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Attorney for Plaintiff,
MIKAYLA HUDDLESTON
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO
(UNLIMITED JURISDICTION)

MIKAYLA HUDDLESTON, as an "aggrieved
employee" on behalf of other similarly situated
"aggrieved employees" under the Labor Code
Private Attorney General Act of 2004,

Plaintiff(s),

vs.

EASTER 263, INC., a California corporation;
and DOES 1 through 50, inclusive,

Defendant(s).

Case No.:

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
§§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff MIKAYLA HUDDLESTON (hereafter “Plaintiff”), on behalf of herself, the
2 State of California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”), against EASTER 263, INC., and Does 1-50, inclusive (collectively
7 “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 her, the State of California, and all current and former non-exempt hourly employees who
10 worked in California during the period of February 4, 2019 through September 14, 2020 for
11 civil penalties and other related relief. These claims are based on Defendants’ alleged (1) failure
12 to pay wages for all hours worked at the correct rates of pay, (2) failure to provide rest breaks,
13 (3) failure to provide all meal periods, (4) failure to provide accurate written wage statements,
14 (5) failure to maintain accurate employment records, (6) failure to timely pay wages during
15 employment, (7) unlawful deductions, and (8) failure to indemnify Plaintiff and the Aggrieved
16 Employees for the reasonable expenses incurred during the course of performing their duties.
Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this
representative action.

17 **II. JURISDICTION AND VENUE**

18 3. This Court has subject matter jurisdiction because the aggregate claims of
19 Plaintiff and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in
20 controversy.

21 4. Venue is proper in Sacramento County pursuant to California Code of Civil
22 Procedure sections 395(a) and 395.5 in that liability arose in Sacramento County because at
23 least some of the transactions that are the subject matter of this Complaint occurred therein
24 and/or because each defendant is found, maintains offices, transacts business, and/or has an
agent therein.

25 **III. THE PARTIES**

26 5. Plaintiff is a resident of California. Defendants employed Plaintiff from about
27 March of 2018 to approximately May of 2019.

28 6. Defendant EASTER 263, INC. is a corporation organized and existing under the



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laws of California and a citizen of California based on Plaintiff's information and belief.

7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

A. THE AGGRIEVED EMPLOYEES

8. The "Aggrieved Employees" are all current and former non-exempt hourly employees Defendants employed in California during the period of February 4, 2019 through September 14, 2020 ("the PAGA Period").

9. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

10. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice that resulted in Defendants allegedly not paying Plaintiff and other Aggrieved Employees in accordance with applicable California labor laws as set forth herein.

IV. FACTUAL ALLEGATIONS

11. Defendants first employed Plaintiff on or about March 14, 2018, to work as an hourly fast food restaurant crew member in their Rancho Cordova, California restaurant. Plaintiff continuously worked for Defendants from the time of her hire until approximately May 24, 2019, when her employment ended.

12. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely rest and meal periods. Defendants failed to hire sufficient staff members to allow Plaintiff and the Aggrieved Employees to take off-duty meal and rest breaks. Defendants further prohibited Plaintiff and the Aggrieved Employees to leave the restaurant during their breaks and therefore, Plaintiff and the Aggrieved Employees were often interrupted by their coworkers during their meal periods. Defendants also failed to pay premium wages for



1 days on which they failed to provide Plaintiff and the Aggrieved Employees with rest and/or
2 meal periods. Moreover, Defendants deducted approximately 30 minutes from the daily
3 recorded work hours of Plaintiff and the Aggrieved Employees, and reported less hours on their
4 wage statements, even if Plaintiff and the Aggrieved Employees were not able to take their 30-
minute uninterrupted meal periods.

