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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

STEPHANIE FLORES, in her individual and
representative capacity,

Plaintiff,

vs.

AMAZON LOGISTICS INC., a Washington
corporation; BAMBOO COURIERS, a California
corporation; HERMES GLOBAL LOGISTICS
CORPORATION, a California corporation; and
DOES 1-10, Inclusive,

Defendants.

Case No. 30-2020-01148058-CU-OE-CXC

COMPLAINT FOR:

**(1) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT OF
2004 [Lab. Code §2698 *et seq.*]**

JURY TRIAL DEMANDED

Assigned for All Purposes
Judge William Claster

CX-104

1 Plaintiff STEPHANIE FLORES (“Plaintiff”) is informed and believes and hereby alleges as
2 follows:

3 **FACTUAL BACKGROUND**

4 1. Plaintiff was a driver (and, at times, a Human Resources Assistant) of HERMES
5 GLOBAL LOGISTICS CORPORATION, (“Hermes”) BAMBOO COURIERS (“Bamboo”) and/or
6 AMAZON LOGISTICS INC. (“Amazon”) (collectively “Defendants”) who, along with many other
7 similarly situated employees who were often called or titled a “driver” (“Aggrieved Employees”), were
8 (and are), among other things, regularly denied compliant meal periods and were not paid premium pay,
9 regularly denied compliant rest periods and were not paid premium pay, were not properly paid
10 minimum wages, and were not properly paid overtime pay rates for work greater than eight hours in a
11 workday and/or forty hours in a workweek, including double-time pay for work over 12 hours in a
12 workday.

13 2. Among other things, Plaintiff and Aggrieved Employees were rarely, if ever, provided
14 compliant rest periods; as for meal periods, they regularly recorded and/or submitted their actual time
15 worked on handwritten timesheets or on the ADP workforce application showing missed, truncated, or
16 late meal periods, but Employers would simply deduct actual time worked and falsely state or insert
17 meal periods where they were not properly provided nor taken despite these actual time records. In
18 addition, Employers had actual notice that said rest period and meal periods were not being taken
19 because the Amazon Logistics system tracks the drivers and shows stops of five (5) minutes or more.

20 3. Accordingly, Defendants regularly fail to, among other things: (1) pay overtime pay; (2)
21 pay minimum wages; (3) provide uninterrupted off-duty meal periods and/or required premium wages;
22 (4) provide uninterrupted off-duty rest periods and/or required premium wages; (5) maintain adequate
23 records; (6) furnish proper and/or accurate wage statements; and (7) timely pay all wages due upon
24 termination, among other things. The Defendants’ time records and policies will confirm these violations
25 including numerous violations of PAGA and the California Labor Code, as well as other laws, decisions,
26 orders, or rulings that are enforceable through PAGA.

27 4. For over 50 years, California’s courts and legislature have recognized that this State’s
28 wage-and-hour laws serve a compelling public interest of fostering a stable job market. Wages are not

1 ordinary debts. Because of the economic position of the average worker and his or her family, it is
2 essential to the public welfare that employers obey the wage-and-hour laws so that employees are
3 promptly paid the minimum wages that the Legislature has required for employees. So fundamental are
4 California's wage-and-hour laws that the Legislature has criminalized certain types of violations.

5 5. Plaintiff brings this action pursuant to PAGA and seeks to obtain all applicable relief for
6 Defendants' violations, including all available relief under PAGA and the applicable Labor Code
7 provisions or other law enforceable through PAGA. As a result of Defendants' unlawful conduct alleged
8 herein, Defendants violated California Labor Code sections 201-203, 204, 206, 206.5, 208, 210, 216,
9 218.5, 223, 226, 226.3, 226.6, 227.3, 226.7, 227.3, 256, 432.5, 510, 512, 558, 1174, 1174.5, 1182.12,
10 1194, 1197, 1197.1, 1198, 1199, and all applicable Industrial Welfare Commission Wage Orders ("Wage
11 Orders"), all applicable Wage Orders as well as interpretations of these laws by California courts and
12 administrative bodies.

