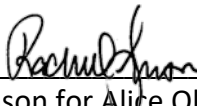

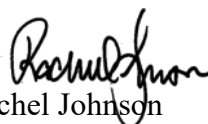


STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS Labor Commissioner's Office 320 W 4th St, Ste 450 Los Angeles, CA 90013 EMAIL: laborcomm.wca.lao@dir.ca.gov Tel.: (213) 620-6330 FAX: (213) 477-2306	FOR COURT USE ONLY Electronically FILED by Superior Court of California, County of Los Angeles 4/02/2024 12:00 AM David W. Slayton, Executive Officer/Clerk of Court, By N. Rose, Deputy Clerk																								
SUPERIOR COURT OF THE STATE OF CALIFORNIA California Superior Court, County of Los Angeles, Stanley Mosk Courthouse, County of Los Angeles <p style="text-align: center;">Central JUDICIAL DISTRICT</p>	COURT NUMBER <p style="text-align: center;">24STCP01046</p>																								
PLAINTIFF: Naomi Leslie	DEFENDANTS: Deon Taylor, an Individual																								
State Case Number WC-CM-750947																									
REQUEST THAT CLERK ENTER JUDGMENT AND JUDGMENT ON FINAL ORDER, DECISION OR AWARD OF THE LABOR COMMISSIONER																									
<i>REQUEST THAT CLERK ENTER JUDGMENT</i>																									
The Order, Decision or Award of the Labor Commissioner has become final and the clerk is requested to enter judgment immediately in conformity with the accompanying certified copy.																									
LABOR COMMISSIONER, STATE OF CALIFORNIA																									
DATED: February 17, 2024	BY  Rachel Johnson for Alice Okubo Hearing Officer																								
JUDGMENT																									
A certified copy of a final Order, Decision or Award of the Labor Commissioner has been filed with this court. Judgment therefore is entered as follows:																									
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">1</td> <td style="width: 20%; text-align: right;">\$180,660.20</td> <td>for wages, expenses, sick leave and/or liquidated damages pursuant to Labor Code Section(s) 98.1, 248.5(f), 1194.2 and/or 2802;</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: right;">\$85,627.99</td> <td>interest pursuant to Labor Code Section(s) 98.1(c), 248.5(f), 1194.2 and/or 2802(b);</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: right;">\$26,747.40</td> <td>for penalties pursuant to Labor Code Section(s) 203, 203.1, 210, 226(f), and/or 1198.5(k), and/or 1695(a)(5);</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: right;">\$0.00</td> <td>other (the non-interest other i.e. tips)</td> </tr> <tr> <td style="text-align: center;">5</td> <td style="text-align: right;">\$293,035.59</td> <td>Total Amount of Plaintiff's Award</td> </tr> <tr> <td style="text-align: center;">6</td> <td style="text-align: right;">\$7,077.92</td> <td>For post hearing interest pursuant to Labor Code Section(s) 98.1(c), 248.5(f), 1194.2 and/or 2802(b).</td> </tr> <tr> <td style="text-align: center;">7</td> <td style="text-align: right;">\$460.00</td> <td>For filing fee, pursuant to Labor Code Section 101, et. Seq.</td> </tr> <tr> <td style="text-align: center;">8</td> <td style="text-align: right;">\$300,573.51</td> <td>Total Amount of Judgment</td> </tr> </table>	1	\$180,660.20	for wages, expenses, sick leave and/or liquidated damages pursuant to Labor Code Section(s) 98.1, 248.5(f), 1194.2 and/or 2802;	2	\$85,627.99	interest pursuant to Labor Code Section(s) 98.1(c), 248.5(f), 1194.2 and/or 2802(b);	3	\$26,747.40	for penalties pursuant to Labor Code Section(s) 203, 203.1, 210, 226(f), and/or 1198.5(k), and/or 1695(a)(5);	4	\$0.00	other (the non-interest other i.e. tips)	5	\$293,035.59	Total Amount of Plaintiff's Award	6	\$7,077.92	For post hearing interest pursuant to Labor Code Section(s) 98.1(c), 248.5(f), 1194.2 and/or 2802(b).	7	\$460.00	For filing fee, pursuant to Labor Code Section 101, et. Seq.	8	\$300,573.51	Total Amount of Judgment	
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7	\$460.00	For filing fee, pursuant to Labor Code Section 101, et. Seq.																							
8	\$300,573.51	Total Amount of Judgment																							
I certify this to be a true copy of the judgment entered on <u>04/03/2024</u> ; in Judgment book _____ at page _____ or microfilm, pursuant to CCP 668.5.																									
David W. Slayton, Executive Officer/Clerk of Court Clerk, by <u>N. Rose</u> , Deputy Clerk																									

