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Corbett H. Williams (Bar No. 246458)
cwilliams@chwilliamslaw.com
Law Offices of Corbett H. Williams
24422 Avenida de la Carlota, Suite 370
Laguna Hills, California 92653
Telephone: 949.679.9909
Facsimile: 949.535.1031

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 17 2021

Sherril R. Carter, Executive Officer/Clerk of Court

Attorneys for Plaintiff
DANY STASOLLA

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

DANY STASOLLA in his individual and
representative capacities,

Plaintiff,

v.

INDO CALI OPERATIONS, a California
corporation and DOES 1 through 10,
inclusive,

Defendants.

Case No.:

21STCV10448

Assigned to:

CLASS ACTION COMPLAINT FOR:

1. Violation of California Labor Code Section 2802(a) (Failure to Indemnify Necessary Expenditures);
2. Violation of California Business & Professions Code §§ 17200, *et seq.*
3. Civil Penalties Under the Private Attorneys General Act, Labor Code §§ 2698, *et seq.*

Law Offices of Corbett H. Williams

RV FAX

Plaintiff DANY STASOLLA individually and on behalf of all other members of the public similarly situated, alleges as follows against defendants INDO CALI OPERATIONS and DOES 1 through 10, inclusive:

THE PARTIES

1. Plaintiff DANY STASOLLA (“PLAINTIFF”) is an individual residing in Los Angeles County, California.

2. Defendant INDO CALI OPERATIONS (“ICO”) is a corporation existing under the laws of the state of California.

3. ICO is based in Los Angeles, California and does business as “CanEx Delivery.” ICO is in the business of selling and delivering cannabis products. According to its website, CanEx Delivery “is one of LA’s top-rated cannabis and weed delivery services” and offers delivery “to those who live and work in Los Angeles, Orange County, and Ventura County.”

4. PLAINTIFF is unaware of the true names and capacities, whether corporate or individual, or otherwise, of defendants named as DOES 1 through 10, inclusive. Pursuant to California Code of Civil Procedure section 474, PLAINTIFF will seek leave of court to amend this Class Action Complaint to state said defendants’ true names and capacities when the same have been ascertained. PLAINTIFF is informed and believes, and based on such information and belief, alleges that said fictitiously-named defendants are responsible in some manner for the injuries and damages to PLAINTIFF as further alleged herein.

5. PLAINTIFF is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to ICO and/or DOES 1 through 10, inclusive, (hereafter referred to collectively as “DEFENDANTS”) each acting as the agent for the other, with legal authority to act on the other’s behalf. The acts of any and all DEFENDANTS were in accordance with, and represent the official policy of DEFENDANTS.

6. PLAINTIFF is informed and believes, and on that basis alleges, that each defendant is the alter ego and joint employer, and is working in joint enterprise with, each and every other defendant. PLAINTIFF is further informed and believes, and on that basis alleges, that at all times

1 relevant to this Complaint, each defendant was the agent or employee of each other defendant, and
2 in the doing the acts alleged herein, was acting within the course and scope of such agency or
3 employment, with the consent, provision, and authorization of each of the remaining defendants.
4 All actions of each defendant were ratified and approved by every other defendant.

5 7. At all relevant times, DEFENDANTS, and each of them, ratified each and every act
6 or omission complained of herein. At all relevant times, DEFENDANTS, and each of them, aided
7 and abetted the acts and omissions of each and all the other Defendants in proximately causing the
8 damages herein alleged.

9 8. PLAINTIFF is informed and believes, and thereon alleges, that each of said
10 DEFENDANTS is in some manner intentionally, negligently, or otherwise responsible for the acts,
11 omissions, occurrences, and transactions alleged herein.

12 **JURISDICTION AND VENUE**

13 9. Venue is proper under California Code of Civil Procedure Section 395.5 because the
14 obligation or liability that is the subject of this Complaint arose, at least in part, in this County. The
15 amount in controversy exceeds this Court's jurisdictional minimum.

