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CA3141

LWDA-CM-1016045-24

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
Certified Mail #
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Re: Amended Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Merrill Lynch, Pierce, Fenner & Smith Incorporated in California, including any employees staffed with Merrill Lynch, Pierce, Fenner & Smith Incorporated a third party, and classified as non-exempt employees during the time period of March 11, 2023 until a date as determined by the Court. Our offices represent Plaintiff Nancy Jauregui (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Defendant”).

Plaintiff was employed by Defendant in California from 2008 to August 31, 2023. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

Plaintiff contends that Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked,

including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, for all vested vacation hours at their final rate, and for all of their time spent working off the clock. For instance, for vested vacation hours, “final rate” is an average of all earned compensation (just like the regular rate of pay) and increases with the payment of non-discretionary bonus. Plaintiff alleges that Defendant had such non-discretionary bonuses but did not pay the correct final rate. Further, Plaintiff alleges that she and other Aggrieved Employees were subject to off-the-clock work before and after each shift. For instance, before Plaintiff was able to clock in, she had to help open the doors and vaults, and boot up her computer. At the end of her shift, and after she had clocked out for the day, Plaintiff had to finish filing documents and make time-sensitive follow-up calls to clients. She also had to assist with other tasks such as safe deposits and training from time to time.

Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise and/or provide Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Specifically, Plaintiff alleges that she and Aggrieved Employees were regularly denied their meal and rest breaks and were not provided with a schedule for said breaks.

Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. For instance, Defendant failed to pay for all hours worked as stated above. Plaintiff alleges that she and other Aggrieved Employees were required to work off-the-clock before and after their scheduled shifts. However, Defendant has yet to pay Plaintiffs and Aggrieved Employees for this time

Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2).

Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period.

Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats.

Plaintiffs further contends that Defendant failed to reimburse them for all necessary business expenses that they incurred in performance of their tasks and assignments by Defendant. Specifically, Plaintiff was required to work from home for 6-7 months during the COVID-19 pandemic. Defendant provided her with a computer but failed to reimburse for the other accommodations and equipment Plaintiff required in order to do her job. Plaintiff was also not reimbursed for use of her own internet, electricity and cell phone or for a pro rata portion of her rent or mortgage based on the square footage she set aside for Defendant.

Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Brooke W. Waldrop
Brooke W. Waldrop, Esq.