I hereby certify that the herein documents is a full, true, and correct copy of the final ORDER, DECISION, and AWARD of the Labor Commissioner served on the parties herein.

Executed on the 17th day of February, 2024, in Los Angeles, California


Rachel Johnson
Hearing Officer



State of California
Department of Industrial Relations
DIVISION OF LABOR STANDARDS ENFORCEMENT

**CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013A) OR CERTIFIED MAIL**

I, Arturo Corzantes, do hereby certify that I am a resident of or employed in the County of Los Angeles, over 18 years of age, not a party to the within action, and that I am employed at and my business address is:

LABOR COMMISSIONER, STATE OF CALIFORNIA
320 W 4th St Ste 450
Los Angeles, CA 90013
Tel: (213) 620-6330 Fax: (213) 947-4986

I am readily familiar with the business practice of my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 3, 2023, at my place of business, a copy of the **following document(s)**:

Order, Decision or Award

was(were) placed for deposit in the United States Postal Service in a sealed envelope, by First Class with postage fully prepaid, addressed to:

NOTICE TO:

Naomi Leslie,

	Service Address
Law Office of Eugene Lee, Attorney for Naomi Leslie,	PO BOX 1212 VENICE, CA 90294-1212
	Service Address
VELMA SYKES, an Individual Hoop 2 Film LLC, a California Limited Liability Company	8088 Shelborne Drive Granite Bay, CA 95746
VELMA SYKES, an Individual Hidden Empire Film Group, LP, a California Limited Partnership	8088 Shelborne Drive Granite Bay, CA 95746
Hidden Empire Film Group, LP, a California Limited Partnership	8060 SHELBORNE DR GRANITE BAY, CA 95746
Hoop 2 Film LLC, a California Limited Liability Company	8060 SHELBORNE DR GRANITE BAY, CA 95746
Fry Law Corporation,	ATTN: Christopher J. Fry, Esq. 980 9TH ST FL 16 SACRAMENTO, CA 95814

and that envelope was placed for collection and mailing on that date following ordinary business practices.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on October 3, 2023, at Los Angeles, California.

STATE CASE NUMBER: WC-CM-750947


/s/ Arturo Corzantes

STATE OF CALIFORNIA Department of Industrial Relations Labor Commissioner's Office 320 W 4th St, Ste 450 Los Angeles, CA 90013 EMAIL: laborcomm.wca.lao@dir.ca.gov FAX: (213) 477-2306	For Court Use Only:
Plaintiff: Naomi Leslie	Court Number:
Defendant: Deon Taylor, an Individual	
Case No.: WC-CM-750947	ORDER, DECISION OR AWARD OF THE LABOR COMMISSIONER

1. The above-entitled matter came on for hearing before the Labor Commissioner of the State of California as follows:

DATE: 8/28/2023

CITY: 320 W 4th St, Ste 450, Los Angeles, CA 90013

2. IT IS ORDERED THAT: Plaintiff recover from Defendant:

	Balance Due to Employee(s)	Interest Balance Due	Line Total
OVERTIME WAGES	\$156,317.70	\$74,090.31	\$230,408.01
VACATION WAGES	\$0.00	\$0.00	\$0.00
LIQUIDATED DAMAGES	\$24,342.50	\$11,537.68	\$35,880.18
PENALTIES PURSUANT TO LC 226(f)	\$750.00	\$0.00	\$750.00
PENALTIES PURSUANT TO LC 1198.5(k)	\$0.00	\$0.00	\$0.00
WAITING TIME PENALTIES	\$25,997.40	\$0.00	\$25,997.40
Totals	\$207,407.60	\$85,627.99	\$293,035.59

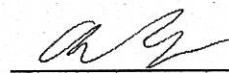
3. The herein Order, Decision or Award is based upon the Findings of Fact, Legal Analysis and Conclusions attached hereto and incorporated herein by reference.

