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VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Francisco Robles v. ADT LLC*

Dear PAGA Administrator:

This office represents Francisco Robles in connection with his claims under the California Labor Code. Mr. Robles was an employee of ADT LLC ("ADT").

The employer may be contacted directly at the address below:

ADT LLC
1501 YAMATO ROAD
BOCA RATON, FL 33431

Mr. Robles intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Robles seeks relief on behalf of himself, the State of California, and other persons who are or were employed by ADT as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

ADT employed Mr. Robles as an hourly paid, non-exempt employee from approximately February 2016 to February 2024. Mr. Robles worked for ADT as a Residential/Small Business Installation Technician out of its Modesto and Concord, California offices, and assigned to work at various customer jobsites in the Central Valley of California. During his employment, Mr. Robles typically worked eight (8) or more hours per day and five (5) days per week. By the end of his employment, Mr. Robles was compensated approximately \$28.80 per hour. His job duties included, without limitation, communicating with clients and installing alarm systems and cameras.

ADT committed each of the following Labor Code violations against Mr. Robles, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

ADT’s Company-Wide and Uniform Payroll and HR Practices

ADT LLC is a Delaware limited liability company and is a leading provider of security, interactive, and smart home solutions serving residential and small business customers in the United States. Upon information and belief, ADT maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Boca Raton, Florida, for all non-exempt, hourly paid employees working for ADT in California, including Mr. Robles and other aggrieved employees. At all relevant times, ADT issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Robles and other aggrieved employees, regardless of their location or position.

Upon information and belief, ADT maintains a centralized Payroll department at its corporate headquarters in Boca Raton, Florida, which processes payroll for all non-exempt, hourly paid employees working for ADT in California, including Mr. Robles and other aggrieved employees. Further, ADT issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Robles and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, ADT utilized the same methods and formulas when calculating wages due to Mr. Robles and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) 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. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

ADT willfully failed to pay all overtime wages owed to Mr. Robles and other aggrieved employees. During the relevant time period, Mr. Robles and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Mr. Robles’s experience and counsel’s review of those records currently available relating to Mr. Robles’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Robles reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, during the relevant time period, ADT had, and continues to have, a company-wide policy and/or practice of requiring Mr. Robles and other aggrieved employees to perform various work-related tasks while off-the-clock. Specifically, Mr. Robles and other aggrieved employees were instructed to clock in for their shifts upon arriving at an assigned jobsite and clock out when completing an installation; after completing an installation, Mr. Robles and other aggrieved employees were instructed to record the time spent traveling between jobsites under, “route,” which was a specific timekeeping code available on ADT’s timekeeping system. However, sometimes after Mr. Robles clocked out once he completed an installation, but before clocking in under the “route” timekeeping code to travel to his next assigned jobsite, Mr. Robles was often required to remain with a customer to answer questions or fulfill additional requests. This typically resulted in Mr. Robles staying at the jobsite an additional 15-30 minutes, time which was not recorded. Thus, ADT failed to track this time spent working in between jobsites, and Mr. Robles and other aggrieved employees received no compensation for this time.

Moreover, ADT required Mr. Robles and other aggrieved employees to travel to distant jobsites and assignments, but did not compensate them for their time spent traveling to and from these locations. For example, Mr. Robles typically worked at client sites in the Central Valley of California, but ADT sometimes assigned him to jobsites outside of his usual geographic area. As a result, Mr. Robles was required to drive from his home in Stockton, California, to client sites that were substantially farther away, such as Turlock, or Livermore, which increased the amount of time he needed to prepare for the assignments and travel to and from the distant jobsites. Because Mr. Robles and other aggrieved employees were not allowed to clock in until arriving at their first client site for the start of their scheduled shifts, and were required to clock out when leaving their last client site at the end of their scheduled shifts, they were not paid for any time spent preparing for their service appointments or traveling to and from distant client sites. Thus, Mr. Robles and other aggrieved employees were not compensated for this time, despite being under the direction and control of ADT.

