

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Scheper

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ALEGRIA MARTINEZ, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act (“PAGA”);

Plaintiff,

v.

WELLS ENTERPRISES, INC. d/b/a WELLS
DAIRY, INC., an Iowa corporation; EDEN
CREAMERY LLC, a California limited
liability company; HALO TOP SCOOP SHOP
LLC, a California limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: **20STCV34004**

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATION OF LABOR CODE
§ 2698 *et seq.* (PRIVATE ATTORNEYS
GENERAL ACT OF 2004)**

1 Plaintiff Alegria Martinez (“Plaintiff”) hereby submits her Complaint against Defendants
2 Wells Enterprises, Inc. d/b/a Wells Dairy, Inc.; Eden Creamery LLC; Halo Top Scoop Shop
3 LLC; and DOES 1 through 100, inclusive; (collectively, “Defendants”), on behalf of herself and
4 other current and former aggrieved employees of Defendants for penalties as follows:

5 **INTRODUCTION**

6 1. This representative action brought pursuant to Labor Code § 2698 *et seq.*
7 (the Private Attorneys General Act of 2004 (“PAGA”)) for Defendants’ violations of Labor Code
8 §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197,
9 1197.1, 1198, 2800 and 2802.

10 2. This Complaint challenges Defendants’ systemic illegal employment
11 practices resulting in violations of the stated provisions of the Labor Code against the identified
12 group of employees.

13 3. Plaintiff is informed and believes and thereon alleges Defendants jointly
14 and severally acted intentionally and with deliberate indifference and conscious disregard to the
15 rights of all employees in (1) failing to pay all meal period wages and rest break wages, (2)
16 failing to properly calculate and pay all minimum and overtime wages, (3) failing to provide
17 accurate wage statements, (4) failing to pay all wages due and owing during employment and
18 upon termination of employment, and (5) failing to reimburse all necessary business expenses.

19 **JURISDICTION AND VENUE**

20 4. This action is brought pursuant to PAGA. The civil penalties sought by
21 Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established
22 according to proof at trial.

23 5. This Court has jurisdiction over this action pursuant to California
24 Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all
25 causes except those given by statute to other courts. The statutes under which this action is
26 brought do not specify any other basis for jurisdiction.

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6. This Court has jurisdiction over the violations of PAGA and Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

7. This Court has jurisdiction over all Defendants because, upon information and belief, each party has sufficient minimum contacts in California, or otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

8. Venue is proper in this Court because, upon information and belief, the named Defendants transact business and/or have offices in this county, and the acts and omissions alleged herein took place in this county. Moreover, this action is brought on behalf of the State of California as a private attorney general and has jurisdiction in this venue.

PARTIES

9. Plaintiff Alegria Martinez is an individual residing in the State of California. Plaintiff was employed by Defendants within the statutory time period.

10. Plaintiff is informed and believes and thereon alleges that Defendants are licensed to do business and actually doing business in the State of California, including the County of Los Angeles.

11. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and thereon alleges that each of Defendants designated as a DOE was responsible in some way for the matters alleged herein and proximately caused Plaintiff and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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12. At all times herein mentioned, Defendants, and each of them, were agents, partners, joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly committed with ratification, knowledge, permission, encouragement, authorization and consent of each Defendant designated herein.

13. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to PAGA and Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

CAUSE OF ACTION

VIOLATION OF PAGA

(AGAINST ALL DEFENDANTS BY PLAINTIFF)

14. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 13 as though fully set forth herein.

15. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

16. On June 26, 2020, Plaintiff provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code she contends were violated, and the theories supporting her contentions. Plaintiff believes that on or about August 31, 2020, the sixty-five (65) days notice period expired, and the LWDA did not take any action to investigate or prosecute this matter. Attached hereto as **Exhibit 1** and incorporated by reference is a copy of the written notice to the LWDA. Therefore, Plaintiff exhausted the statutory time period to bring this action.