4. The parties herein are notified and advised that this Order, Decision or Award of the Labor Commissioner shall become final and enforceable as a judgment in a court of law unless either or both parties exercise their right to appeal to the appropriate court* within ten (10) days of service of this document. Service of this document can be accomplished either by first class mail or by personal delivery and is effective upon mailing or at the time of personal delivery. If service on the parties is made by mail, the ten (10) day appeal period shall be extended by five (5) days. For parties served outside of California, the period of extension is longer (See Code of Civil Procedure Section 1013). In case of appeal, the necessary filing fee must be paid by the appellant and appellant must, immediately upon filing an appeal with the appropriate court, serve a copy of the appeal request upon the Labor Commissioner. If an appeal is filed by a corporation, a non-lawyer agent of the corporation may file the Notice of Appeal with the appropriate court, but the corporation must be represented in any subsequent trial by an attorney, licensed to practice in the State of California. Labor Code Section 98.2(c) provides that if the party seeking review by filing an appeal to the court is unsuccessful in such appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other party to the appeal and assess such amount as a cost upon the party filing the appeal. An employee is successful if the court awards an amount greater than zero. **PLEASE TAKE NOTICE:** Labor Code Section 98.2(b) requires that as a condition to filing an appeal of an Order, Decision or Award of the Labor Commissioner, the employer shall first post a bond or undertaking with the court in the amount of the ODA; and the employer shall provide written notice to the other parties and the Labor Commissioner of the posting of the undertaking. Labor Code Section 98.2(b) also requires the undertaking contain other specific conditions for distribution under the bond. While this claim is before the Labor Commissioner, you are required to notify the Labor Commissioner *in writing* of any changes in your business or personal address within 10 days after change occurs.

Notice Date: September 27, 2023

*California Superior Court, County of Los Angeles, Stanley Mosk
Courthouse
111 North Hill Street Room 102
Los Angeles, CA 90012

By



Alice Okubo, Hearing Officer

**BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA**

Naomi Leslie

Plaintiff,

v.

Roxanne Taylor, an Individual
Deon Taylor, an Individual
Hidden Empire Film Group, LP, a California Limited Partnership
Hoop 2 Film LLC, a California Limited Liability Company

Defendant(s)



CASE NO. **CM-750947**

ORDER, DECISION, OR AWARD
OF THE LABOR COMMISSIONER

BACKGROUND

Plaintiff filed an initial claim with the Labor Commissioner's office on March 22, 2019. The complaint raises the following allegations:

CLAIM	Amount Earned or Accrued	Less Amount Paid	Balance Due
<p>OVERTIME / DOUBLE TIME -- Any work in excess of 8 hours per day, any work in excess of 40 hours per week, and the first 8 hours worked on the seventh consecutive day of work in any workweek must be compensated at the applicable overtime rate of pay. Any work in excess of 12 hours per day and any work in excess of 8 hours on the seventh consecutive day of work in any workweek must be compensated at the applicable double time rate of pay. (See Labor Code Section 510)</p> <p>Plaintiff claims wages earned for overtime and double time hours worked, based on a regular rate of pay of \$50.00 per hour, as follows:</p> <p>From 9/11/17 through 12/31/17, 320 hours at \$75 per hour (overtime at 1.5 times the regular rate).</p> <p>From 9/11/17 through 12/31/17, 320 hours at \$100 per hour (double time at 2 times the regular rate).</p>	\$56,000.00		\$56,000.00