Further, ADT had, and continues to have, a company-wide policy and/or practice of requiring Mr. Robles and other aggrieved employees to complete mandatory training modules, but did not permit them to complete them during their shifts. For example, Mr. Robles was required to complete 2-3 training modules per year, while on his days off or when he was at home, which took about 30 minutes and up to one (1) hour to complete per instance. Thus, ADT failed to track all the time Mr. Robles and other aggrieved employees spent completing the mandatory training modules, and Mr. Robles and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, ADT had, and continues to have, a company-wide policy and/or practice of scheduling and dispatching its installation technicians to complete time-sensitive installation appointments, which included traveling to various locations, and delivering and/or installing security alarm systems and cameras, without building in sufficient time to allow for 30-minute meal periods. This scheduling policy and/or practice prevented Mr. Robles and other aggrieved employees from taking all uninterrupted 30-minute meal periods, and forced them to work off-the-clock during their meal periods to complete their assigned appointments. Because appointments could take longer than the time ADT allotted for them, Mr. Robles and other aggrieved employees were unable to take compliant meal periods. In conjunction with varying appointment durations, travel time between client sites could take longer than anticipated due to traffic conditions, which further impeded Mr. Robles and other aggrieved employees from taking compliant meal periods. And, upon information and belief, ADT had no mechanism in place to permit Mr. Robles and other aggrieved employees to take meal periods when the schedule was thrown off because one or more of their appointments took longer than the scheduled time, or if travel time between

appointments was extended by traffic conditions. For example, approximately 3-4 times per week, Mr. Robles worked straight through his meal periods, in order to keep up with ADT's appointment scheduling practices. ADT's company-wide policy and/or practice of allotting too little time for employees to actually complete their installation appointments, while still requiring that they be on time for their next appointment, has prevented Mr. Robles and other aggrieved employees from being relieved of their duties to take uninterrupted 30-minute meal periods.

ADT also had a company-wide practice and/or policy of failing to schedule meal periods and/or failure to adhere to a schedule for meal periods, which further caused Mr. Robles and other aggrieved employees to not be relieved of their duties for compliant meal periods. In addition, when Mr. Robles and other aggrieved employees were able to take their meal periods, ADT pressured them to eat their meals while driving between client sites. Thus, Mr. Robles and other aggrieved employees worked through meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. ADT did not compensate Mr. Robles and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Third, ADT required Mr. Robles and other aggrieved employees to use their company mobile devices, including cellular phones, to communicate with dispatcher employees, coworkers, and supervisors at all times, including during unpaid meal periods. ADT expected that Mr. Robles and other aggrieved employees promptly respond to calls, text messages, and emails at all times to discuss work-related matters. For example, ADT's management contacted Mr. Robles on his work cellular phone to discuss the status of completing installations or provide him with his next assigned jobsite during his unpaid meal periods, but did not compensate him for this time. ADT knew or should have known that Mr. Robles and other aggrieved employees were being made to respond to management while off-the-clock in order to meet ADT's expectations, but failed to compensate them for this time worked.

Fourth, on information and belief, because ADT frowned upon employees accruing meal period premiums, ADT's management pressured Mr. Robles and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Thus, ADT did not record all hours worked during meal periods, and Mr. Robles and other aggrieved employees performed work during meal periods for which they were not paid.

ADT knew or should have known that as a result of these company-wide practices and/or policies, Mr. Robles and other aggrieved employees were performing assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Robles and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Robles and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, ADT did not pay Mr. Robles and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, ADT paid Mr. Robles and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ADT failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Robles and other aggrieved employees worked

overtime and received these other forms of pay, ADT failed to pay all overtime wages by paying a lower overtime rate than required.

For example, ADT paid Mr. Robles and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Robles's and other aggrieved employees' wage statements as "BNF – Misc Bns." During pay periods that Mr. Robles and other aggrieved employees were paid overtime wages, ADT did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Robles's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, ADT paid Mr. Robles and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. ADT's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Robles and other aggrieved employees on a company-wide basis.

ADT's failure to pay Mr. Robles and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. Tit. 8, § 11040(2)(K) (defining "Hours Worked").

First, as set forth above, ADT had, and continues to have, company-wide policies and/or practices of requiring Mr. Robles and other aggrieved employees to perform various work-related tasks while off-the-clock. For example, as stated, Mr. Robles and other aggrieved employees were required to perform work off-the-clock, including providing customer service to clients in between jobsites and completing mandatory training modules while at home or on days off. Moreover, due to ADT's timekeeping policies, Mr. Robles and other aggrieved employees were not compensated properly for the time spent traveling to and from distant client sites. Thus, Mr. Robles and other aggrieved employees were not compensated for this time, despite being under the direction and control of ADT.