5 13. Defendants failed to pay Plaintiff and the Aggrieved Employees at one and one-
6 half times their regular rates of pay when they worked in excess of eight hours in a workday
7 and/or over 40 hours in a workweek. Defendants required Plaintiff and the Aggrieved
8 Employees to arrive before their shifts began to wait for deliveries, to open the restaurant if the
9 employee scheduled to open didn't show up for work, and/or be prepared to open up just in case
10 the employee scheduled to open didn't show up for work. However, Defendants failed to
11 compensate Plaintiff and the Aggrieved Employees for such off-the-clock, overtime work.
12 Defendants required Plaintiff and the Aggrieved Employees to stay after their workday ended to
13 take inventory and to clean up. However, Defendants failed to compensate Plaintiff and the
Aggrieved Employees for such off-the-clock, overtime work.

14 14. Defendants failed to reimburse Plaintiff and the Aggrieved Employees for
15 mileage they incurred traveling in their personal automobiles on Defendants' behalf, such as
16 when Defendants required Plaintiff and/or the Aggrieved Employees to transport supplies
17 between restaurants.

18 15. Defendants failed to provide Plaintiff and the Aggrieved Employees with
19 accurate wage statements that stated the correct name and address of their employer.
20 Defendants failed to properly and accurately itemize each employee's gross and net wages
21 earned and the total hours worked. Defendants did not state the hours worked and wages earned
22 described above on the wage statements of Plaintiff and the Aggrieved Employees.

23 16. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

24 A. Not paid all wages earned, including but not limited to, (1) at least
25 minimum wages for all hours worked, (2) one and one-half times their regular rates of pay for
26 all hours worked over eight hours in one workday or over 40 hours in one workweek and/or up
27 to eight hours on the seventh consecutive workday in a workweek, and (3) double their regular
28 rates of pay for all hours worked over twelve hours in one workday and/or over eight hours on



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1 the seventh consecutive workday in a workweek;

2 B. Not provided with all rest breaks and timely meal periods;

3 C. Not paid one hour's pay for each workday in which Defendants failed to
4 provide them with one or more timely rest breaks;

5 D. Not paid one hour's pay for each workday in which Defendants failed to
6 provide them with one or more timely meal periods;

7 E. Not provided with accurate and complete wage statements;

8 F. Not timely paid all earned and unpaid wages during their employment
9 with Defendants and at the time such employment ended;

10 G. Unlawfully deducted wages; and

11 H. Not reimbursed for the reasonable expenses incurred during the course of
12 performing their duties.

13 **V. FIRST (AND ONLY) CAUSE OF ACTION**

14 **CIVIL PENALTIES**

15 **(Lab. Code §§ 2698, *et seq.*)**

16 **(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all
17 Defendants)**

18 17. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 **A. UNPAID WAGES**

20 18. At all relevant times, Plaintiff and the Aggrieved Employees have been entitled
21 to the benefits and protections of the California Labor Code and the applicable Wage Order.

22 19. Section 2 of the applicable Wage Order defines "hours worked" as "the time
23 during which an employee is subject to the control of an employer, and includes all the time the
24 employee is suffered or permitted to work, whether or not required to do so[.]"

25 20. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
26 employees at least the minimum wage set forth therein for all hours worked, which consist of all
27 hours that an employer has actual or constructive knowledge that employees are working.

28 21. The Division of Labor Standards Enforcement ("DLSE"), the State agency
charged with adjudicating wage claims on the behalf of workers who file claims for
nonpayment of wages, has stated with regard to the federal standard:

Unlike the meaning of "hours worked" which is specifically defined under the



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1 Industrial Welfare Commission Orders, the federal courts have chosen to define
2 the term for purposes of the FLSA much more restrictively. ... [T]he U.S.
3 Department of Labor's regulations (29 C.F.R. § 785.19(b)) provides employers
4 with the right to require workers to remain on the employers premises during
meal periods if the employee is "otherwise completely freed from duties during
the meal period."

5 (DLSE Op. lt. 11/1/1995.). In a later opinion, the DLSE struck its earlier opinion that:

6 If, on the other hand, the employer requires the employee to not only wear the
7 pager or listen for the in-house paging system, but also to remain within a
8 certain distance of a telephone or otherwise limits the employee's activities, such
control would require that all of the meal period time be compensated.