<p>OVERTIME / DOUBLE TIME -- Any work in excess of 8 hours per day, any work in excess of 40 hours per week, and the first 8 hours worked on the seventh consecutive day of work in any workweek must be compensated at the applicable overtime rate of pay. Any work in excess of 12 hours per day and any work in excess of 8 hours on the seventh consecutive day of work in any workweek must be compensated at the applicable double time rate of pay. (See Labor Code Section 510)</p> <p>Plaintiff claims wages earned for overtime and double time hours worked, based on a regular rate of pay of \$50.00 per hour, as follows:</p> <p>From 1/1/18 through 12/22/18, 1020 hours at \$75 per hour (overtime at 1.5 times the regular rate).</p> <p>From 1/1/18 through 12/22/18, 1020 hours at \$100 per hour (double time at 2 times the regular rate).</p>	\$178,500.00		\$178,500.00
<p>MEAL PERIOD PREMIUM WAGES – Employees are entitled to one additional hour of pay at the employee’s regular rate of pay for each workday that a meal period is not provided as required by law. (See Labor Code Section 226.7; IWC Order 15, Section 11).</p> <p>From 09/11/17 through 12/22/18, plaintiff claims meal period premium wages based on a regular rate of pay of \$50.00 per hour, for 335 workdays where a meal period was not provided as required by law.</p>	\$16,750.00		\$16,750.00
<p>REST PERIOD PREMIUM WAGES – Employees are entitled to one additional hour of pay at the employee’s regular rate of pay for each workday that a rest period is not provided as required by law. (See Labor Code Section 226.7; IWC Order 15, Section 12).</p> <p>From 09/11/17 through 12/22/18, plaintiff claims rest period premium wages based on a regular rate of pay of \$50.00 per hour, for 134 workdays where a rest period was not provided as required by law.</p>	\$6,700.00		\$6,700.00
<p>VACATION WAGES - Plaintiff claims 72 hours of accrued vacation that remained unused at the time of plaintiff’s termination of employment on 01/01/19. Plaintiff’s final rate of pay was \$50.00 per hour.</p>	\$3,600.00		\$3,600.00
<p>LIQUIDATED DAMAGES: Failure to Pay Minimum Wages -- At least minimum wage must be paid for all hours worked, including any overtime hours worked. An employee is entitled to recover liquidated damages in an amount equal to minimum wages earned but not paid as required by law. (See Labor Code Section 1194.2)</p> <p>From 9/11/17 through 12/31/17, plaintiff claims liquidated damages, as follows:</p> <p>Minimum wages earned at \$10.00 per hour, for a total of 640 hour(s) where at least minimum wage was not paid. Less a total of \$0 paid. Liquidated damages equal the balance due.</p>	\$6,400.00		\$6,400.00

<p>LIQUIDATED DAMAGES: Failure to Pay Minimum Wages -- At least minimum wage must be paid for all hours worked, including any overtime hours worked. An employee is entitled to recover liquidated damages in an amount equal to minimum wages earned but not paid as required by law. (See Labor Code Section 1194.2)</p> <p>From 1/1/18 through 12/22/18, plaintiff claims liquidated damages, as follows:</p> <p>Minimum wages earned at \$10.50 per hour, for a total of 2040 hour(s) where at least minimum wage was not paid. Less a total of \$0 paid. Liquidated damages equal the balance due.</p>	\$21,420.00		\$21,420.00
<p>ACCESS TO PAYROLL RECORDS: Penalty- Failure by an employer to permit a current or former employee to inspect or copy itemized payroll records as set forth in Labor Code Section 226, no later than 21 calendar days from the date of the request to inspect or copy such records, entitles the employee to recover a penalty of \$750 from the employer. (See Labor Code Section 226(f))</p> <p>Plaintiff requested to inspect or copy itemized payroll records pertaining to plaintiff's employment. Defendant failed to permit inspection or copying within 21 calendar days of the request.</p>	\$750.00		\$750.00
<p>ACCESS TO PERSONNEL RECORDS: Penalty- Failure by an employer to permit a current or former employee, or his or her representative, to inspect or copy personnel records as set forth in Labor Code Section 1198.5 entitles the current or former employee to recover a penalty of \$750.00 from the employer. (See Labor Code Section 1198.5(k))</p> <p>Defendant failed to permit inspection or copying of plaintiff's personnel records as required under Labor Code Section 1198.5(k).</p>	\$750.00		\$750.00
<p>WAITING TIME PENALTIES - If an employer willfully fails to pay, in accordance with Labor Code Section 201, any wage, of an employee who is discharged, the wages of the employee continue as a penalty from their due date at the same rate until paid, up to a maximum of 30 days. (See Labor Code Section 203)</p> <p>Plaintiff was discharged on 01/01/19, on which date wages were due. Plaintiff claims waiting time penalties for 30 days' worth of wages, based on a rate of pay of \$1,100.00 per day. Daily rate of pay is calculated as follows: \$50.00 per hour x 8 regular hours per day + \$75.00 per OT hour x 4 OT hours per day + \$100.00 per DT hour x 4 DT hours per day = \$1,100.00 per day (avg. 16 hours per day)</p>	\$33,000.00		\$33,000.00