13 **PRELIMINARY ALLEGATIONS**

14 6. This Court has jurisdiction over this matter under PAGA and this Court's general powers
15 granted by statutory law and the California Constitution.

16 7. Plaintiff STEPHANIE FLORES is, and at relevant times was, an individual domiciled in
17 the State of California and a citizen of the State of California who worked as a driver (and, at times, a
18 Human Resources Assistant) at Defendants' Irvine, California location.

19 8. Defendant AMAZON LOGISTICS INC. is a Washington Corporation doing business in
20 Los Angeles, California.

21 9. Defendant BAMBOO COURIERS is a California Corporation doing business in Los
22 Angeles, California.

23 10. Defendant HERMES GLOBAL LOGISTICS CORPORATION is a California
24 Corporation doing business in Los Angeles, California.

25 11. Venue is proper because Plaintiff worked and resided in Los Angeles, California, and a
26 substantial portion of the events at issue in this matter occurred within Los Angeles County, California.

27 12. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
28 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious

1 names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts
2 alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and
3 capacities of the Doe Defendants when such identities become known.

4 13. At all relevant times, each and every Defendant was acting as an agent and/or employee
5 of each of the other Defendants and was acting within the course and/or scope of said agency and/or
6 employment with the full knowledge and consent of each of the Defendants. Each of the acts and/or
7 omissions complained of herein were alleged and made known to, and ratified by, each of the other
8 Defendants. Defendants Amazon, Bamboo, Hermes, and Doe Defendants are hereafter collectively
9 referred to as “Defendants.”

10 14. At all relevant times, Defendants were, and are, legally responsible for all of the unlawful
11 conduct, policies, practices, acts and omissions complained of herein as the employer of Plaintiff and
12 Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions
13 complained of herein under the doctrine of *respondeat superior*. The conduct of Defendants’ managers
14 and supervisors was at all relevant times undertaken as employees of Defendants, acting within the scope
15 of their employment or authority in all of the unlawful activities described herein.

16 15. Plaintiff gave written notice by certified mail of Defendant’s violations of various
17 provisions of the California Labor Code as alleged in this complaint to the Labor and Workforce
18 Development Agency (“LWDA”) and Defendant. This written notice is attached hereto as **Exhibit A**.

19 16. The LWDA did not provide notice of its intention to investigate Defendants’ violations.

20 **FIRST CAUSE OF ACTION**

21 **Violation Of The Private Attorneys General Act [Lab. Code § 2698 *et seq.*]**

22 **(By Plaintiff Against All Defendants)**

23 17. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully
24 set forth in this cause of action.

25 18. Plaintiff is an “Aggrieved Employee” under PAGA, as he was employed by Defendants
26 during the applicable statutory period and suffered one or more of the Labor Code violations set forth
27 herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and former
28 Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney’s fees and costs.

1 19. Plaintiff seeks to recover the PAGA civil penalties through a representative action
2 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal 4th 969 (2009).
3 Therefore, class certification of the PAGA claims is not required.

4 20. Plaintiff seeks civil penalties pursuant to PAGA for Defendants' unlawful wage and hour
5 practices, including but not limited to, as stated herein: (i) failing to pay overtime; (ii) failing to pay
6 minimum wages and straight wages; (iii) failing to provide uninterrupted off-duty meal periods and/or
7 required penalties; (iv) failing to provide uninterrupted off-duty rest periods and/or required penalties;
8 (v) failing to maintain adequate records; (vi) failing to furnish accurate wage statements; and (vii) failing
9 to timely pay all wages due upon termination.

10 21. Plaintiff seeks PAGA penalties as forth and allowed under Labor Code section 2699(f)
11 and/or other applicable sections.