9 (Compare DLSE Op. lt. 7/12/1996 to DLSE Op. lt. 1/28/1992.) As reiterated in *Brinker v. Sup.*
10 *Ct. (Hohnbaum)* (2012) 53 Cal. 4th 1004, 1029, "The DLSE's opinion letters, while not
11 controlling upon the courts by reason of their authority, do constitute a body of experience and
12 informed judgment to which courts and litigants may properly resort for guidance." (*Ibid.*)

13 22. Federal court decisions interpreting the FLSA hold that time spent by an
14 employee predominantly for the employer's benefit is compensable. (See *Henson v. Pulaski*
15 *County Sheriff Dep't* (8th Cir. 1993) 6 F.3d 531, 534.) Others require that an employee be
16 completely relieved of her duties during a meal period or else the meal period is compensable
17 time. (See 29 CFR 785.19 ["The employee is not relieved if he is required to perform any
18 duties, whether active or inactive, while eating"]; *Kohlheim v. Glynn County, Ga.* (11th Cir.
1990) 915 F.2d 1473, 1477.)

19 23. Labor Code section 1198 states, "The employment of any employee . . . under
20 conditions of labor prohibited by the [Wage Order] is unlawful."

21 24. In relevant part, Labor Code section 1194 states,

22 (a) Notwithstanding any agreement to work for a lesser wage, any employee
23 receiving less than the legal minimum wage or the legal overtime compensation
24 applicable to the employee is entitled to recover in a civil action the unpaid
balance of the full amount of this minimum wage or overtime compensation,
including interest thereon, reasonable attorney's fees, and costs of suit.

25 25. In relevant part, Labor Code section 1197 states, "The minimum wage for
26 employees fixed by the commission is the minimum wage to be paid to employees, and the
27 payment of a less wage than the minimum so fixed is unlawful."

28 26. In relevant part, California Labor Code section 510 states,



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Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

27. Section 3 of the applicable Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

28. California Labor Code section 510(a) and the Wage Order require employers to compensate employees at one and one-half times their regular rates of pay for:

A. All hours worked in excess of eight hours in one workday; and

B. All hours worked in excess of forty hours in one workweek.

29. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

30. As described above, at all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay.



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1 31. Plaintiff is informed and believes that, at all relevant times, Defendants have
2 applied centrally devised policies and practices to her and the Aggrieved Employees with
3 respect to working conditions and compensation arrangements.

4 32. At all relevant times, Defendants failed to compensate Plaintiff and the
5 Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all
6 overtime hours worked.

7 33. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
9 Defendants' failure to compensate the Aggrieved Employees for all hours worked at the correct
10 rates of pay, including but not limited to, at least minimum wages for on-duty meal periods and
11 30-minute meal periods Defendants deducted from Plaintiff and the Aggrieved Employees' time
12 records that they did not take, one and one-half times their regular rate of pay for all hours
13 worked over eight hours in one workday or over 40 hours in one workweek, and doubletime
14 wages for all hours worked over 12 hours in one workday.

15 **B. UNPROVIDED REST PERIODS**

16 34. In relevant part, section 12 of the Wage Order states
17 Rest Periods:

18 (A) Every employer shall authorize and permit all employees to take rest
19 periods, which insofar as practicable shall be in the middle of each work period.
20 The authorized rest period time shall be based on the total hours worked daily at
21 the rate often (10) minutes net rest time per four (4) hours or major fraction
22 thereof. However, a rest period need not be authorized for employees whose
23 total daily work time is less than three and one-half (3 1/2) hours. Authorized
24 rest period time shall be counted as hours worked for which there shall be no
25 deduction from wages.

26 (B) If an employer fails to provide an employee a rest period in accordance
27 with the applicable provisions of this Order, the employer shall pay the
28 employee one (1) hour of pay at the employee's regular rate of compensation for
each work day that the rest period is not provided."