HEARING DETAILS

A hearing was conducted via video conference by the Los Angeles WCA office of the Labor Commissioner on August 28, 2023, before the undersigned Hearing Officer designated by the Labor Commissioner to hear this matter.

Plaintiff Naomi Leslie, appeared and was represented by Law Office of Eugene Lee.

Christopher J. Fry, Attorney appeared for the following Defendant(s):

Roxanne Taylor, an Individual ("R. Taylor")

Deon Taylor, an Individual ("D. Taylor")

Hidden Empire Film Group, LP, a California Limited Partnership ("H.E. Film Group, LP")

Hoop 2 Film LLC, a California Limited Liability Company ("Hoop 2 Film LLC")

Due consideration having been given to the testimony, documentary evidence, and arguments presented, the Labor Commissioner hereby adopts the following Order, Decision, or Award.

FINDINGS OF FACT

The findings of fact contained herein are, unless otherwise noted, based on a composite of the credited aspects of all witness testimony and evidence and a careful consideration of the entire hearing record. Although each iota of evidence or testimony may not be individually discussed, all matters have been considered. Any omitted testimony or evidence has been determined to be incredible, irrelevant or superfluous. To the extent that testimony or evidence not mentioned herein may appear to contradict the findings of fact, such testimony or evidence has not been overlooked. Rather, it has been rejected as incredible or lacking probative value. Unless otherwise indicated, credibility resolutions are based on an evaluation of the evidence and/or observation of witness testimony and demeanor. Failure to detail all conflicts in testimony and/or other evidence does not mean that such conflicts were not considered. Furthermore, witness testimony and evidence may only be partially credited.

Plaintiff was employed by R. Taylor and D. Taylor ("the Taylors") to perform personal services as a live-in nanny to care for their children for the period of September 11, 2017 through January 1, 2019 at their residence in Granite Bay, California. R. Taylor interviewed and hired Plaintiff. R. Taylor informed Plaintiff that she was expected to work from 6:00 a.m. to 6:00 p.m. at the rate

of \$400.00 per day. Plaintiff was paid on a bi-weekly basis by R. Taylor. Plaintiff's employment was terminated by D. Taylor on January 1, 2019.

Plaintiff testified during the course of her employment she typically worked five (5) days per week for a total of 80 hours as follows:

- Monday: 6:30 a.m. to 9:00 p.m.
- Tuesday: 6:00 a.m. to 12:00 a.m.
- Wednesday: 12:00 a.m. to 7:45 p.m.
- Thursday: 6:30 a.m. to 7:45 p.m.
- Friday: 6:30 a.m. to 9:00 p.m.

Plaintiff testified she performed duties as a personal attendant for the Taylors. Plaintiff took care of a one-year-old baby and a six-year-old child to feed, dress, bathe and transport them. Plaintiff testified she had to wake up in the middle of the night to tend to the one-year-old baby.

R. Taylor was a movie producer and D. Taylor was a movie director. Plaintiff testified H.E. Film Group, LP and Hoop 2 Film LLC were the Taylors' movie production companies.

Plaintiff claimed she received from D. Taylor a check issued by Hoop 2 Film LLC. Plaintiff presented no such record. Plaintiff presented a check issued by H.E. Film Group, LLC, which is not a named defendant. Plaintiff conceded she did not perform any duties pertaining to the Taylors' movie production business.

