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VIA CERTIFIED U.S. MAIL

January 8, 2020

Attention: PAGA Administrator
Acting Agency Secretary
California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

McMillan - Hendryx Incorporated (DBA American Seals West, Inc., and other likely defendants, including but not limited to managers and supervisors)
C/O Gary Hendryx
144 Frances Avenue
Modesto, CA 95354

Gary Hendryx
144 Frances Avenue
Modesto, CA 95354

Justin Hendryx
639 Hermosa Ave.
Clovis, CA 93619

Deb C. Hall
3924 Starlite Dr. Bldg B
Ceres, CA 95307

RE: Labor Code §2699 Notice by Aggrieved Employee *Edmond Trent Gilmore (D.O.B.* [redacted]

Dear PAGA Administrator and All Entities and Persons listed herein:

This constitutes statutory notice pursuant to Labor Code § 2699.3(a)(1) for purposes of bringing a claim under the Private Attorneys General Act, Cal. Labor Code § 2699, *et seq.* Please consider this a request for the California Labor & Workforce Development Agency ("LWDA" or "Agency") to take action against McMillan - Hendryx Incorporated; Affiliated Companies, and their agents, managers and supervisors – including but not limited to Chief Executive Officer Gary Hendryx, Secretary and Chief Financial Officer Justin Hendryx, and Controller/Bookeeper Deb C. Hall (collectively "McMillan - Hendryx"), for violations of the California Labor Code described below. The aforementioned entities and individuals were aware of, complicit in, and actually caused the violations described below.

I am writing on behalf of Edmond Trent Gilmore, Aggrieved Employee represented by this law firm (hereinafter "Aggrieved Plaintiff") who seeks to assert a PAGA claim on behalf of the State of California and all other current or former employees who have been employed by McMillan - Hendryx in California, seeking all penalties available under PAGA, as well as injunctive and declaratory relief.

McMillan - Hendryx is a manufacturer of custom and standard sealing products located in Ceres. Non-exempt employees manufacture, repair, maintain, sell, and/or distribute sealing products for customers, perform clerical and/or administrative tasks, and other tasks. This investigation request and notice of California Labor Code violations concerns the systematic failure by McMillan - Hendryx to pay current and former California non-exempt employees in conformance with provisions set out in the California Labor Code and in Wage Orders promulgated by the Industrial Welfare Commission.

At the core of McMillan - Hendryx's violations is the systematic failing to keep accurate time and payroll records; requiring, suffering or permitting employees to perform unpaid work outside their scheduled worktime; refusing to pay reporting time wages; refusing to provide proper rest and meal periods or to provide premium wages in lieu thereof; failing to pay premium wages for all hours worked in excess of the overtime thresholds set forth in the Labor Code and Wage Orders; requiring employees to make purchases necessary for work out of their own pockets without reimbursement; failing to provide accurate wage statements; failing to provide employee payroll and personnel records; failing to pay all wages owed upon separation from employment.

Liability under the Private Attorneys General Act (Cal. Labor Code §§ 2698 *et seq.*) ("PAGA") may be based on a wide variety of Labor Code predicate provisions, including but not limited to §§ 98.6, 201, 202, 203, 204, 205, 206, 208, 209, 212, 210, 213, 216, 218, 218.6, 221, 222, 223, 225, 226, 226.7, 227, 230, 231, 233, 234, 246, 510, 512, 1174, 1175, 1194, 1194.2, 1197, 1197.1 1199 and 2673.1(a), IWC wage orders, 2699 et seq. and all of the provisions listed in Labor Code 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serves as the basis for a PAGA claim by an aggrieved employee on behalf of the state of California. McMillan - Hendryx and its agents, managers, and/or supervisors caused the violations described below by enforcing and carrying out its illegal policies:

1. McMillan - Hendryx has failed to pay Aggrieved Plaintiff and other non-exempt employees all wages earned, including minimum wages and overtime premium wages, in violation of Cal. Labor Code §§ 201, 202, 221, 1194 and 558, and the Wage Orders, by inaccurately keeping records of actual hours worked and wages earned, and by failing to pay for all hours worked.

   Specifically, McMillan - Hendryx required non-exempt employees to work "off the clock" by instructing them to perform work-related tasks before they clocked in for their shifts, as well as by rounding their start times to their scheduled time when they arrived early for work. They recorded meal periods that were missed or cut short as if they had been taken in their entirety.

   Additionally, McMillan - Hendryx required non-exempt employees to be "on call" on a permanent basis, instructing them to be available to work on-site at forty-five minutes notice maximum, at all times.

2. McMillan - Hendryx has violated California's rest and meal break provisions, including Labor Code §§ 226.7, 512 and 558 and the Wage Orders, by discouraging rest and meal breaks, not providing all requisite rest and meal breaks, not relieving employees of all duty during break time, and requiring employees to take their meal breaks late.

   Non-exempt employees were explicitly instructed to work during part or all of rest breaks and meal periods, and to record rest breaks and meal periods that they did not actually take. However, McMillan - Hendryx failed to compensate employees in lieu of their incomplete or late meal breaks as prescribed by law.

   Meal periods were scheduled for 5.5 hours after non-exempt employees were scheduled to begin working, in violation of the Labor Code and applicable Wage Orders. Additionally, due to the time-sensitive nature of the work and the lack of relief staff available, employees often had to wait until after their scheduled meal break to actually take a meal break, sometimes until they had been working for up to 7 hours.

3. McMillan - Hendryx has failed to pay proper premium/overtime wages at one and one half the regular rate of pay for shifts greater than eight (8) hours in a work day and/or forty (40)

hours in a workweek, and failure to pay proper premium/double-time wages at double the regular rate of pay for shifts greater than twelve (12) hours in a day and/or eight (8) hours on any seventh consecutive work day of a workweek, in violation of Labor Code § 510 and the IWC Wage Orders.