 35. "[I]n the context of an eight-hour shift, '[a]s a general matter,' one rest break
should fall on either side of the meal break. (Ibid.)" *Brinker Rest. Corp. v. Superior Court*
(2012) 53 Cal. 4th 1004, 1032.

 36. In addition, Labor Code Section 226.7 states



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(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

37. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

38. Defendants failed to provide Plaintiff with all required rest breaks in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with all timely rest breaks required by California law.

39. Defendants failed to pay Plaintiff the additional wages required by California Labor Code section 226.7 for workdays in which one or more timely rest breaks were not provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with additional wages for all workdays on which one or more timely rest breaks were not provided to them as required by California Labor Code section 226.7.

C. UNPROVIDED MEAL PERIODS

40. In relevant part, Labor Code Section 512 states

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee



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1 with a second meal period of not less than 30 minutes, except that if the total
2 hours worked is no more than 12 hours, the second meal period may be waived
3 by mutual consent of the employer and the employee only if the first meal
4 period was not waived.

41. In relevant part, section 11 of the Wage Order states
Meal Periods

(A) No employer shall employ any person for a work period of more than
five (5) hours without a meal period of not less than 30 minutes, except that
when a work period of not more than six (6) hours will complete the day's work
the meal period may be waived by mutual consent of the employer and the
employee.

(B) If an employer fails to provide an employee a meal period in accordance
with the applicable provisions of this Order, the employer shall pay the
employee one (1) hour of pay at the employee's regular rate of compensation for
each workday that the meal period is not provided.

42. Pursuant to California Labor Code section 512 and the Wage Order, Plaintiff and
the Aggrieved Employees were entitled to an uninterrupted meal period of at least thirty (30)
minutes before they worked more than five (5) hours.

43. During the relevant time period, Defendants failed to provide Plaintiff with all
timely meal periods in accordance with the Wage Order. Plaintiff is informed and believes and
thereon alleges that, at all relevant times within the applicable limitations period, Defendants
maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing
the Aggrieved Employees with all timely meal periods required by California Labor Code
section 512 and the Wage Order.

44. Defendants failed to pay Plaintiff the additional wages required by California
Labor Code section 226.7 for all workdays in which one or more timely meal periods were not
provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times
within the applicable limitations period, Defendants have maintained a policy, practice, or a
lack of a policy which resulted in Defendants not providing the Aggrieved Employees with
additional wages for all workdays on which one or more timely meal periods were not provided
to them as required by California Labor Code section 226.7.

D. INCOMPLETE AND INACCURATE WAGE STATEMENTS

45. Pursuant to California Labor Code section 226(a), Plaintiff and the Aggrieved



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1 Employees were entitled to receive, semimonthly or at the time of each payment of wages, an
2 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all
3 applicable hourly rates in effect during the pay period; and d) the corresponding number of
4 hours worked at each hourly rate by the employee.

5 46. Pursuant to California Labor Code section 226, an employee is deemed to suffer
6 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
7 injury if the employer fails to provide accurate and complete information as required by
8 California Labor Code section 226(a) and the employee cannot “promptly and easily determine”
9 from the wage statement alone one or more of the following:

10 A. The amount of the gross wages or net wages paid to the employee during
11 the pay period or any of the other information required to be provided on the itemized wage
12 statement pursuant to California Labor Code § 226(a);

13 B. Which deductions the employer made from gross wages to determine the
14 net wages paid to the employee during the pay period;

15 C. The name and address of the employer and, if the employer is a farm
16 labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the
17 name and address of the legal entity that secured the services of the employer during the pay
18 period;

19 D. The name of the employee and only the last four digits of his or her social
20 security number or an employee identification number other than a social security number; and

21 E. The number of piece-rate units earned and the piece rate.

22 47. “Promptly and easily determine,” as stated in California Labor Code section
23 226(e), means a reasonable person would be able to readily ascertain the information without
24 reference to other documents or information.