12 22. Labor Code violations alleged in this PAGA action include the following:

- 13 a. California Labor Code sections 226(a) and 226.3 (Non-compliant Wage Statements);
- 14 b. California Labor Code section 1198 (Standard Conditions of Labor);
- 15 c. California Labor Code section 510 (Failure to pay overtime/double-time);
- 16 d. California Labor Code sections 201, 202 and 203 (Wages Not Timely Paid Upon
17 Termination);
- 18 e. California Labor Code sections 226.7 (Unpaid Rest Break Premiums);
- 19 f. California Labor Code sections 226.7 and 512(a) (Unpaid Meal Period Premiums);
- 20 g. California Labor Code sections 204, 210 (Payment of wages);
- 21 h. California Labor Code sections 1174, Industrial Wage Orders (Failure to Maintain
22 Records);
- 23 i. California Labor Code section 558 (Failure to comply with requirements regulating
24 hours and days of work);
- 25 j. California Labor Code sections 1194, 1194.2, 1197 and 1197.1 (Unpaid Minimum
26 Wages).

27 23. Accordingly, Plaintiff respectfully request that the Court award judgment and relief in
28 their favor as described herein.

24. Pursuant to section 2699(g) of the Labor Code, or other applicable law, Plaintiff is entitled to recover statutory penalties, interest, injunctive relief, costs, and attorneys' fees.

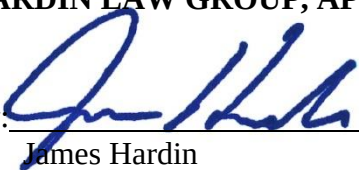
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

1. Applicable statutory and/or civil penalties pursuant to PAGA;
2. Reasonable attorneys' fees and costs pursuant to California Labor Code section 2699(g) and/or other applicable law;
3. Wages, civil penalties, and applicable statutory penalties;
4. General and compensatory damages;
5. Pre-judgment and post-judgment interest;
6. Attorneys' fees and costs reasonably incurred;
7. Punitive and/or exemplary damages, if allowed;
8. Equitable relief, if allowed;
9. Such other relief that the Court deems proper.

Dated: July 10, 2020

HARDIN LAW GROUP, APC

By: 

James Hardin

Attorneys for Plaintiff

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

HARDIN LAW GROUP, APC

By: _____

[Signature]

James Hardin

Attorneys for Plaintiff

EXHIBIT A

HARDIN

LAW GROUP,^{APC}

Page | 1

April 7, 2020

Via Certified U.S. Mail

California Labor & Workforce
Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(Via Online Submission)

Amazon Logistics Inc.
C/O CSC Lawyers Incorporating Service
270 Gateway Oaks Dr., Ste. 150N
Sacramento CA 95833

Amazon Logistics Inc.
ATTN: Legal Department
410 Terry Ave., N
Seattle, WA 98109

Bamboo Couriers
ATTN: Edris Baboli
2790 Kelvin Ave., #1359
Irvine, CA 92614

Hermes Global Logistics Corporation
ATTN: Farhad Vojdaniheris
205 Rockview
Irvine, CA 92612

Re: PAGA Notice Pursuant to California Labor Code § 2699: Stephanie Flores v. Employer(s)
(Amazon Logistics Inc., Bamboo Couriers, and Hermes Global Logistics Corporation)

Dear Sir and Madam:

Please be advised that Stephanie Flores (“Plaintiff”) has retained Hardin Law Group, APC to represent her and other aggrieved employees for wage and hour claims against their former and/or current employer, Hermes Global Logistics Corporation, a California Corporation (“Hermes”), Bamboo Couriers (“Bamboo”), Amazon Logistics Inc. (“Amazon”), and/or responsible entities or affiliates (collectively “Employer”). This notice is being provided via certified

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LAW GROUP,^{APC}

Page | 2

mail to the Employer at their principal place of business and agent for service of process (if any) and is being filed with the California Labor and Workforce Development Agency (“LWDA”) via the LWDA’s electronic filing system under Section 2699.3(b) of the Labor Code.