Plaintiff testified she was promised a two-week vacation. While Plaintiff was on her one-week vacation, she was contacted by D. Taylor after her first day of vacation on November 26, 2018. D. Taylor requested her to return to take care of the children. Plaintiff also stated she last worked on December 22, 2018 and went back to Belize for Christmas. Plaintiff received a text message from D. Taylor terminating her employment on or about January 1, 2019 while she was out of the country. Plaintiff received a check in the mail on or about January 9, 2019. Plaintiff claimed her two-week vacation wages were not paid because she did not use her two-week vacation and was subsequently terminated from her employment with the Taylors.

Plaintiff testified that her attorney sent a request for her payroll and personnel records on or about March 22, 2019, but did not receive any records. Plaintiff conceded during the course of her employment, the Taylors did not conduct any performance evaluations or discussed any work-related issues with her.

Defendants argued that Plaintiff was not an employee of H.E. Film Group, LP, or Hoop 2 Film LLC as Plaintiff conceded all duties performed were to care for the Taylors' children, who were not talents of H.E. Film Group, LP, or Hoop 2 Film LLC. Defendants pointed out that Plaintiff conceded she never perform any work related to the Taylors' movie production business. Defendants also argued that Plaintiff's rate of pay was an hourly rate because Plaintiff in the filing of her worker's compensation claim indicated that her rate of pay was \$35.00 per hour and the number of hours worked was 60 hours per week (equivalent to 12 hours per day, five days per week). The wage statements presented by the defense shows R. Taylor as Plaintiff's employer. The defense also argued there was no personnel file maintained.

LEGAL ANALYSIS

As the moving party, Plaintiff has the burden to prove by a preponderance of the evidence, each and every fact to support his claim. "Preponderance of the evidence" means the evidence that, when weighed with that opposed to it, has more convincing force and greater probability of truth. In administrative hearings before the Labor Commissioner, the trier of fact is the Hearing Officer.

Employer(s)

Plaintiff's employment is covered under Industrial Welfare Commission (IWC) Wage Order 15-2001 regulating wages, hours and working conditions in the Household Occupations.

The evidence is persuasive to find that R. Taylor and D. Taylor employed Plaintiff. R. Taylor and D. Taylor exercised control over Plaintiff's wages, hours, and working conditions.

Plaintiff also argues H.E. Film Group, L.P. and Hoop 2 Film LLC as her employers under the applicable IWC Wage Order. The California Supreme Court in *Martinez v. Combs* (2010) 49 Cal.4th 35 held that "no generally applicable rule of law imposes on anyone other than *an employer* a duty to pay wages." (*Id.* at 49, italics added.) *Martinez* set forth the definition of

employer under the Industrial Welfare Commission Wage Orders as: “(a) to exercise control over the wages, hours, or working conditions or (b) to suffer or permit to work or (c) to engage, thereby creating a common law employment relationship.” (*Id.* at 64.) Where more than one entity falls within the definition of an “employer” under the Wage Order regarding the person performing work, the entities may be joint employers of the person.

In this present case, Plaintiff failed her burden to establish that she was an employee of H.E. Film Group, L.P. and/or Hoop 2 Film LLC. Under the definition of (a), there is insufficient evidence that either defendant had control over Plaintiff’s wages, hours or working conditions. Plaintiff presented one (1) check issued by H.E. Film Group LLC, which is not a named defendant. Plaintiff conceded she never performed work for either defendant. Plaintiff presented no evidence either R. Taylor or D. Taylor acted as the agent for either defendant to hire Plaintiff to perform work. The evidence is clear that Plaintiff was hired to take care of the Taylors’ children, not to care for the talents working for the defendants. Under the definition of (b), there is no evidence that H.E. Film Group, L.P. and/or Hoop 2 Film LLC. had the power to stop or prevent Plaintiff from working. On the contrary, Plaintiff admitted she never performed work for either defendant. Under the definition of (c), there is no evidence Plaintiff was engaged by H.E. Film Group, L.P. and/or Hoop 2 Film LLC. Plaintiff was interviewed and hired by R. Taylor to take care of her children. Neither R. Taylor nor D. Taylor presented themselves as the agent of either defendant to hire Plaintiff. Absent persuasive evidence to establish that H.E. Film Group, L.P. and Hoop 2 Film LLC met the definition of “Employer,” Plaintiff’s Complaint against these defendants is denied respectively.

