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SUBMITTED VIA LWDA'S PAGA CLAIM NOTICE ONLINE PORTAL

COPY SENT VIA CERTIFIED MAIL TO:

RED BULL DISTRIBUTION COMPANY, INC.
1630 STEWART STREET
SANTA MONICA, CA 90404

C/O C T CORPORATION SYSTEM
330 N BRAND BLVD, SUITE 700
GLENDALE, CA 91203

Re: *Raymond Vasquez v. Red Bull Distribution Company, Inc.*
Notice of Intent to File Suit for California Labor Code § 2698 et seq. Penalties

To Whom It May Concern:

This office and Falakassa Law, P.C. represent Raymond Vasquez (hereinafter "Mr. Vasquez") and a proposed group of current and former non-exempt employees working for Red Bull Distribution Company, Inc. (hereinafter "Red Bull Distribution") and any of its affiliated, predecessor and merged entities in the State of California for violations of the California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1199, 2802-2804, and all applicable Industrial Welfare Commission Wage Orders ("Wage Order").

This letter shall serve as notification under Labor Code § 2699.3 (hereinafter "PAGA Notice"). The $75 filing fee payable to the California Labor and Workforce Development Agency for the Private Attorneys General Act Notice ("PAGA Notice") was paid online. A copy of this PAGA Notice was submitted electronically to the Department of Industrial Relations.

Mr. Vasquez wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of the following group of "aggrieved employees":

> All current and former non-exempt hourly employees who work or worked for Red Bull Distribution Company, Inc. in California during the one year immediately preceding the filing of this PAGA Notice and continuing into the present and ongoing ("aggrieved employees")

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Red Bull Distribution is a distribution network exclusively distributing Red Bull products across California and the United States. Mr. Vasquez was employed by Red Bull Distribution as a non-exempt employee with the title of "Area Sales Manager" out of Sacramento, California beginning in February 2019, until his separation from employment on August 1, 2024. Mr. Vasquez and other aggrieved employees (including, Warehouse Loader, Local Truck Driver, Area Sales Managers, and all other non-exempt positions) were responsible for Red Bull Distribution's business in California.

At all relevant times, Mr. Vasquez and other aggrieved employees regularly worked various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek. Mr. Vasquez alleges that other aggrieved employees were also subjected to the same policies, procedures, practices, working conditions, and corresponding wage and hour violations to which he was subjected during his employment.

First, at all relevant times, Mr. Vasquez and other non-exempt employees worked regular shifts that lasted longer than 8.0 hours in a workday and more than 40 hours in a workweek. However, Mr. Vasquez and other non-exempt employees were not properly paid at the correct overtime rate for all overtime hours worked due to Red Bull Distribution's uniform failure to include all forms of compensation/remuneration, including, but not limited to, shift pay, commissions, incentives, non-discretionary bonuses, stipends, and all other forms of remuneration in calculating the "regular rate of pay" for purposes of overtime compensation.

Under the California Labor Code (as well as the FLSA), courts have consistently held that regularly paid non-discretionary bonuses (and other forms of pay) must be included in determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc*. 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiff under California and federal law on the grounds that Defendant improperly calculated overtime by excluding annual bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman-Reynolds Hardwood Co*. (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties but an actual fact. Once the parties have decided upon the amount of wages and the mode of payment, the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§ 778.110 ("production bonus") and 778.111 ("piece-rate").

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8.0) hours in one workday, forty (40.0) hours in a workweek, and for the first eight (8.0) hours worked on the seventh consecutive day, no less than one and one-half times (11/2) the regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12.0) hours in a workday or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8.0) hours in any workday or more than 40.0 hours in any workweek unless the employee receives one and one-half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

By their policy of requiring aggrieved employees to work in excess of eight (8) hours in a workday and/or forty (40.0) hours in a workweek without compensating them at the rate of one-half (11/2) their regular rate of pay, Red Bull Distribution willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

Accordingly, through PAGA and to the extent permitted by law, Mr. Vasquez and other aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Similarly, at all relevant times, Red Bull Distribution also failed in its obligation to provide Mr. Vasquez and other aggrieved employees the legally required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment." Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek."

Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." Finally, Labor Code §246(i) requires employers to "provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

Here, at all relevant times, Red Bull Distribution failed in its obligation to provide Mr. Vasquez and other aggrieved employees the legally required paid sick days at the "regular rate of pay," including all forms of compensation, pursuant to Labor Code §§ 246(a), (b). As such, Red Bull Distribution paid sick time below his base rate of pay rather than the "regular rate of pay" as required by Labor Code §§ 246(l) (1-2).