Plaintiff requests that the LWDA regard this Notice as written notice of her intent to seek civil penalties against Employer. The specific provisions of the California Labor Code (“Labor Code”) that Employer has violated requiring this notice include, but are not limited to California Labor Code sections 201-203, 204, 206, 206.5, 208, 210, 216, 218.5, 223, 226, 226.3, 226.6, 227.3, 226.7, 227.3, 256, 432.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, 1723, 1771, and all applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), including but not limited to the reporting time pay requirements in section 5 of the applicable Wage Order(s). *See also Ward v. Tilly’s, Inc.*, 31 Cal.App.5th 1167, 1178 (2019).

The Employer

Hermes and Bamboo are international logistics companies that deliver products and goods throughout California and the United States for Amazon. Hermes is a California corporation doing business in California, including hiring California residents as employees within the State of California. Plaintiff is informed and believes that Hermes generally employs more than 50 employees working within California. Bamboo is a California corporation doing business in California, including hiring California residents as employees within the State of California. Plaintiff is informed and believes that Bamboo generally employs more than 50 employees working within California. Amazon is a Washington corporation doing business in California, including hiring California residents as employees within the State of California. Plaintiff is informed and believes that Amazon generally employs more than 1,000 employees working within California. Plaintiff is informed and believes that Plaintiff and the Aggrieved Employees worked in Amazon-based uniforms, carried out work directly for Amazon, their movements and work progress was tracked by Amazon via the Amazon Logistics computer software and/or application, and that Amazon regularly audited the employment and wage and hour practices of Hermes and Bamboo, among other things. Accordingly, Plaintiff is informed and believes that Hermes and any relevant affiliates, including but not limited to Bamboo and Amazon, constitute “joint employers” for all relevant purposes under California law.

Employer has violated or caused to be violated several Labor Code provisions and is therefore liable for civil penalties under Labor Code sections 2698-2699.5, *et seq.* Plaintiff respectfully requests that your agency investigate the claims alleged against it herein. This letter will serve as notice of these allegations pursuant to the Private Attorney Generals Act of 2004 (“PAGA”). Cal. Lab. Code § 2699.3.

Plaintiff and Aggrieved Employees

At all relevant times, Plaintiff was a driver (and, at times, a Human Resources Assistant) who, along with many other similarly situated employees who were often called or titled a “driver” (“Aggrieved Employees”), were (and are), among other things, regularly denied compliant meal periods and were not paid premium pay, regularly denied compliant rest periods and were not paid premium pay, were not properly paid minimum wages, were not properly paid overtime pay rates for work greater than eight hours in a workday and/or forty hours in a workweek, including double-time pay for work over 12 hours in a workday, and were not paid prevailing wages.

Among other things, Plaintiff and Aggrieved Employees were rarely, if ever, provided compliant rest periods; as for meal periods, they regularly recorded and/or submitted their actual time worked on handwritten timesheets or on the ADP workforce application showing missed, truncated, or late meal periods, but Employers would simply deduct actual time worked and falsely state or insert meal periods where they were not properly provided nor taken despite these actual time records. In addition, Employers had actual notice that said rest period and meal periods were not being taken because the Amazon Logistics system tracks the drivers and shows stops of five (5) minutes or more.

As a result of the foregoing illegal practices, Employer regularly fails to, among other things: (1) pay overtime pay; (2) pay minimum wages; (3) pay prevailing wages; (4) provide uninterrupted off-duty meal periods and/or required premium wages; (5) provide uninterrupted off-duty rest periods and/or required premium wages; (6) timely pay all wages due upon termination; (7) pay “waiting time” penalties; (8) pay wages due; (9) paying wages required by statute; (10) maintain adequate records; (11) furnish proper and/or accurate wage statements; and (12) pay reporting time pay.

At all relevant times, Plaintiff was an aggrieved employee, as defined in Labor Code section 2699(c) as: “any person who was employed by the alleged violator and against whom one or more violations was committed.” Plaintiff seeks recovery for the Labor Code and Wage Order violations set forth herein on behalf of herself and other current and former employees, including but not limited to all similarly situated employees in the State of California within one year of the filing of this Notice and who were subject to the same or similar Labor Code and Wage Order violations as Plaintiff.