Overtime wages

Labor Code sections 1450-1454, referred to as the “Domestic Worker Bill of Rights,” modifies the previous law in IWC Wage Order 15 by statutorily providing for overtime protections for a personal attendant. A personal attendant covered by this law is entitled to overtime pay at 1.5 times his or her regular rate of pay for any hours worked in excess of nine (9) hours in a day or in excess of 45 hours in a week.

The preponderance of the evidence substantiates a finding that Plaintiff’s rate of pay was based on a fixed daily rate of \$400.00. The wage statements did not reflect Plaintiff’s rate of pay at \$35.00 per hour. Labor Code section 515 (d)(2) provides payment of a fixed salary to a nonexempt

employee is deemed to provide compensation only for the employee's **regular, non-overtime hours**. For the purposes of calculating the regular rate of pay for overtime compensation to be paid to a nonexempt, salaried personal attendant as defined by Labor Code section 1454, the personal attendant's salary is divided by no more than 45 hours, i.e., non-overtime hours, to determine the regular rate of pay. Therefore, Plaintiff's hourly rate for the purposes of computing overtime compensation is \$44.44 per hour (\$400.00 per day divided by nine (9) regular, non-overtime hours). The wage statements did not reflect Plaintiff was compensated for any hours worked in excess of nine (9) hours per day, or 45 hours per week. Although the defense argued Plaintiff indicated in her workers' compensation claim that her total number of hours worked per week was 60 hours, Plaintiff provided credible and reasonable testimony that she worked more than 12 hours per day, longer than the hours communicated at the time of the interview with R. Taylor, who expressed that her shift was from 6:00 a.m. to 6:00 p.m. only. Plaintiff testified she often had to wake up in the middle of the night to tend to the one-year-old baby. The preponderance of the evidence finds that Plaintiff worked 80 hours per week. Therefore, Plaintiff is entitled to recover from R. Taylor and D. Taylor overtime wages of \$156,317.70 (35 OT hours per week x 67 workweeks x \$44.44 per hour x 1.5).

Liquidated Damages

Labor Code section 1194.2(a) permits the recovery of liquidated damages for failure to pay the minimum wages fixed by "an order of the commission or by statute..."

As stated above, Plaintiff did not receive overtime compensation for the hours worked in excess of nine (9) hours per day, or 45 hours per week. Therefore, Plaintiff is entitled to liquidated damages for \$24,342.50, as follows:

- 35 OT hours x 16 workweeks x \$10.00 per hour at the applicable State minimum wage scale from September 11, 2017 to December 31, 2018, totaling \$5,600.00; and
- 35 OT hours x 51 workweeks x \$10.50 per hour at the applicable State minimum wage scale from January 1, 2018 to December 21, 2018, totaling \$18,742.50.

Meal and Rest Break Premium Wages

Plaintiff withdrew her claim for meal and rest break premium wages respectively on the record.

Penalties for payroll records request and personnel records request

Labor Code section 226(c) provides the current and former employees the right to inspect or receive a copy of payroll records after the receipt of a written or oral request. Labor Code section 226(f) entitles the current or former employee to recover from the employer a penalty of \$750.00 if the employer fails to comply within 21 calendar days of the date of the request.

In this instant case, Plaintiff through her counsel made a written request for payroll records on or about March 22, 2019. R. Taylor or D. Taylor did not comply with the request. Therefore, Plaintiff's claim for penalty of Defendant's non-compliance for payroll records request pursuant to Labor Code section 226(f) is awarded.

Separately, Labor Code section 1198.5 provides the current and former employees (or a representative) the right to inspect and receive upon the receipt of a written request a copy of the personnel files and records **related to 1) those "relating to the employee's performance;" and 2) those relating to "any grievance concerning the employee."** (Labor Code section 1198.5(a)). In other words, the section provides that only the above two categories of personnel records maintained by an employer must be produced for inspection or copying. Labor Code section 1198.5(k) entitles a current or former employee to recover from the employer a penalty of \$750.00 if the employer fails to comply within 30 calendar days of the date of the request.

