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October 21, 2024

SENT VIA ONLINE SUBMISSION

California Department of Industrial Relations
Labor and Workforce Development Agency
Attention: PAGA Administrator

SENT VIA EMAIL & CERTIFIED U.S. MAIL

Sanctus, LLC, doing business as Shift Digital
Attention: Matt VanDyke, President (matt@shiftdigital.com)
Attention: Adam Rubin, EVP Legal (arubin@shiftdigital.com)
348 E. Maple Road
Birmingham, Michigan 48009

RE: ***Sean Adley v. Sanctus, LLC, dba Shift Digital***
PAGA Notice to LWDA

California Labor & Workforce Development Agency:

Colby Law Firm, PC represents aggrieved former employee Sean Adley ("Plaintiff") in connection with Plaintiff's claims pursuant to the California Labor Code against Sanctus, LLC ("Defendant").

This letter is written notice to the California Labor & Workforce Development Agency ("LWDA") as required by the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. ("PAGA"), including, without limitation, California Labor Code §§ 2699(a), 2699(g)(1), and 2699.3(a) and (c), and/or any other applicable provision of statute, rule, or law ("Notice").

Plaintiff worked for Defendant as a non-exempt employee. Because of the allegations set forth herein, Defendant has violated numerous provisions of the California Labor Code.

This Notice is the representative (the Colby Law Firm) of the aggrieved employee (Plaintiff) giving written notice by online filing with the LWDA and by certified mail to the employer (Defendant) of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, pursuant to California Labor Code §§ 2699.3(a)(1)(A) and/or (c)(1)(A).

This Notice is intended to exhaust the pre-litigation requirements set forth under PAGA. It is the intention of Colby Law Firm, PC to bring the appropriate claims under PAGA should the LWDA not address these matters within the proscribed time under California Labor Code §§ 2699.3(a)(2) and (c)(2).

This Notice is subject to and without waiver of the rights and remedies of Plaintiff and Aggrieved Employees, and is not an express statement of all facts and circumstances concerning this Matter.

A. Submission of Notice

This Notice is submitted online to the LWDA, with a copy sent by certified mail to Defendant. Accompanying this Notice is the $75 filing fee to the LWDA, pursuant to California Labor Code §§ 2699.3(a)(1)(B) and/or (c)(1)(B). Please advise Colby Law Firm immediately if the fee was not received so that it may be resent.

B. Notice To Company On Behalf Of Aggrieved Employees

This Notice is hereby given to and is made against Sanctus, LLC 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 law for any of these alleged violations as to any locations or employees who worked at any time in the State of California ("Defendant").

This Notice is made on behalf of all persons who are, were, or will be employees of Defendant 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 and at any location within the State of California ("Aggrieved Employees.")

C. Alleged Violations Of The California Labor Code With Facts And Theories In Support

The alleged violations of the California Labor Code and the facts and theories to support each are as follows.

1. Facts And Theories

Plaintiff, through their representative, intends to pursue civil penalties under PAGA against Defendant, on behalf of themself and all Aggrieved Employees, based on the factual allegations and theories below.[1]

Plaintiff is informed and believes that the Aggrieved Employees experienced the same factual allegations as Plaintiff experienced, and that these factual allegations continue through the present.

Defendant. Defendant against Sanctus, LLC, doing business as Shift Digital is a large digital marketing firm operating nationwide with headquarters at 348 E. Maple Road, Birmingham, Michigan 48009.[2]

Plaintiff's Hire & Job Details. On or about April 15, 2015, Defendant hired Plaintiff Sean Adley, (born in [redacted] as an employee in the job position of Regional Digital Consultant to work at the worksite.

Defendant classified Plaintiff as an "exempt" employee paid an annual salary of $84,500.

Plaintiff's job duties included to work within the Pacific Area region Volkswagen client team and California Volkswagen dealerships.

Plaintiff's work schedule was typically 40-60 hours a week, with long driving and very little time for breaks.

Plaintiff reported to Volkswagen Team Lead [redacted] and Field Manager [redacted] and prior Field Manager [redacted].

Defendant Raises Plaintiff's Compensation. Plaintiff performed well enough that Defendant raised Plaintiff's pay. In 2022, Defendant raised Plaintiff's annual salary to $98,000.

Plaintiff Blows The Whistle On Unsafe Work Conditions And Failure To Reimburse Expenses. In January 2023, Plaintiff complained about long, unsafe driving conditions required for the job, and Defendant's failure to reimburse expenses when traveling. Plaintiff complained to [redacted], [redacted], and [redacted].

Plaintiff complained about being forced to wake up before 3:00am to drive through stormy weather, floods, mudslide, and road closures to get to dealerships, all without adequate breaks to rest. Plaintiff complained that several times he had to pull over because he was so exhausted. Plaintiff complained that this was unsafe. The response was dismissive.