Labor Code Violations

Unlawful Failure to Pay Overtime

Employer fails to compensate Plaintiff and Aggrieved Employees for the many hours of overtime they work and for which they are entitled to be paid. Employer has failed to maintain a policy that compensates Plaintiff and Aggrieved Employees for hours worked, including overtime,

work after eight (8) hours in a workday, forty (40) hours in a workweek and/or on the seventh consecutive day of work. Moreover, as a result of Employers' alterations and deduction of the actual time records of Plaintiff and Aggrieved Employees, said employees are required to perform an array of overtime and "off-the-clock" work, including performing work before or after scheduled shifts and working through or during meal periods and rest periods. As a result, Employer does not pay Plaintiff or Aggrieved Employees for the overtime worked on a daily basis, weekly basis, and/or due to untimely, interrupted, or non-duty-free meal periods or rest periods.

As a result of violations of the Labor Code sections 510, 1194, and applicable Wage Orders for failure to pay overtime, Employer is liable for civil penalties pursuant to Labor Code sections 558 and 2699 *et seq.*

Unlawful Failure to Provide Unpaid Balance of Full Amount of Overtime Compensation

As described above, Employer has required Plaintiff and Aggrieved Employees to work hours qualifying them for significant overtime compensation, but it has not paid these employees overtime compensation. As a result, Plaintiff and Aggrieved Employees have been denied "the unpaid balance of the full amount of this . . . overtime compensation" as required by Labor Code section 1194, and Employer is liable for civil penalties pursuant to Labor Code section 2699 *et seq.*

Unlawful Failure to Pay Minimum Wage

Employer has failed to maintain a policy that compensates Plaintiff and Aggrieved Employees an amount equal to or greater than the minimum wage for all hours worked, as required by Labor Code sections 1182.12, 1194, 1197, 1197.1, and applicable Wage Orders. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. Moreover, as a result of Employers' alterations and deduction of the actual time records of Plaintiff and Aggrieved Employees, said employees are required to perform an array of "off-the-clock" work, including performing work before or after scheduled shifts and working through or during meal periods and rest periods. As a result, Employer does not pay Plaintiff or Aggrieved Employees for the minimum wages worked on a daily basis, weekly basis, and/or due to untimely, interrupted, or non-duty-free meal periods or rest periods.

As a result of violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198 and applicable Wage Orders for failure to pay minimum wage, Employer is liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699 *et seq.*

Unlawful Failure to Pay Prevailing Wage

Employer has failed to maintain a policy that compensates Plaintiff and Aggrieved Employees an amount equal to or greater than the prevailing wage for all hours worked on qualifying public works projects, including as required by Labor Code sections 1723 and 1771, and applicable Wage Orders. All hours on qualifying public works projects must be paid at the

prevailing rate. Plaintiff and Aggrieved Employees are paid on qualifying projects at an hourly rate less than the prevailing wage, and are required to perform an array of “off-the-clock” work, including performing work before or after scheduled shifts and working through or during meal periods and rest periods. Among other things, as a result of Employers’ alterations and deduction of the actual time records of Plaintiff and Aggrieved Employees, said employees are required to perform an array of overtime and “off-the-clock” work, including performing work before or after scheduled shifts and working through or during meal periods and rest periods. As a result, Employer does not pay Plaintiff or Aggrieved Employees the prevailing wage for such work on a daily basis, weekly basis, and/or due to untimely, interrupted, or non-duty-free meal periods or rest periods.

