permit and authorize Ms. McGill and other aggrieved employees to exercise the use of their accrued paid sick leave days;

k. Employers violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Ms. McGill and other aggrieved employees; and

l. Employers violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Ms. McGill and other aggrieved employees.

m. Employers violated Labor Code §§ 204 and 221-223 by failing to pay Ms. McGill and other aggrieved employees all agreed-upon wages including bonus wages accrued.

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

Very truly yours,
STANSBURY BROWN LAW, PC

Jess Flores

Jessica Flores

cc: Professional Exchange Service Corporation (via certified mail)