Specifically, McMillan - Hendryx required non-exempt employees to work shifts in excess of these thresholds without proper compensation. Overtime provisions of the Labor code and IWC Wage Orders were violated by inaccurately keeping records of actual hours worked and wages earned by requiring, suffering or permitting employees to work without compensation, by not compensating workers for all hours worked, including overtime hours and proper overtime pay and by not compensating for off-the-clock time and by failing to pay for all hours worked within the meaning of the IWC Wage Orders.

4. McMillan - Hendryx has failed to reimburse employees for garments and equipment necessary for work in violation of Labor Code § 2802.

   Non-exempt employees had to use their own cellular phones for work, and were expected to have their phones on or near them at any given moment when off the premises, in case McMillan - Hendryx required them to come in at 45 minutes maximum notice. They were not reimbursed for these costs.

   Non-exempt employees were required to buy their own special safety boots for work and were not reimbursed for the cost of their boots.

   Non-exempt employees were also required to use their own cars and purchase their own gasoline when traveling for work. Often, they were not reimbursed at all for these expenses, and when they were, it was far less than the actual amount that they had paid out of their own pockets.

5. McMillan - Hendryx has failed to allow access to employee payroll and personnel records, nor to provide copies of such records, at the actual cost of reproduction of such records, in violation of Labor Code §§ 226 and 1198.5.

   Aggrieved Plaintiff was denied access to, and copies of, his payroll and personnel records within the timeframe established by the Labor Code. Aggrieved Plaintiff requested copies of these records from McMillan - Hendryx, offering to arrange for his counsel to personally copy the documents on-site if making such copies would be burdensome for McMillan - Hendryx.

   Deb C. Hall informed us that McMillan - Hendryx would only furnish copies to Aggrieved Plaintiff for the cost of $250, an amount well in excess of the actual cost of reproduction. She also said that we could only make the copies on-site after regular business hours, and would have to be supervised by an employee, and pay for that employee's time at an overtime premium rate, at a minimum of $100, plus the cost of the copies. This also does not represent the actual cost of reproduction. Although we informed Ms. Hall that McMillan - Hendryx was in violation of the Labor Code, they continued to refuse to furnish the documents to us at the actual cost of reproduction.

6. For the above reasons, McMillan - Hendryx has failed to keep accurate time records and to provide accurate wage statements that reflect the actual hours worked and amounts earned, in violation of Labor Code sections 226, 1174 and the Wage Orders.

7. Given the numerous violations indicated above, it is reasonable to conclude that McMillan - Hendryx did not pay all wages owed to its non-exempt employees upon termination in violation of the Cal. Lab. Code section 203.

PLEASE TAKE NOTICE THAT THIS IS ALSO A GENERAL LITIGATION PRESERVATION NOTICE to preserve all documents relating to all employees, including but not limited to all timekeeping and payroll records in paper form, native electronic form and any other format in which they are generated and maintained in the regular course of business; all databases and computer or electronic systems that are used for timekeeping and payroll; all records and evidence in any way related to the facts and claims asserted in this letter; all records and evidence in any way related to claims of Aggrieved Plaintiffs, the state and other current or former employees under the California Labor Code Private Attorney General (including underlying Labor Code and IWC orders), the California Government Code, and the Equal Employment Opportunity Act. These documents include but are not limited to all schedules (both current and former) all timekeeping records, all rest and meal period records, all duty and responsibility records, all records with employee signatures or initials, all payroll records, all state or federal withholding records, all personnel files and other employment records, all records concerning the payment or non-payment of wages, or provision or non-provision of state mandated labor code protections, as well as all documents pertaining to harassment or discrimination against employees, all communications relating to these records and documents, and all emails relating to these records and documents.

Further, pursuant to California Labor Code §§ 210, 558, 558.1, 1197.1, 2699(f) and other provisions of the Labor Code, please consider this a notice to McMillan - Hendryx; Affiliated Companies, and owners, supervisors, managers, agents and all other person acting on behalf of McMillan - Hendryx, including but not limited to Chief Executive Officer Gary Hendryx, Secretary and Chief Financial Officer Justin Hendryx, and Controller/Bookkeeper Deb C. Hall, and other individuals who, on behalf of McMillan - Hendryx, caused to be violated any provision of the California Labor Code or Wage Orders governing hours and days of work. McMillan - Hendryx, has complete authority to implement and carry out the illegal payroll policies at issue herein. These violations are a uniform policy applied to all non-exempt workers at McMillan - Hendryx.

Gary Hendryx, as the Chief Executive Officer of McMillan - Hendryx, and Justin Hendryx, as the Secretary and Chieft Financial Officer of McMillan - Hendryx, are in charge of making major corporate decisions and managing the operations of the corporation. As such, they were on notice, whether actual or constructive, of all of the violations described above, and failed to prevent or address them. Deb C. Hall and other McMillan - Hendryx employees in charge of payroll failed to provide accurate payroll records and failed to pay non-exempt workers all of their owed wages during their employment or upon termination. In addition, the aforementioned individuals failed to prevent and/or address these violations.

Aggrieved Plaintiff who worked as a master lapper and a soft foreman for Defendants during the past year may be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

If no action is taken within 65 days, we will assume that we may pursue this action under the theories described above against the Defendants described above and their managers, agents, owners and other liable persons and entities (pursuant to §210, 558, 1197.1, 2699(f) (and other provisions)).

Sincerely,

Leanna Marie Sac, Esq.
MALLISON & MARTINEZ