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

Labor Code section 512 and Wage Orders require every California employer to provide all non-exempt employees a duty-free meal period of not less than 30 minutes, for a work period of more than five (5) hours, “except that if the total work period per day is not more than six (6) hours, the meal period may be waived by mutual consent of the employer and employee. An employer may not employ and employee for a work period of more than ten (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 work 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 not waived.” Under subdivision (a) of Labor Code section 226.7, an employer shall not require an employee to work during meal periods mandated by state law. Subdivision (c) provides that “[i]f an employer fails to provide an employee a meal . . . period in compliance with an applicable statute, wage order, etc. . . . the employer shall pay the employee one (1) additional hour of pay at the employee’s regular rate of compensation for each workday that the meal . . . period is not provided.”

Employer has, among other things, failed to: (1) maintain a policy that provides Plaintiff and Aggrieved Employees with off-duty meal periods as required by California law; (2) provide Plaintiff and Aggrieved Employees with a reasonable opportunity to take their meal periods at the appropriate times; and (3) failed to pay Plaintiff and Aggrieved Employees an additional hour of pay at their regular rate of pay for each missed or late meal period. Among other things, Plaintiff and Aggrieved Employees were regularly not provided required meal periods or required to take untimely, interrupted, or non-duty-free meal periods without receiving an additional hour of pay at their regular rate of for each such meal period.

As a result of Employer’s violations of Labor Code sections 226.7, 226.7(b), 512, and 1198, Employer is liable for civil penalties pursuant to Labor Code sections 558 and 2699 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

Labor Code section 226.7 and Work Order 5 section 12(A) require every California employer to authorize and permit all non-exempt employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours, or a major fraction thereon. Under subdivision (a), an employer shall not require an employee to work during rest periods mandated by state law. Subdivision (c) provides that “[i]f an employer fails to provide an employee a rest period in compliance with an applicable statute, wage order, etc. . . the employer shall pay the employee one (1) additional hour of pay at the employee’s regular rate of compensation for each workday that the rest . . . period is not provided.”

Employer has, among other things, failed to: (1) maintain a policy that provides Plaintiff and Aggrieved Employees with off-duty rest periods as required by California law; (2) provide Plaintiff and Aggrieved Employees with a reasonable opportunity to take their rest periods at the appropriate times; and (3) failed to pay Plaintiff and Aggrieved Employees an additional hour of pay at their regular rate of pay for each missed or late rest period. Among other things, Plaintiff and Aggrieved Employees were regularly not provided required rest periods or required to take untimely, interrupted, or non-duty-free rest periods without receiving an additional hour of pay at their regular rate of for each such rest period.

As a result of Employer’s violations of Labor Code sections 226.7, 226.7(b), and 512, Employer is liable for civil penalties pursuant to Labor Code sections 558 and 2699 *et seq.*

Unlawful Failure to Timely Pay Wages Owed Including those Due Upon Termination

Labor Code section 201 provides “if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 202 provides “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 intention to quit, in which case the employee is entitled to his wages at the time of quitting.” Labor Code section 208 requires that all final wages be paid to an employee who is terminated at the place of discharge and to an employee who voluntarily resigns at the place where the employee has been working.

Employer has violated Labor Code sections 201 and 202 by willfully failing to timely pay all compensation due and owing to Plaintiff and all former Aggrieved Employees at the time employment was terminated because of, as noted herein, said unpaid overtime wages, regular wages, minimum wages, reporting time pay, one hour penalties for missed, interrupted, or untimely meal periods and rest periods, and among things others. Labor Code sections 201 and 227.3 require an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge. Labor Code section 202 requires an employer to pay all compensation due and owing to an employee who quits within 72 hours of that employee quitting, unless the employee provides at least 72-hours’ notice of quitting, in which case all compensation is due at the

end of the employee's final day of work. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by sections 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 work days.

Pursuant to Labor Code section 1199, "Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission. (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission."