25 48. As alleged herein, Defendants failed to pay Plaintiff and the Aggrieved
26 Employees all wages owed. As a result, Defendants have failed to properly and accurately
27 itemize each employee’s gross wages earned, net wages earned, total hours worked,
28 corresponding number of hours worked, and other requirements of California Labor Code
section 226. As a result, Defendants have violated California Labor Code section 226.
Defendants also failed to state the correct name and address of the employer on its paycheck
statements. Further, Defendants failed to state the 30-minute deductions from the daily hours



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1 Plaintiff and the Aggrieved Employees worked and the premium wages earned for unprovided
2 meal and rest periods.

3 49. Defendants' failure to provide Plaintiff and the Aggrieved Employees with
4 accurate wage statements was knowing and intentional. Defendants had the ability to provide
5 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally
6 provided wage statements that Defendants knew were not accurate.

7 50. As a result of being provided with inaccurate wage statements by Defendants,
8 Plaintiff and the Aggrieved Employees have suffered an injury. Their legal rights to receive
9 accurate wage statements were violated and they were misled about the amount of wages they
10 had actually earned and were owed. In addition, the absence of accurate information on their
11 wage statements prevented immediate challenges to Defendants' unlawful pay practices, has
12 required discovery and mathematical computations to determine the amounts of wages owed,
13 has caused difficulty and expense in attempting to reconstruct time and pay records and/or has
14 led to the submission of inaccurate information about wages to state and federal government
15 agencies. Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the
16 wage statements whether Defendants complied with their obligations under California Labor
17 Code section 226(a).

18 **E. UNTIMELY WAGES DURING EMPLOYMENT**

19 51. Labor Code section 204 states,

20 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
21 or 204.2, earned by any person in any employment are due and payable twice
22 during each calendar month, on days designated in advance by the employer as
23 the regular paydays. Labor performed between the 1st and 15th days, inclusive,
24 of any calendar month shall be paid for between the 16th and the 26th day of the
25 month during which the labor was performed, and labor performed between the
26 16th and the last day, inclusive, of any calendar month, shall be paid for
27 between the 1st and 10th day of the following month. ...

28 (b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a)
of Section 226 relating to total hours worked by the employee, if hours worked
in excess of the normal work period during the current pay period are itemized
as corrections on the paystub for the next regular pay period. Any corrections set
out in a subsequently issued paystub shall state the inclusive dates of the pay



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period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

52. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

F. UNTIMELY FINAL WAGES

53. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

54. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

55. By failing to pay Plaintiff and the Aggrieved Employees earned minimum and overtime wages, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

56. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

G. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

57. Labor Code section 1174 states:

Every person employing labor in this state shall:

...



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1 (c) Keep a record showing the names and addresses of all employees
2 employed and the ages of all minors.

3 (d) Keep, at a central location in the state or at the plants or establishments
4 at which employees are employed, payroll records showing the hours worked
5 daily by and the wages paid to, and the number of piece-rate units earned by and
6 any applicable piece rate paid to, employees employed at the respective plants or
7 establishments. These records shall be kept in accordance with rules established
8 for this purpose by the commission, but in any case shall be kept on file for not
9 less than three years. An employer shall not prohibit an employee from
10 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
11 piece-rate units earned.

12 58. Labor Code section 1174.5 states:

13 Any person employing labor who willfully fails to maintain the records required
14 by subdivision (c) of Section 1174 or accurate and complete records required by
15 subdivision (d) of Section 1174, or to allow any member of the commission or
16 employees of the division to inspect records pursuant to subdivision (b) of
17 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

18 59. Section 7 of Wage Order states,

19 (a) Every employer shall keep accurate information with respect to each
20 employee including the following:

- 21 1. Full name, home address, occupation and social security number.
- 22 2. Birth date, if under 18 years, and designation as a minor.
- 23 3. Time records showing when the employee begins and ends each work
24 period. Meal periods, split shift intervals and total daily hours worked shall also
25 be recorded. Meal periods during which operations cease and authorized rest
26 periods need not be recorded.
- 27 4. Total wages paid each payroll period, including value of board, lodging,
28 or other compensation actually furnished to the employee.
- 29 5. Total hours worked in the payroll period and applicable rates of pay.
30 This information shall be made readily available to the employee upon
31 reasonable request.
- 32 6. When a piece rate or incentive plan is in operation, piece rates or an
33 explanation of the incentive plan formula shall be provided to employees. An
34 accurate production record shall be maintained by the employer.