Despite Plaintiff's written request for personnel file pursuant to Labor Code section 1198.5, Plaintiff admitted the Taylors never conducted any performance reviews or had any discussion regarding any grievances during the course of her employment. The section is inapplicable if Defendants did not have documents related to Plaintiff's performance reviews or grievances on file to respond. As such, Plaintiff's claim for penalty pursuant to Labor Code section 1198.5(k) is denied.

Vacation Wages

Pursuant to Labor Code section 227.3, earned vacation time is considered wages, and vacation time is earned, or vests, as labor is performed. In other words, upon separation of employment an employee is entitled to a pro rata share of their vacation pay without any reduction or loss based on conditions imposed by the employer. All earned and unused vacation must be paid to the employee at his or her final rate of pay upon termination of employment.

It is undisputed that Plaintiff was promised a two-week vacation. Plaintiff's assertion is that she did not receive un-used vacation wages upon termination because 1) her one-week vacation was cut short to one (1) day in November 2018 at the request of the Taylors; and 2) she did not take any vacation until she was let go on January 1, 2019. Contrary to Plaintiff's assertion, the wage statement of January 1, 2019 shows Plaintiff was compensated for \$10,000.00, equivalent to compensation for 25 workdays. Based on Plaintiff's bi-weekly pay schedule, the wage statement covers the pay period of December 16, 2018 to December 29, 2018. Plaintiff testified her last day of work was December 22, 2018 and went abroad afterwards. This means Plaintiff received additional payment of 20 workdays (without performance of work), far exceeding Plaintiff's unused 2-week vacation, equivalent to 10 days. Yet, Plaintiff claimed she only received \$2,000.00. Furthermore, Plaintiff received additional \$2,400.00 (equivalent to 6 workdays) on or about January 7, 2019 which covers the pay period of December 30, 2018 to January 12, 2019 during which period Plaintiff did not perform work. Absent persuasive evidence to the contrary, Plaintiff's claim for vacation is not awarded.

Waiting Time Penalties

Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 203 provides that if an employer willfully fails to pay any earned wages of an employee in accordance with Section 201, the wages of such employee shall continue as a penalty from the due date thereof at the same rate until paid, up to 30 days. It is commonly known as "waiting time penalties." A "willful" failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. The term "willful" does not necessarily imply anything blameworthy or evil intent, but rather that the person knows what he or she is doing, is a free agent, and fails to perform a required act. (*Davis v. Morris* (1940) 37 Cal.App.2d 269.)

Here, Plaintiff's employment was terminated on January 1, 2019 and all wages earned were due on the same day. Plaintiff's wages, as set forth above, remain unpaid to date. Therefore, Plaintiff is entitled to the maximum penalties of 30 days at the daily rate of \$866.58 (9 regular hours x \$44.44 per hour plus 7 overtime hours x \$44.44 per hour x 1.5), totaling \$25,997.40.

AWARD AND ORDER

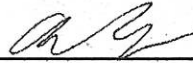
For all of the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff is awarded a total amount of **\$293,035.59**.

The details of the award are as specified on the attached WCA 75C - ODA Coversheet, which is incorporated by reference herein.

This award is not yet a final judgment. This award shall become final and enforceable as a judgment in court against each Defendant who does not file an appeal pursuant to Labor Code Section 98.2. Once a final judgment based on this award is entered in court against any non-appealing Defendant, Plaintiff may seek to recover the amounts set forth in the judgment against that non-appealing Defendant, but Plaintiff can only recover a total of **\$293,035.59** from all Defendants together. The Labor Commissioner's Office will immediately proceed to obtain a final judgment against any Defendant who does not appeal this award.

September 27, 2023

Date



Alice Okubo, Hearing Officer

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GRANITE BAY CA 90294

STATE CASE NO. WC-CM-750947

Deon Taylor, an Individual
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