Employer willfully failed to pay Aggrieved Employees no longer employed by it all compensation due upon termination of employment as required under Labor Code sections 201 and 202. Pursuant to sections 203 and 256 of the Labor Code, Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days of wages due to Employer's willful failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code. In addition, because Employer violated Labor Code sections 201, 202, and 203, Employer is liable for civil penalties pursuant to Labor Code section 2699 *et seq.*

Unlawful Withholding of Wages Due

Labor Code section 206 requires an employer "to pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him to be due" As a result of violations of Labor Code section 206, Employers are liable for civil penalties pursuant to Labor Code section 2699 *et seq.*

Unlawful Paying Lower Wage Than Required by Statute

Labor Code section 223 prohibits an employer from "secretly pay[ing] a lower wage while purporting to pay the wage designated by statute or by contract." As a result of violations of Labor Code section 223, Employers are liable for civil penalties pursuant to Labor Code section 2699 *et seq.*

Unlawful Failure to Maintain Adequate Records

Labor Code section 1174 states, in pertinent part, that "[e]very person employee labor in this state shall . . . (c) Keep a record showing the names and addresses of all employees employed . . . [and] (d) Keep, at a central location in the state . . . or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to . . . employees employed at the respective . . . establishments. These records shall be kept . . . in a file for not less

than three years. . . Likewise, Wage Order 5, section 7 requires that “(A) [e]very employer shall keep accurate information with respect to each employee including the following: (1) the full name, home address, occupation and social security number (2) Birth date . . . (3) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked shall also be recorded . . . (5) Total hours worked in the payroll period and the applicable rates of pay. This information shall be made readily available to the employee upon reasonable request . . .” Labor Code section 1174.5 provides that “any person employing labor who willfully fails to maintain the records required under subdivision (c) of section 1174 or accurate or complete records required by subdivision (d) of section 1174 . . . shall be subject to a civil penalty of five hundred dollars (\$500). Subdivision (d) of section 1174.5 states that “[a]ny person, or officer or agent thereof, is guilty of a misdemeanor who fails to keep any of the records required by section 1174.

For the reasons and bases noted here, Employer has, among other things, willfully failed to adequate records regarding Plaintiff and Aggrieved Employees and

As a result of Employers’ violations of Labor Code sections 201-204, 206, 206.5, 216, and 512, 1174, Employer is liable for civil penalties pursuant to Labor Code sections 2699 et seq. and 1174.5 for willful violations.

Unlawful Failure to Furnish Accurate Wage Statements

Labor Code section 226 requires an employer to provide employees with accurate itemized wage statements showing (1) gross wages earned, (2) total hours worked by an non-exempt employee, (3) piece rates, if applicable, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is being paid, (7) the name of the employee and his or her social security number or identification number, (8) the name and address of the legal entity that is the employer, and (9) all hourly rates in effect and the corresponding number of hours worked. In addition, any payment made in cash must be accompanied by an itemized wage statement that meets the conditions set forth above. The applicable Wage Order(s) requires an employer to provide the same information.

Labor Code 226.3 provides that “any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two-hundred and fifty dollars (\$250) per employee per violation in an initial citation, and one-thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records in subdivision (a) of section 226. The penalties provided for in this section are in addition to any other penalty provided by law.”

Employer has violated Labor Code section 226(a) by willfully failing to furnish Plaintiff and Aggrieved Employees with itemized wage statements accurately stating, among other things, gross wages earned, total hours worked, deductions, net wages earned, and hourly rates and number of

hours worked. As a result of violations of Labor Code section 226(a), Employers are liable for civil penalties pursuant to Labor Code sections 226.3 and 2699 *et seq.*

Unlawful Failure to Make Semimonthly Payments

Employer has violated Labor Code section 204 by failing to make semimonthly payments of wages “twice during each calendar month, on days designated in advance by the employer as the regular paydays.” As discussed herein, Employer failed to pay Plaintiff and Aggrieved Employees wages due for many pay periods.

Conclusion

Employer has violated or caused to be violated a number of California wage and hour laws. Plaintiff requests that the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA’s provision. Alternatively, Plaintiff requests the agency inform them if it does not intend to investigate these violations so that they may include in their lawsuit the violations discussed in this letter.

Very truly yours,

HARDIN LAW GROUP, APC
A Professional Corporation



James B. Hardin

JBH/br