35 60. On information and belief, Plaintiff alleges that Defendants failed to maintain
36 accurate employment records for Plaintiff and the Aggrieved Employees.

37 **H. UNLAWFUL DEDUCTIONS**

38 61. Labor Code section 221 states, "It shall be unlawful for any employer to collect



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1 or receive from an employee any part of wages theretofore paid by said employer to said
2 employee.”

3 62. On information and belief, Plaintiff alleges on behalf of herself and other
4 Aggrieved Employees that Defendants deducted wages for meal periods that Plaintiff and the
5 Aggrieved Employees did not take in violation of Labor Code section 221.

6 **I. FAILURE TO REIMBURSE FOR EXPENSES**

7 63. In pertinent part, California Labor Code section 2802(a) states, “An employer
8 shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee
9 in direct consequence of the discharge of his or her duties.”

10 64. In relevant part, Section 9 of the Wage Order states,

11 (B) When tools or equipment are required by the employer or are necessary to
12 the performance of a job, such tools and equipment shall be provided and
13 maintained by the employer, except that an employee whose wages are at least
14 two (2) times the minimum wage provided herein may be required to provide
15 and maintain hand tools and equipment customarily required by the trade

16 65. Labor Code section 1198 prohibits employers from employing their employees
17 under conditions prohibited by the Wage Order.

18 66. On information and belief, Plaintiff alleges on behalf of herself and other
19 Aggrieved Employees that Defendants required Plaintiff and the Aggrieved Employees to incur
20 business expenses by using their personal automobiles. Specifically, Defendants required
21 Plaintiff and the Aggrieved Employees to use their personal automobiles to transport supplies as
22 a necessary condition of employment. Defendants failed to indemnify Plaintiff and the
23 Aggrieved Employees for such expenses.

24 **J. CIVIL PENALTIES SOUGHT**

25 67. During the applicable time period, Defendants violated California Labor Code
26 sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

27 68. California Labor Code section 2699, subdivisions (a) and (g) authorize an
28 aggrieved employee, on behalf of themselves and other current or former employees, to bring a
civil action to recover civil penalties pursuant to the procedures specified in California Labor
Code section 2699.3.

69. Pursuant to California Labor Code section 2699, subdivisions (a) and (f),
Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of



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Defendants' violations of California Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code section 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code section 210).

B. For violations of California Labor Code section 221, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code section 225.5).

C. For violations of California Labor Code section 226(a), two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code section 226.3).

D. For violations of California Labor Code sections 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

E. For violations of California Labor Code section 1197, one hundred dollars (\$100.00) for each aggrieved employee for each initial and intentional violation per pay period (regardless of whether the initial violations were intentionally committed) and two hundred fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed).

F. For violations of California Labor Code sections 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code section 2699(f)(2)).

G. For the violations of California Labor Code section 1174, \$500 for each



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aggrieved employee for each violation of California Labor Code section 1174 (penalty amounts established by California Labor Code § 1174.5).

K. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

70. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code section 2699.3. By letter dated February 4, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA dated February 4, 2020 is attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff’s letter.

71. Pursuant to California Labor Code section 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in connection with their claims for civil penalties.

VI. PRAYER FOR RELIEF

72. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys’ fees; and
- D. Such other relief as the Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: March 4, 2021

By: _____



DAVID SPIVAK
MARALLE MESSRELIAN, Attorneys for
Plaintiff, MIKAYLA HUDDLESTON, and
the Aggrieved Employees



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

February 4, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Mikayla Huddleston / Easter 263, Inc.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Mikayla Huddleston (hereafter "Huddleston") provides notice on behalf of herself and of all individuals currently and formerly employed in California as hourly employees (hereafter "Aggrieved Employees," by Harman Management Corporation, a Utah corporation, and Easter 263, Inc., a California corporation (hereafter collectively referred to as "Harman") of violations of California Labor Code §§ 201-203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802, and IWC Wage Order 5-2001.