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[1] *See Huff v. Securitas Security Services, USA, Inc.*, 23 Cal.App.5th 745 (2018) (PAGA plaintiffs who may have suffered just one alleged Labor Code violation are allowed to pursue penalties for any number of additional alleged Labor Code violations that affected other employees and not the plaintiff).
[2] https://www.shiftdigital.com/ | https://www.linkedin.com/company/shift-digital/

Plaintiff complained that the per diem amounts for reimbursement of hotels and meals was insufficient to the actual reasonable expenses incurred. Even utilizing low rate options with discounts, Plaintiff was unable to find accommodations in metro Los Angeles for less than $150 a night. Plaintiff complained that he was forced to pay out of pocket without reimbursement. Nothing was done.

In October 2023, Plaintiff filed a claim with HR Generalist [redacted]. Plaintiff complained that [redacted] was harassing and retaliating against Plaintiff by constantly calling him and questioning his expenses. [redacted] told Plaintiff she would consult with her manager, HR Leader [redacted]. Plaintiff thereafter had a call with [redacted] and [redacted] but there was no follow-up.

On April 30, 2024, Defendant fired Plaintiff.

Plaintiff's Pay & Misclassification. Defendant misclassified Plaintiff as "exempt" as Plaintiff should have been "non-exempt" thus entitled to overtime and breaks.

Defendant is unable to prove that Plaintiff's job duties met the Executive, Administrative, or Professional exemptions to overtime and breaks.

Defendant is unable to prove that Plaintiff's job duties met the "outside salesperson exemption" to be exempt overtime (the outside salesperson exemption does not exempt employees from breaks), because Plaintiff did not regularly work more than half of his working time *in sales activities* outside the workplace.[3]

Overtime Work. Defendant failed to pay Plaintiff for work in excess of eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1.5) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek, and for work in excess of twelve (12) hours in a day overtime compensation at a rate of two (2) times the regular rate of pay.

Meal Break Violations. Defendant failed to provide Plaintiff with first or second timely, uninterrupted 30-minute meal break as required by law, according to proof. For instance, among other things according to proof: Plaintiff did not get meal breaks at all; Plaintiff was forced to work throughout Plaintiff's meal breaks; Plaintiff was "on-call" during meal breaks; Plaintiff's meal breaks were not timely; Plaintiff's meal breaks were interrupted; and/or Plaintiff's meal breaks were less than the full 30 minutes; and/or Defendant required Plaintiff to remain on premises at the worksite during meal breaks.

Rest Break Violations. Defendant failed to authorize and permit Plaintiff to take a 10-minute rest break per each four (4) hour period worked or a major fraction thereof, according to proof.

[3] 8 California Code of Regulations § 11010, *et seq.*; *Ramirez v. Yosemite Water Co., Inc.*, 20 Cal.4th 785, 796 (1999).

For instance, among other things according to proof: Plaintiff did not get rest breaks at all; Plaintiff was forced to work throughout Plaintiff's rest breaks; Plaintiff was "on-call" during rest breaks; Plaintiff's rest breaks were not timely; Plaintiff's rest breaks were interrupted; and/or Plaintiff's rest breaks were less than the full 10 minutes.

Unreimbursed Expenses. Defendant failed to fully reimburse Plaintiff's reasonable business expenses incurred, according to proof, including: mobile device usage costs; travel costs; home internet usage costs. Defendant owes Plaintiff no less than $5,000 in unreimbursed expenses.

Wage Statements. Defendant knowingly and intentionally failed to provide Plaintiff with uniform, complete, and accurate wage statements because the wage statements provided to Plaintiff failed to list the: accurate totals of the hours worked; number of hours worked at each hourly rate; net wages earned; and/or gross wages earned.

Final Pay. Defendant failed to pay Plaintiff all wages owed to Plaintiff immediately upon Plaintiff's termination of employment, including earned and unpaid wages, such as: overtime wages; meal and rest period premium wages; and/or all wages owed for the final day of work.

2. <u>Violations Of The California Labor Code</u>

Plaintiff, through their representative, intends to pursue civil penalties under PAGA against Defendant, on behalf of themself and all Aggrieved Employees, for violations of the below provisions of the California Labor Code, based on the facts and theories set forth above:

This Notice shall apply without limitation to any past, present, future, or continuing violation of the California Labor Code or regulations thereunder which might be discovered as a result of reasonable and diligent investigation made pursuant to this Notice.

D. Conclusion

Colby Law Firm, PC believes that this Notice, including any enclosures, provides sufficient facts and theories to support each of the alleged violations. However, if any additional facts or theories to support the allegations in this Notice are required per law, please do not hesitate to contact Colby Law Firm, PC.

Please advise if the LWDA will proceed with an investigation of the allegations raised in this Notice, or if Plaintiff, through their representative, may proceed with private litigation against Defendant on behalf of Aggrieved Employees for the alleged violations in this Notice.

All legal, contractual, and equitable rights are expressly reserved and not waived.

Very truly yours,

Aaron Colby, Esq.
COLBY LAW FIRM, PC