Based on the foregoing Labor Code violations, Mr. Vasquez seeks all civil and statutory penalties available and applicable under Labor Code § 2699(f)(2), and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Moreover, at all relevant times, Mr. Vasquez and other aggrieved employees were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to Red Bull Distribution's uniform meal period policies/practices, operational requirements, and work demands, Mr. Vasquez and other aggrieved employees often could not take timely and uninterrupted net 30-minute first meal periods before the end of the fifth hour of work.

Further, when Mr. Vasquez and other aggrieved employees worked more than 10.0 hours in a shift, they were not always allowed and permitted to take a mandated second meal period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders. Indeed, Mr. Vasquez' and other aggrieved employees' meal periods were often interrupted and lasted fewer than 30 minutes due to Red Bull Distribution's meal period policies/procedures, operational requirements, and work demands.

In addition, for each missed or non-compliant meal period, Red Bull Distribution failed and continues to fail to maintain a mechanism by which aggrieved employees were paid meal period premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* and Labor Code § 226.7.

Accordingly, due to Red Bull Distribution's uniform meal period practices, Mr. Vasquez and other aggrieved employees were also regularly denied legally compliant meal periods in violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders and are entitled to penalties under Labor Code § 2699(f)(2) and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Next, at all relevant times, Mr. Vasquez and other aggrieved employees were not provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to Red Bull Distribution's uniform rest period policies/practices, operational requirements, and work demands. As a result, Mr. Vasquez and other aggrieved employees were and are often unable to take a net 10-minute duty-free rest period for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in a workday.

By not relieving all non-exempt employees of all duties during rest periods, Red Bull Distribution failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc*. (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."]. In *Augustus*, the California Supreme Court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained: "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id*. at 273. Each time Mr. Vasquez and other aggrieved employees could not take a compliant rest period, Red Bull Distribution failed and failed to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

Accordingly, due to Red Bull Distribution's uniform rest period policies/practices and work demands, Mr. Vasquez and other aggrieved employees were also regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders and would be entitled to penalties under Labor Code § 2699(f)(2) and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

As a result of Red Bull Distribution's failure to pay Mr. Vasquez and other aggrieved employees for all overtime and sick pay wages, and Red Bull Distribution's failure to pay for meal and rest period premiums at the "regular rate of pay," Red Bull Distribution issued wage statements which failed to identify the gross wages earned accurately, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

Thus, for the violations of Labor Code section 226 described above, Mr. Vasquez and other aggrieved employees may also recover Labor Code § 226.3 penalties for Red Bull Distribution's violations of Labor Code § 226(a). Consequently, because Red Bull Distribution failed to comply with Labor Code § 226(a), Mr. Vasquez and other aggrieved employees would be entitled to recover penalties under Labor Code §§ 226(e) or Labor Code § 2699(f)(2), and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Furthermore, because Red Bull Distribution failed to pay all overtime wages, sick pay wages, and meal and rest period premiums at the "regular rate of pay," Red Bull Distribution also failed and continues to fail to pay the aggrieved employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to recover penalties under Labor Code §§ 201-203 or Labor Code § 2699(f)(2) and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Finally, at all relevant times, Red Bull Distribution required Mr. Vasquez and other aggrieved employees to incur necessary business expenses for work-related purposes but did not reimburse aggrieved employees adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804. Here, Red Bull Distribution uniformly failed to reimburse aggrieved employees for all necessary costs incurred in discharging their duties, including, but not limited to, the cost for cell phone use and other necessary tools for business purposes. (*See Cochran v. Schwan's Home Service, Inc.,* (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person or at all...To show liability under section 2802, an employee needs only to show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed”].) Accordingly, due to Red Bull Distribution’s uniform failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802 and applicable Wage Orders, Mr. Vasquez and other aggrieved employees would be entitled to civil penalties under Labor Code § 2699(f)(2), and attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Pursuant to Labor Code § 2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the date of this notice whether your office intends to investigate the violations alleged herein above. We understand that if we do not receive a response from your office within sixty-five (65) calendar days of this PAGA Notice, Mr. Vasquez may thereafter pursue his interests and the interests of similarly aggrieved employees with a civil complaint against Red Bull Distribution for its violations of the California Labor Code and applicable Wage Orders.

While we intend to pursue a PAGA representative and/or Class Action lawsuit against Red Bull Distribution for unpaid wages and civil penalties under Labor Code § 2699, our firms’ policy is to attempt to negotiate an early resolution of all matters where possible and beneficial to all aggrieved employees and the State of California. If Red Bull Distribution is interested in resolving this matter, don't hesitate to contact me or have your lawyer contact our office to discuss an informal discovery plan and the possibility of early mediation on or before **November 12, 2024**.

Respectfully submitted,

FALAKASSA LAW, P.C.
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