At all relevant times, Harman has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Huddleston and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter "the Wage Order"), paragraph 2.F, and "aggrieved employees" within the meaning of California Labor Code § 2699(c).

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Statement of Facts

Harman began employing Huddleston as an hourly fast food restaurant crew member in its Rancho Cordova, California restaurant, on or about March 14, 2018. Huddleston continuously worked at Harman from the time of her hire until approximately May 24, 2019, when she resigned. Throughout this employment period Harman failed to provide Huddleston and the Aggrieved Employees with all timely rest and meal periods. Harman failed to hire sufficient staff members to allow Huddleston and the Aggrieved Employees to take off-duty meal and rest breaks. Harman further prohibited Huddleston and the Aggrieved Employees to leave the restaurant during their breaks and therefore, Huddleston and the Aggrieved Employees were often interrupted by their coworkers during their meal periods. Harman also failed to pay premium wages for days on which it failed to provide Huddleston and the Aggrieved Employees with rest and/or meal periods. Moreover, Harman deducted approximately 30 minutes from the daily recorded work hours of Huddleston and the Aggrieved Employees, and reported less hours on their wage statements, even if Huddleston and the Aggrieved Employees were not able to take their 30-minute uninterrupted meal periods.

Harman failed to pay Huddleston and the Aggrieved Employees at one and one-half times their regular rates of pay when they worked in excess of eight hours in a workday and/or over 40 hours in a workweek. Harman required Huddleston and the Aggrieved Employees to arrive before their shifts began to wait for deliveries, to open the restaurant if the employee scheduled to open didn't show up for work, and/or be prepared to open up just in case the employee scheduled to open didn't show up for work. However, Harman failed to compensate Huddleston and the Aggrieved Employees for such off-the-clock, overtime work. Harman required Huddleston and the Aggrieved Employees to stay after their workday ended to take inventory and to clean up. However, Harman failed to compensate Huddleston and the Aggrieved Employees for such off-the-clock, overtime work.

Harman failed to reimburse Huddleston and the Aggrieved Employees for mileage they incurred traveling in their personal automobiles on Harman's behalf, such as when Harman required Huddleston and/or the Aggrieved Employees to transport supplies between restaurants.

Harman failed to provide Huddleston and the Aggrieved Employees with accurate wage statements that stated the correct name of their employer and its address. Harman failed to properly and accurately itemize each employee's gross and net wages earned and the total hours worked. Harman did not state the hours worked and wages earned described above on the wage statements of Huddleston and the Aggrieved Employees.

For the reasons herein, on behalf of herself and the Aggrieved Employees, Huddleston alleges the following violations of the California Labor Code and the Wage Order:

- a) Harman failed to compensate Huddleston and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, overtime wages;
- b) Harman failed to provide Huddleston and the Aggrieved Employees with all timely rest breaks and meal periods;
- c) Harman failed to compensate Huddleston and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely rest breaks;
- d) Harman failed to compensate Huddleston and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely meal periods;
- e) Harman failed to provide Huddleston and the Aggrieved Employees with accurate wage statements;
- f) Harman failed to timely pay Huddleston and the Aggrieved Employees all earned and unpaid wages during, and upon termination from, their employment with Harman;
- g) Harman unlawfully collected and received wages from Huddleston and Aggrieved Employees by deducting 30 minutes of daily time worked in spite of the fact that such time was spent on duty; and

- h) Harman failed to indemnify Huddleston and the Aggrieved Employees for the business-related expenses they incurred on Harman's behalf.

