

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

November 27, 2024

VIA LWDA WEBSITE

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

Re: *Porfirio Salgado v. Bee Imagine, LLC*

To Whom It May Concern:

Please be advised that this law firm represents Porfirio Salgado (“Mr. Salgado”) in claims arising from her employment with Bee Imagine, LLC, a Delaware Limited Liability Company, and Does 1 through 100 (“Defendants”). The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all current and former employees who worked for Defendant Bee Imagine, LLC, whether hired directly or through a staffing agency, in California during the one year immediately preceding the date of this letter through the present.

Defendants are an industry leading third party logistics provider, which have locations in Long Beach, Irwindale, and Fontana, specializing in warehousing, distribution, transportation, and fulfillment. Defendants employed Mr. Salgado from October 2019 until approximately March 22, 2024. Mr. Salgado primarily worked at Defendants’ Fontana and Irwindale locations in the non-exempt position of Warehouse Associate. Mr. Salgado’s primary job duties included unloading shipping containers, transporting pallets, and packing and unwrapping orders. Unless otherwise specified all of the allegations herein occurred during Mr. Salgado’s employment with Defendants.

Throughout a portion of the relevant time period, Defendants utilized a bell schedule which signaled employee start and end times, as well as times for meal and rest breaks. However, upon information and belief, Defendants bell schedule rang at exact intervals of 10 minutes (for rest periods) and 30 minutes (for meal periods). Under California law, Defendants are required to authorize and permit a “net” rest period of 10-minutes (and net 30 minute for meal periods) that begins when the employee reaches a rest area away from his or her workstation and must be uninterrupted during the duration of the rest period. *See e.g.,* Division of Labor Standards Enforcement Manual (“DLSE Manual”) §45.3.3; *Vaquero v. Stoneledge Furniture LLC*, (2017) 9 Cal.App.5th 98, 111-112 (citing DLSE Manual § 45.3.3 for the proposition that “the rest period begins when the employee reaches an area away from the workstation that is appropriate for rest”);

Augustus v. ABM Security Services, Inc., (2016) 2 Cal.5th 257, 260 (“[D]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time”). However, as a result of Defendants’ timekeeping practices, Defendants only authorized and permitted Mr. Salgado and other aggrieved employees to take rest periods of exactly 10 minutes in length (and meal periods of exactly 30 minutes in length), beginning the moment they left their workstation and requiring Mr. Salgado and other aggrieved employees to return to their workstations by the completion of the 10-minutes (or 30 minutes for meal periods). Because the single timeclock utilized by Defendants was a multiple minute walk from Mr. Salgado’s workstation (and the breakroom an approximate 2 minute walk from there), Mr. Salgado and other aggrieved employees were not permitted full and complete 10 minute rest periods and 30 minute meal periods during the relevant time period. When Mr. Salgado and other aggrieved employees worked a shift over 10.0 hours, Defendants also failed to provide a second full uninterrupted 30 minute meal period. On those occasions when Defendants failed to provide Mr. Salgado and other aggrieved employees with all legally compliant meal and rest periods to which they were entitled, Defendants failed to always compensate Mr. Salgado and other aggrieved employees with an additional hour of premium pay at the employees’ regular rate of pay for each workday there was a meal and rest period violation, as mandated by Labor Code § 226.7.

Moreover, throughout Mr. Salgado’s employment, Defendants maintained an unlawful practice/policy whereby Mr. Salgado and other aggrieved employees were required to carry a radio, walkie-talkie, and/or cellphone on their persons at all times, and respond to any incoming radio calls regardless of when the call came in, including during Mr. Salgado’s and the other aggrieved employees’ purported meal periods and rest periods. If a call came in over the radio, Defendants required Mr. Salgado and other aggrieved employees to immediately respond and inform Defendants of their whereabouts and status, even during their meal period (without clocking back in) or rest periods. *See Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778, 808 (holding that requiring employees to work through any portion of meal period entitles them to payment for actual time worked as well as an additional hour of pay for the meal period premium). As a result of this unlawful practice, Defendants failed to pay Mr. Salgado and other aggrieved employees for all hours worked. Defendants also failed to provide Mr. Salgado and other aggrieved employees with uninterrupted meal and rest periods in violation of *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257.

