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VIA ONLINE FILING

Labor and Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, CA 95814

PAGAfiling@dir.ca.gov

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: Fernando Raul Salguero v. Collabera Inc.

Dear Representative:

This office represents Fernando Raul Salguero (“**Mr. Salguero**”) with respect to his claims against Collabera Inc. (“**Employer**”) for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employer by certified mail.

Employer employed Mr. Salguero from approximately October 8, 2018 to April 29, 2019, as an hourly, non-exempt employee. During his employment with Employer, Mr. Salguero was employed as a Field Tech at Employer’s worksite at 1977 S. Sepulveda Boulevard, Los Angeles, California 90025. Employer is staffing solutions company with offices and worksites throughout the state of California.

Mr. Salguero intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 (“**PAGA**”). Mr. Salguero is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of Employer (“**Aggrieved Employees**”). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employer violated several of California’s wage and hour laws during Mr. Salguero’s employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Order”) including *inter alia*, IWC Wage Order Nos. 4 and 9. The claims made on behalf of Mr. Salguero and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Mr. Salguero and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.



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First, Employer regularly required Mr. Salguero and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Salguero and Aggrieved Employees to: (1) respond to Employer and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Mr. Salguero and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Salguero and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Mr. Salguero and Aggrieved Employees to perform work off-the-clock without compensation, Employer failed to accurately record the actual time worked by Mr. Salguero and Aggrieved Employees, which resulted in a failure to pay Mr. Salguero and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages and overtime wages. Finally, as a matter of policy and/or practice, Employer failed to pay overtime to Mr. Salguero and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employer has failed to pay Mr. Salguero and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order Nos. 4 and 9 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Mr. Salguero and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 4 and 9; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employer failed to provide Mr. Salguero and Aggrieved Employees with legally-compliant 30-minute meal periods. Mr. Salguero and Aggrieved Employees were required by Employer to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Mr. Salguero and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Mr. Salguero and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Mr. Salguero and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Salguero and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally-compliant policies



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regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Mr. Salguero and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Mr. Salguero and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Salguero and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Mr. Salguero and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included monitoring and responding to telephone calls, communication devices, and responding to in-person verbal interruptions; and (7) Employer's policy and culture prevented Mr. Salguero and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Mr. Salguero and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order Nos. 4 and 9 and California Labor Code sections 226.7(a), 512(a) and 1198.

Mr. Salguero and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 4 and 9; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employer failed to authorize and permit Mr. Salguero and Aggrieved Employees take legally-compliant 10-minute periods. Employer required Mr. Salguero and Aggrieved Employees to work through rest periods. Mr. Salguero and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Salguero and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Salguero and Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Salguero and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the



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provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Mr. Salguero and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Mr. Salguero and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Salguero and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Mr. Salguero and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to telephone calls, communication devices, and in-person verbal interruptions; and (7) Employer's policy and culture prevented Mr. Salguero and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Mr. Salguero and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order Nos. 4 and 9 and California Labor Code sections 226.7(a), and 1198.

Mr. Salguero and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 4 and 9; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

As to each pay period, Employer has failed to timely pay all wages earned because [Mr. Salguero and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).

Mr. Salguero and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Mr. Salguero and Aggrieved Employees never included the actual hours worked, the actual gross wages earned, and the correct rates of pay, inclusive pay period dates, and the name and address of the legal employer. Accordingly, Employer violated California Labor Code section 226(a).



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Mr. Salguero and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employer has failed to maintain accurate records relating to Mr. Salguero and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employer violated IWC Wage Order Nos. 7 and 9 and California Labor Code sections 1198.5 and 1174(d).

Mr. Salguero and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 7 and 9; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order Nos. 7 and 9 require employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Mr. Salguero and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, the use of their personal cell phones for work-related purposes.

Accordingly, Employer violated IWC Order Nos. 7 and 9 and California Labor Code sections 2800 and 2802.

Mr. Salguero and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 7 and 9; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

Upon the termination of employment, Mr. Salguero and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employer's practices of requiring Mr. Salguero and Aggrieved Employees to work off-the-clock without compensation, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employer failed to pay Mr. Salguero and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to



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them upon termination of their employment. Accordingly, Employer violated California Labor Code sections 201 and 202.

Mr. Salguero and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

Therefore, on behalf of himself, the State of California and all Aggrieved Employees, Mr. Salguero may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'Amir Nayebdadash', is written over a horizontal line.

Amir Nayebdadash

Notice provided to Employer via Certified Mail (7019 1120 0002 3020 3025)

Collabera Inc.
Agent for Service of Process – XL Corporate Services, Inc.
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Notice provided to Employer via Certified Mail (7019 1120 0002 3020 3056)

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