Second, as also stated above, due to ADT's policies and/or practices of assigning heavy workloads while allowing insufficient time to complete assigned appointments, failing to schedule meal periods and/or adhere to a schedule for meal periods, requiring employees to take their meal periods while driving to client sites, and requiring employees to respond to calls at all times, Mr. Robles and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, on information and belief, in order to limit meal period premiums that ADT would otherwise owe, ADT pressured Mr. Robles and other aggrieved employees to clock out for meal

periods to reflect compliant meal periods. Thus, ADT systematically failed to pay Mr. Robles and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

ADT did not pay at least minimum wages for all hours worked by Mr. Robles and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, ADT did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, ADT regularly failed to pay at least minimum wages to Mr. Robles and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated, ADT had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads and scheduling its installation technicians to meet specific appointment windows, in such a way that prevented Mr. Robles and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as also stated, ADT had company-wide practices and/or policies of failing to schedule meal periods and/or adhere to a schedule for meal periods, and pressuring employees to eat their meals while driving between jobsites, which further caused Mr. Robles and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Robles and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, approximately 3-4 times per week, Mr. Robles worked straight through his meal periods in order to keep up with ADT's appointment scheduling practices. As another example, as stated, Mr. Robles was sometimes required to return early from his meal periods

to keep up with ADT's pressure to meet time-sensitive repairs. Indeed, according to Mr. Robles's time records, on September 4, 2023, he clocked in at the start of his meal period at 1:48 p.m. and clocked out for the end of his meal period at 2:14 p.m., resulting in Mr. Robles taking a shortened meal period of 26 minutes. Additionally, Mr. Robles sometimes took his meal periods late, after the fifth hour of work, due to the lack of coverage. For example, according to Mr. Robles's time records, on September 29, 2023, he clocked in at the start of his shift at 8:32 a.m. and clocked out for his meal period at 3:08 p.m., working a total of six (6) hours and 36 minutes (or 6.60 hours), before he was able to take his meal period.

Second, as stated above, ADT had a policy and/or practice of requiring that Mr. Robles and other aggrieved employees respond to calls from dispatch employees, coworkers, and supervisors on their mobile devices at all times, even during meal periods. For example, Mr. Robles's meal periods were interrupted by his supervisors calling to discuss the status of completing installations or provide him with his next job assignment location.

Third, as stated, on information and belief, because ADT frowned upon employees accruing meal period premiums, ADT's management pressured Mr. Robles and other aggrieved employees to clock out for meal periods, regardless of whether they had received a compliant meal period or not. For example, Mr. Robles was required to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely, uninterrupted meal periods. Mr. Robles and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned, ADT knew or should have known that as a result of its company-wide policies and/or practices, Mr. Robles and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. ADT further knew or should have known that it did not pay Mr. Robles and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, ADT engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Robles and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that ADT did pay Mr. Robles and other aggrieved employees premium pay for missed, late, and interrupted meal periods, ADT did not pay Mr. Robles and other aggrieved employees at the correct rate of pay for premiums because ADT systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. For example, ADT paid Mr. Robles and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Robles's and other aggrieved employees' wage statements as "CE5 Tech Prod" and/or "CM5 TechUpsel." During pay periods that Mr. Robles and other aggrieved employees were paid premium pay for missed, late, and interrupted meal periods, ADT did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Robles's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay meal premiums. Specifically, ADT paid Mr. Robles and other aggrieved employees meal period premiums at their straight hourly rate of pay instead of at their regular rate of pay.

Accordingly, ADT failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Robles and other aggrieved employees are entitled to recover civil

penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, ADT regularly failed to authorize and permit Mr. Robles and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, ADT's company-wide scheduling policies and practices, while simultaneously assigning heavy workloads, prevented Mr. Robles and other aggrieved employees from being able to take rest periods. ADT also failed to schedule rest periods, which, coupled with ADT's requirement that employees respond to communications from management on their company-issued mobile devices at all times, further led to Mr. Robles and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, ADT maintained a company-wide on-premises rest period policy, which effectively required that Mr. Robles and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Robles and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, ADT effectively maintained control over Mr. Robles and/or other aggrieved employees during rest periods.

As a result of ADT's practices and policies, Mr. Robles and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Robles missed most of his rest periods because of the lack of rest period coverage and ADT's failure to schedule rest periods for employees.

ADT also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or

policy, Mr. Robles and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that ADT did pay Mr. Robles and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, ADT did not pay Mr. Robles and other aggrieved employees at the correct rate of pay for premium wages because ADT failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay.

Accordingly, ADT failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. ADT has not provided Mr. Robles and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, ADT has knowingly and intentionally provided Mr. Robles and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ADT issued uniform wage statements to Mr. Robles and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, ADT violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because ADT did not record the time Mr. Robles and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), ADT did not list the correct amount of gross wages and net wages earned by Mr. Robles and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, ADT failed to accurately list the total number of hours worked by Mr. Robles and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Further, because ADT did not calculate Mr. Robles's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, ADT did not list the correct amount of gross wages in compliance with section 226(a)(1).

