

STATE OF CALIFORNIA Department of Industrial Relations Labor Commissioner's Office 1500 Hughes Way, Ste. C-202 Long Beach, CA 90810 EMAIL: laborcomm.wca.lbo@dir.ca.gov FAX: (562) 684-0662	For Court Use Only:
Plaintiff: E	Court Number:
Defendant: Gold Gate Capital, a California Corporation	
Case No.: CM-620058	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: 5/19/2021 9:30 AM

CITY: 1500 Hughes Way, Ste. C-202, Long Beach, CA 90810

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

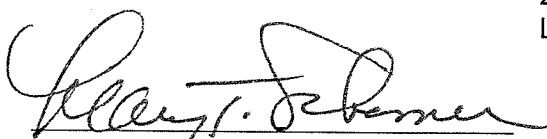
	Balance Due to Employee(s)	Interest Balance Due	Line Total
REGULAR WAGES	\$3,800.00	\$1,031.73	\$4,831.73
COMMISSION WAGES	\$5,500.00	\$1,493.29	\$6,993.29
OVERTIME WAGES	\$8,437.50	\$2,290.84	\$10,728.34
WAITING TIME PENALTIES	\$6,000.00	\$0.00	\$6,000.00
Totals	\$23,737.50	\$4,815.86	\$28,553.36

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: June 4, 2021

Governor George Deukmejian Courthouse
275 MAGNOLIA AVE
LONG BEACH, CA 90802

By 
Mary Schamer, Hearing Officer

1 FINDINGS OF FACT

2 Plaintiff was employed by Defendant to perform services as an IRA manager/sales
3 representative for the period April 30, 2017 to September 17, 2018, in Los Angeles County,
4 California, under the terms of an oral agreement at the promised rates of \$25.00 per hour. He
5 worked an average of ten or more hours per day, five days per week. He sometimes worked on
6 weekends.

7 Plaintiff testified that his paychecks would be inconsistently different each pay period.
8 He would be paid \$12.00 per hour or \$20.00 per hour. His pay checks did not reflect the number
9 of hours worked or even the hourly rate would be missing in some. The missing hourly rates
10 were actually paid at the \$25.00 hourly rate. Plaintiff submitted copies of his pay checks in
11 support of his testimony. He stated that his agreed upon hourly rate was \$25.00. He calculated
12 the difference and is owed another 152 regular hours in the amount of \$3,800.00.

13 Plaintiff testified that there was no time keeping system so he created a journal of his own
14 hours worked. Plaintiff submitted a copy of a page of the journal. After calculating the regular
15 wages owed, Plaintiff also found that he worked at least 2.5 overtime hours each day and came
16 up with 225 overtime hours not paid. He stated that he did not count the three holidays during
17 this period of time. Plaintiff testified that he would call customers, took part in conference calls,
18 follow up calls to customers and the paperwork associated with the job. He stated that he also
19 was responsible for updating the company's website that he did after hours. Plaintiff testified
20 that he sent emails to Kyle Winn, CEO, regarding the overtime issue and was told that he would
21 get with ADP to correct the issue. Plaintiff stated that nothing ever came of the email exchange.
22 Plaintiff is claiming \$8,437.50 in overtime wages.

23 Plaintiff testified that he was to earn 5% on any sales of precious metals he was involved
24 in selling. He stated that he never received a written commission structure but he was verbally
25 told it was 5%. Plaintiff submitted a commission summary that reflected two sales he made on
26 August 24, 2018 (sales \$15,000) and August 27, 2018 (sales \$95,000). He should have received
27

1 5% of the sales in the total amount of \$5,500.00. He stated that he never received commission
2 wages and is claiming such.

3 In addition, Plaintiff is claiming interest and waiting time penalties.

4 LEGAL ANALYSIS

5 Defendant was properly served with Notice of Hearing in this matter. Defendant failed to
6 attend the scheduled hearing or to submit an Answer to the Complaint, there is nothing before
7 the Labor Commissioner from or on behalf of Defendant that would deny or mitigate Plaintiff's
8 Complaint or testimony.

9 Plaintiff's testimony was reasonable and credible as evidenced by his demeanor and
10 forthright answers to the Hearing Officer's questions. Plaintiff also submitted documentary
11 evidence in support of his testimony.