Accordingly, Huddleston now seeks civil penalties on behalf of herself and Aggrieved Employees based on Harman's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." § 1. The term "Public Housekeeping Industry" means "any industry, business, or establishment which provides meals, housing, or maintenance services" and includes, but is not limited to, the following occupations:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

§ 2(P) (emphasis added). At all relevant times during the applicable limitations period, Harman employed Huddleston and the Aggrieved Employees as hourly crew members and other hourly employees at its restaurant. Accordingly, Huddleston and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Pay All Wages Earned For All Hours Worked
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, "The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

Section 4 of Wage Order states,

"Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

In relevant part, Section 2(K) of the Wage Order states,

"Hours worked" means 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.

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half ($1 \frac{1}{2}$) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half ($1 \frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

As described above, all at relevant times during the applicable limitations period, Harman failed to compensate at overtime rates Huddleston and the other

Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours worked.

Accordingly, Huddleston seeks civil penalties on behalf of herself and other crew members as follows:

1. \$50 for each aggrieved employee for each initial violation of California Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each aggrieved employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each aggrieved employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages (penalties set by California Labor Code § 1197.1).

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for

longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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 no waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

“[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break should fall on either side of the meal break. (*Ibid.*)” *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1032, 273 P.3d 513, 531.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the

employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As described above, Harman intentionally and improperly failed to provide all timely rest breaks and/or meal periods free from any work or duties to Huddleston and the Aggrieved Employees as required by law. Accordingly, Huddleston seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of California Labor Code § 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

All at relevant times during the applicable limitations period, Harman violated California Labor Code § 226, in that it failed to properly and accurately itemize each aggrieved employee's gross wages earned, net wages earned, total hours worked, the corresponding number of hours worked at the rate by the aggrieved employee, and other requirements of California Labor Code § 226. Harman also failed to state the correct name and address of the employer on its paycheck statements. Further, Harman failed to state the 30-minute deductions from the daily hours Huddleston and the Aggrieved Employees worked and the premium wages earned for unprovided meal and rest periods.

Accordingly, Huddleston seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failures to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due

and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Harman' failures to pay Huddleston and the Aggrieved Employees within the time periods set by California Labor Code § 204, Harman failed to timely pay all wages due to Huddleston and the Aggrieved Employees during, and upon separation from, their employment with Harman.

Accordingly, Huddleston seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 204, and \$200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, for each subsequent violation (penalties set by Labor Code § 210).

Failures to Timely Pay Wages Upon End of Employment
(Lab. Code §§ 201-203)

Under Labor Code section 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under Labor Code section 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. (See *ibid.*) The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. (See *ibid.*)

Under Labor Code section 203, if an employer willfully fails to pay, without abatement or reduction, in accordance sections 201 and 202, any wages of an

employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By willfully failing to pay wages to Huddleston and the Aggrieved Employees as set forth above, Harman is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and Aggrieved Employees, Huddleston seeks civil penalties from Harman as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699, subdivision (f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699, subdivision (f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699, subdivision (f)(2)).

Unlawful Collection of Wages

(Lab. Code § 221)

In relevant part, California Labor Code section 221 states, "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."

///

///

At all relevant times, Harman automatically collected and received wages from Huddleston and Aggrieved Employees by deducting 30 minutes of daily time worked. As a result, Harman collected and received part of its employees' wages in violation of California Labor Code section 221.

Accordingly, Huddleston seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code section 221 (if found to be neither willful nor intentional) and \$200 for each aggrieved employee, plus 25 percent of the amount unlawfully withheld, for each initial violation of California Labor Code section 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code section 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code section 225.5).

Failure to Indemnify for Expenses
(Lab. Code §2802)

In pertinent part, California Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

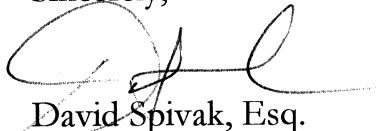
As described above, during the applicable limitations period, Harman required Huddleston and Aggrieved Employees to incur certain business expenses, including mileage, which it failed to indemnify them for both during and after their employment ended. Accordingly, Huddleston seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section

2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Mikayla Huddleston
Walter Haines, Esq.

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