For the same reason, ADT failed to list the correct amount of net wages in violation of section 226(a)(5). ADT also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), ADT willfully failed to maintain accurate payroll records for Mr. Robles and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, ADT engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Robles and other aggrieved employees, in violation of section 1198.

Because ADT failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Robles and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Robles and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, ADT failed to pay Mr. Robles and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, on information and belief, ADT had a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, ADT terminated Mr. Robles on February 9, 2024. However, ADT did not provide him with his final pay until February 15, 2024. Thus, ADT failed to pay Mr. Robles his final wages immediately, in violation of Labor Code section 201.

Additionally, ADT willfully failed to pay Mr. Robles and other aggrieved employees who are no longer employed by ADT all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving ADT's employ.

Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

... [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing . . .” (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

... [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment

obligations could impermissibly interfere with an employee's receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers "effectively act as *agents* of the client employers in discharging the employer's wage payment obligations." *Id.* In a second opinion letter, the DLSE stated that "[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements." *DLSE opinion letter 2008.07.07-2.*

During the relevant time period, ADT had an agreement with a payroll service provider, Wisely, for the issuance of payroll cards to employees, including Mr. Robles and other aggrieved employees, to discharge its wage payment obligations to its employees.

Under ADT's payroll debit card program, Mr. Robles and other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. Mr. Robles and other aggrieved employees were unable to withdraw their entire wages in at least one transaction without incurring a fee, which resulted in a discount in their pay. For example, Mr. Robles was subjected to transaction fees, including a \$3 transaction fee, when withdrawing his wages from an ATM. Thus, ADT's payroll debit card program was, and continues to be, unlawful as it did not give Mr. Robles and other aggrieved employees access to their entire wages without discount and without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. ADT's payroll card program is inconsistent with this policy because ADT's program denies Mr. Robles and other aggrieved employees to access their entire wages without discount and without delay, in violation of California Labor Code sections 212 and 213. Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with Labor Code sections 212 and 213, pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, upon information and belief, ADT unlawfully deducted a portion of wages previously paid to Mr. Robles and other aggrieved employees in violation of California Labor Code section 221. On information and belief, ADT systematically, and on a company-wide basis, provided Mr. Robles and other aggrieved employees with payroll debit cards as payment of their wages. Under ADT's payroll debit card program, Mr. Robles and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, as described above, Mr. Robles and other aggrieved employees were required to pay ATM withdrawal fees and/or other fees to obtain and/or spend their earned and due wages. The fees charged to Mr. Robles and other aggrieved employees resulted in a discount of their wages.

ADT's practice, which resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Robles's and other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with Labor Code sections 221 and 224, pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, ADT willfully and systematically issued payroll debit cards to Mr. Robles and other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. ADT's payroll debit card program resulted in the payment of less than statutorily required wages to Mr. Robles and other aggrieved employees. Thus, ADT paid Mr. Robles and other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Robles and other aggrieved employees were properly paid.

ADT's failure to pay Mr. Robles and other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with Labor Code section 223, pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. California Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall 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[;]" or 2) "[p]aid sick time for nonexempt employees shall 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."

During the relevant time period, on information and belief, ADT did not pay Mr. Robles and other aggrieved employees the correct sick leave rates of pay. ADT failed to correctly use either method of calculation under Labor Code section 246(l) to determine Mr. Robles's and other aggrieved employees' sick leave rates of pay. As stated, in addition to an hourly wage, ADT paid Mr. Robles and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ADT failed to incorporate all remunerations, including incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Mr. Robles and other aggrieved employees took sick leave and received these other forms of pay, ADT failed to pay all sick leave benefits by paying a lower sick leave pay rate than required.

Specifically, ADT paid Mr. Robles and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

ADT's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Robles and other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Mr. Robles and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with Labor Code section 246, pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

During the relevant time period, on information and belief, ADT failed, on a company-wide basis, to provide written notice to Mr. Robles and other aggrieved employees that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, ADT failed to provide Mr. Robles and other aggrieved employees with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that ADT provided to Mr. Robles is blank where the aforementioned wage information should be filled in. ADT's failure to provide Mr. Robles and other aggrieved employees with written notice of basic information regarding their employment with ADT is in violation of California Labor Code section 2810.5.

Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with Labor Code section 2810.5, pursuant to Labor Code section 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent

violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

ADT, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Robles’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Robles seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Robles, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against ADT for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Robles seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by several horizontal strokes.

Alexander Lima

Copy: ADT LLC (via U.S. Certified Mail)