Defendants also failed to authorize and permit all lawful rest periods of at least 10 minutes for every four hours worked, or major fraction thereof for Mr. Salgado and other aggrieved employees due to Defendants’ unlawful rest period policies/practices. On many occasions, Mr. Salgado and other aggrieved employees were required to delay, interrupt, or even forego their rest periods (including third rest periods for shifts over 10.0 hours) to complete rush and emergency accounts. Defendants expected Mr. Salgado and other aggrieved employees to complete all orders each day. As a result of this practice, Mr. Salgado and other aggrieved employees were pressured to delay and even forego breaks throughout the day to ensure they were not reprimanded for not completing their orders.

Defendants also failed to reimburse Mr. Salgado and other aggrieved employees for the use of their personal cellular phones for necessary work activities, as required by Labor Code § 2802. Specifically, Defendants required Mr. Salgado and other aggrieved employees to communicate with coworkers and their supervisors regarding work-related matters through their personal cellular phones. However, Defendants failed to reimburse Mr. Salgado and other aggrieved employees for a reasonable portion of their monthly cellular phone bills despite requiring the use of their personal cellular phones for business purposes, as required by *Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137. Defendants also failed to reimburse Mr. Salgado and other aggrieved employees for apparel and equipment necessary for work activities, such as boots, gloves, and braces, as required by Labor Code § 2802. Specifically, Defendants required Mr. Salgado and other aggrieved employees to purchase this work apparel in order to complete their job duties. However, Defendants failed to reimburse Mr. Salgado and other aggrieved employees for the cost of these items despite requiring Mr. Salgado and other aggrieved employees to wear them to engage in their work.

As a result of Defendants' failure to accurately compensate Mr. Salgado and other aggrieved employees for all minimum and overtime wages and all meal and rest period premium wages, Defendants have maintained inaccurate payroll records, failed to issue accurate itemized wage statements, and failed to pay all final wages owed to non-exempt employees upon their respective separations of employment.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 9 ("Wage Order 9"):

Minimum Wage Violations

Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. Defendants failed to conform their pay practices to the requirements of the law by failing to pay Mr. Salgado and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 9.

Overtime Wage Violations

Defendants were required to properly pay Mr. Salgado and other aggrieved employees for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight

(8) hours” per work day and/or in excess of 40 hours of work in the workweek. Defendants caused Mr. Salgado and other aggrieved employees to work overtime hours but did not compensate Mr. Salgado or other aggrieved employees at one and one-half times their regular rate of pay for all such hours.

Meal Period Violations

As alleged above, Defendants failed to provide Mr. Salgado and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 9, § 11. As a result, Mr. Salgado 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, Defendants also failed to authorize and permit Mr. Salgado and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 9, § 12. As a result, Mr. Salgado 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 Necessary Business Expenses

Defendants failed to indemnify Mr. Salgado and other aggrieved employees for all necessary business expenses incurred, including, among other things, personal cellular phone usage and required apparel. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, Mr. Salgado and other aggrieved employees are entitled to damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to proof at trial, pursuant to Labor Code § 2802 and 2804.

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Salgado and other aggrieved employees with complete and accurate wage statements with respect to gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation

of Labor Code § 226 *et seq.* Defendants' failures in furnishing Mr. Salgado and other aggrieved employees with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages as well as meal and rest period premium wages and deprived them of the information necessary to identify the discrepancies in Defendants' reported data and whether they have been paid all wages earned.

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

- a. Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Salgado and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Defendants violated Labor Code §§ 204, 510, 558, 1194 and 1198 by failing to pay Mr. Salgado and other aggrieved employees all overtime compensation earned;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Salgado and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Salgado and other aggrieved employees to take all required rest periods and failing to pay rest period premiums to Mr. Salgado and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. Defendants violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Salgado and other aggrieved employees for all necessary work-related expenses incurred;
- f. Defendants violated Labor Code § 226 by failing to furnish Mr. Salgado and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Salgado and other aggrieved employees; and

- h. Defendants violated Labor Code § 204 by failing to pay Mr. Salgado and other aggrieved employees all wages earned at least twice during each calendar month.

Pursuant to Labor Code § 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Andrew J. Rowbotham, Esq.

cc: Bee Imagine LLC, c/o Matthew Marzucco, Agent for Service of Process, 2804 Gateway Oaks Dr., #100, Sacramento, CA 95833