1 **17.** Plaintiff and the other hourly-paid or non-exempt employees are
2 “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current
3 or former employees (whether hired directly or through a staffing agency or labor contractor) of
4 Defendants who worked for Defendants at any time during the period from June 26, 2019 to the
5 present, and one or more of the alleged violations was committed against them.

6 **Failure to Pay Minimum and Overtime Wages**

7 **18.** At all times relevant herein, Defendants were required to compensate their
8 non-exempt employees minimum wages for all hours worked and overtime wages for all hours
9 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
10 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

11 **19.** As a pattern and practice, Defendants failed to compensate Plaintiff and
12 other aggrieved current and former employees for all hours worked, resulting in a failure to pay
13 all minimum wages and overtime wages, where applicable.

14 **Failure to Provide Meal Periods and Rest Breaks**

15 **20.** In accordance with the mandates of Labor Code §§ 226.7 and 512,
16 Defendants were required to authorize and permit their non-exempt employees to take a 10-
17 minute rest break for every four (4) hours worked or major fraction thereof, and were further
18 required to provide their non-exempt employees with a 30-minute meal period for every five (5)
19 hours worked.

20 **21.** As a pattern and practice, Defendants failed to provide Plaintiff and other
21 aggrieved current and former employees with legally-mandated meal periods and rest breaks and
22 failed to pay proper compensation for this failure.

23 **Failure to Timely Pay Wages During Employment**

24 **22.** At all times relevant herein, Defendants were required to pay their
25 employees within a specified time period pursuant to the mandate of Labor Code § 204.

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1 **23.** As a pattern and practice, Defendants failed to pay Plaintiff and other
2 aggrieved current and former employees all wages due and owing them within the required time
3 period.

4 **Failure to Timely Pay Wages Upon Termination**

5 **24.** At all times relevant herein, Defendants were required to pay their
6 employees all wages owed in a timely fashion at the end of employment pursuant to California
7 Labor Code §§ 201 to 204.

8 **25.** As a result of Defendants' Labor Code violations alleged above,
9 Defendants failed to pay Plaintiff and the other aggrieved former employees their final wages
10 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
11 Labor Code § 203.

12 **Failure to Provide Complete and Accurate Wage Statements**

13 **26.** At all times relevant herein, Defendants were required to keep *accurate*
14 records regarding their California employees pursuant to the mandate of Labor Code §§ 226 and
15 1174.

16 **27.** As a result of Defendants' various Labor Code violations, Defendants
17 failed to keep accurate records regarding Plaintiff and other aggrieved current and former
18 employees. For example, Defendants failed in their affirmative obligation to keep accurate
19 records regarding Plaintiff and other aggrieved current and former employees' gross wages
20 earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates and
21 the number of hours worked at each hourly rate.

22 **Failure to Reimburse Business Expenses**

23 **28.** At all times relevant herein, Defendants were required to reimburse its
24 employees for any and all necessary expenditures or losses incurred by the employees in direct
25 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code §§
26 2800 and 2802.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on her own behalf and as representative of other current
3 and former aggrieved employees pursuant to PAGA, prays for judgment as follows:

- 4 1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in
5 Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202,
6 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197,
7 1197.1, 1198, 2800 and 2802.
- 8 2. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code
9 §§ 210, 218.5, 1194, and 2699, and any other applicable statute; and
- 10 3. For such other and further relief the court may deem just and proper.
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12 Dated: September 2, 2020

JUSTICE LAW CORPORATION

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15 By: 
16 Douglas Han
17 Shunt Tatavos-Gharajeh
18 Arsiné Grigoryan
19 Attorneys for Plaintiff
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EXHIBIT 1

June 26, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

**Re: WELLS ENTERPRISES, INC. d/b/a WELLS DAIRY, INC., EDEN CREAMERY
LLC and HALO TOP SCOOP SHOP LLC**

Dear Representative:

We have been retained to represent Alegria Martinez against Wells Enterprises, Inc. d/b/a Wells Dairy, Inc., Eden Creamery LLC, Halo Top Scoop Shop LLC (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), DOES 1-10, and DOES 11-20 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1 for violations of California wage-and-hour laws (hereinafter collectively referred to as "HALO TOP").¹

Ms. Martinez is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Martinez may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Wells Enterprises, Inc. d/b/a Wells Dairy, Inc. is an Iowa corporation located at One Blue Bunny Drive, Le Mars, Iowa 51031. Halo Top Scoop Shop, LLC is a California limited liability company located at 2049 Century Park East, Suite 3200, Los Angeles, California 90067. Eden Creamery, LLC is California limited liability company located at 2049 Century Park East, Suite 3200, Los Angeles, California 90067.

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¹ Ms. Martinez does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Martinez will amend this notice when the true names and capacities are known. Ms. Martinez is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Martinez and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

LWDA

June 26, 2020

Page 2 of 6

HALO TOP employed Ms. Martinez as an hourly-paid non-exempt Team Member within one year of the date of this letter (until in or about July of 2019) in the State of California. HALO TOP directly controlled the wages, hours and working conditions of Ms. Martinez's employment.

The "aggrieved employees" that Ms. Martinez may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies or labor contractors) of HALO TOP within the State of California.

HALO TOP failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Martinez has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at HALO TOP, regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

HALO TOP has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Martinez and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. HALO TOP failed to compensate Ms. Martinez and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift and during meal breaks. Additionally, HALO TOP failed to include non-discretionary bonuses and incentives in aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Ms. Martinez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, HALO TOP routinely required Ms. Martinez and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with HALO TOP policies and expectations. Further, HALO TOP scheduled Ms. Martinez and other aggrieved employees to work shifts alone thereby preventing them from taking off-duty meal and/or rest breaks. HALO TOP also failed to authorize and permit Ms. Martinez and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, HALO TOP failed to compensate Ms. Martinez and other aggrieved employees all the premium wages they were owed.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that 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. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, 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. During the relevant time period, HALO TOP failed to pay Ms. Martinez and other aggrieved employees all wages, including for uncompensated off-the-clock work and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that 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. During the relevant time period, HALO TOP failed to pay Ms. Martinez and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, HALO TOP did not provide Ms. Martinez and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from HALO TOP were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Martinez and other aggrieved employees, (2) total hours worked by Ms. Martinez and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Martinez and other aggrieved employees (4) all deductions for Ms. Martinez and other aggrieved employees, (5) net wages earned by Ms. Martinez and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Martinez and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (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 Ms. Martinez and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Martinez and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, HALO TOP failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Martinez and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, HALO TOP did not provide Ms. Martinez and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee 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. During their employment, Ms. Martinez and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by HALO TOP, including for purchasing clothing they were required to wear as part of their uniform.

We believe that Ms. Martinez and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Martinez will seek these penalties and wages on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of HALO TOP within one year of the date of this letter, as allowed by law.

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LWDA
June 26, 2020
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If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a long horizontal flourish extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Wells Enterprises, Inc. d/b/a Wells Dairy, Inc. and Eden Creamery LLC
c/o CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833
Agent for Service of Process for Wells Enterprise, Inc. d/b/a Wells Dairy, Inc. and Eden Creamery LLC

C T Corporation System
c/o Halo Top Scoop Shop LLC
818 West Seventh Street, Suite 900
Los Angeles, California 90017
Agent for Service of Process for Halo Top Scoop Shop LLC

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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is danny@justicelawcorp.com

On September 17, 2020, I served the foregoing document described as

**COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF LABOR CODE §
2698 et seq. (PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

for the following case: **Martinez v. Wells Enterprises, Inc. et al**
LWDA/Court Case No.: **LWDA Case No.: CM- 794880-20**
Court Case No.: 20STCV34004
Los Angeles Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 17, 2020, at Pasadena, California.



Danny Park