12 Defendant's business is subject to the provisions of IWC Order No.4, which regulates
13 wages, hours and working conditions in the professional, technical, clerical, mechanical and
14 similar occupations.

15
16 ISSUE: Regular Wages

17 Section 2 (G) of the Order defines "Hours worked" as "the time which an employee is
18 subject to the control of an employer, and includes all the time the employee is suffered or
19 permitted work, whether or not required to do so."

20 Defendant failed to attend the scheduled hearing or to submit an Answer to the
21 Complaint, there is nothing before the Labor Commissioner from or on behalf of Defendant that
22 would deny or mitigate Plaintiff's Complaint. There being nothing to the contrary, Plaintiff is
23 due unpaid overtime wages in the amount of \$3,800.00 as claimed.
24
25
26
27

1 ISSUE: Overtime Wages

2 Section 3 (A) of the Order provides that employees shall not be employed more than
3 eight hours in any workday or more than forty hours in any workweek unless the employee
4 receives one and one-half times such employees regular rate of pay for all hours worked over
5 eight in any workday and for the first eight hours on the seventh day of work, and double the
6 employee's regular rate of pay for all hours worked in excess of twelve hours in any workday
7 and for all hours worked over eight on the seventh day of work in the workweek.

8 Defendant failed to attend the scheduled hearing or to submit an Answer to the
9 Complaint, there is nothing before the Labor Commissioner from or on behalf of Defendant that
10 would deny or mitigate Plaintiff's Complaint. There being nothing to the contrary, Plaintiff is
11 due unpaid overtime wages in the amount of \$8,437.50 as claimed.

12
13 ISSUE: Commission Wages

14 Labor Code 204.1 defines commissions as, Commissions paid to any person for services
15 rendered in the sale of such employer's property or services and based proportionately upon the
16 amount or value thereof.

17 Plaintiff testified that he was to receive 5% of the sales he made. He was not paid for two
18 sales he made in August 2018. Defendant failed to attend the scheduled hearing or to submit an
19 Answer to the Complaint, there is nothing before the Labor Commissioner from or on behalf of
20 Defendant that would deny or mitigate Plaintiff's Complaint. There being nothing to the
21 contrary, Plaintiff is due commission wages in the amount of \$5,500.00 as claimed.

22
23 Labor Code Section 98.1(c):

24 All awards granted pursuant to a hearing under this chapter shall accrue interest
25 on all due and unpaid wages at the same rate as prescribed by subdivision (b) of
26 Section 3289 of the Civil Code. The interest shall accrue until the wages are paid
27 from the date that the wages were due and payable as provided in Part 1
(commencing with Section 200) of Division 2.

1 Plaintiff is due \$4,815.86 as interest.

2
3 ISSUE: Waiting Time Penalties

4 Labor Code section 203 establishes that "If an employer willfully fails to pay, without
5 abatement or reduction, in accordance with Sections 201,201.5, 202, and 205.5, any wages of an
6 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
7 from the due date thereof at the same rate until paid or until an action therefore is commenced;
8 but the wages shall not continue for more than 30 days."

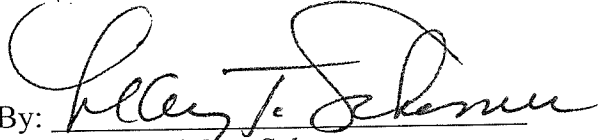
9 Defendant did not pay final wages in full and owes Plaintiff additional wages of
10 \$6,000.00 as a penalty (\$25.00 x 8 hours per day x 30 days).

11
12 CONCLUSIONS

13 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant pay
14 Plaintiff:

- 15 1. \$3,800.00 as regular wages.
- 16 2. \$8,437.50 as overtime wages.
- 17 3. \$5,500.00 as commission wages
- 18 4. \$4,815.86 as interest pursuant to Labor Code Sections 98.1(c).
- 19 5. \$6,000.00 as waiting time penalties pursuant to Labor Code Section 203.

20
21
22
23 Dated: June 4, 2021

24 By: 
Mary Schamer
Hearing Officer

25 ////