16 **FACTUAL ALLEGATIONS**

17 10. PLAINTIFF was employed by DEFENDANTS as a delivery driver. At the beginning
18 of each workday, DEFENDANTS provided PLAINTIFF with a supply of cannabis products with
19 instructions to make deliveries to numerous addresses with the Los Angeles area.

20 11. PLAINTIFF, like all other delivery drivers employed by DEFENDANTS, was
21 required to furnish his own personal vehicle for work purposes. Throughout the course of each
22 workday, PLAINTIFF was required to drive substantial distances using his personal vehicle. This
23 ranged from a minimum of approximately 100 miles to more than 300 miles.

24 12. Although PLAINTIFF and all other individuals employed by DEFENDANTS
25 were required to furnish personal vehicles for work purposes, and although each of those employees
26 incurred substantial costs in terms of fuel, depreciation, maintenance, insurance and other costs in
27 connection with their employment, DEFENDANTS have maintained a policy that denies all
28

1 delivery drivers any reimbursement for those costs. In other words, although California law clearly
2 requires employers to reimburse vehicle expenses necessary to their work, DEFENDANTS
3 reimburse their delivery drivers nothing, and in so doing, plainly violate California law, including,
4 in particular California Labor Code Section 2802(a).

5 13. In addition to requiring delivery drivers such as PLAINTIFF to furnish personal
6 vehicles for work purposes, DEFENDANTS also require delivery drivers to furnish a personnel
7 cellular telephone, equipped with voice and data service. DEFENDANTS, whether expressly or
8 implicitly, require delivery drivers to use their personal smartphones for, among other things, voice
9 communication, text communication and navigation. Although California law requires
10 DEFENDANTS to reimburse delivery drivers, including PLAINTIFF a reasonable amount for the
11 use of their personal communication devices, DEFENDANTS fail to reimburse those employees
12 any amount. This also constitutes a clear violation of California Labor Code Section 2802(a).

13 **PLAINTIFF Has Provided Notice of DEFENDANTS' Unlawful Conduct to the LWDA**

14 14. On March 16, 2021, PLAINTIFF gave written notice through his counsel pursuant
15 to the Private Attorneys General Act, Labor Code Sections 2698, *et seq.* ("PAGA") of ICO'S
16 violations of various provisions of the Labor Code, including as alleged herein, to the Labor Code
17 and Workforce Development Agency ("LWDA"). Such notice was also sent to ICO via registered
18 U.S. Mail to the address of its principal executive office on file with the California Secretary of
19 State. On that same day, PLAINTIFF, through his counsel, tendered the filing fee as required under
20 Labor Code Section 2699.3. A copy of PLAINTIFF'S PAGA notice letter is attached hereto as
21 **Exhibit A.**

22 **CLASS ACTION ALLEGATIONS**

23 15. PLAINTIFF brings this action on behalf of himself and all others similarly situated
24 as a class action pursuant to Section 382 of the Code of Civil Procedure and seek to represent a
25 CLASS of similarly situated individuals defined as follows:

26 "All delivery drivers employed by Indo Cali Operations in California at any time within
27 the Class Period."
28

1 16. The “Class Period” is defined as four (4) years prior to the filing of the initial
2 Complaint through the trial of this matter.

3 17. Members of the CLASS are so numerous that joinder of all members would be
4 unfeasible and impractical.

5 18. The precise scope of the CLASS can be ascertained by DEFENDANTS’ records.

6 19. There are questions of law and fact common among CLASS members including, but
7 not necessarily limited to: (i) whether CLASS members were required to furnish personal vehicles
8 for work purposes at their own expense; (ii) whether CLASS members were required to furnish and
9 use a personal cellular telephone for work purposes at their own expense; (iii) whether, as the result
10 of DEFENDANTS’ policies, CLASS members are entitled to recover amounts paid for such
11 expenses; and (v) whether DEFENDANTS engaged in unfair business practices in violation of
12 California Business & Professions Code 17200 *et seq.*

13 20. These common issues of fact and law predominate over any individualized issues.

14 21. PLAINTIFF’s claims are typical of those of the CLASS, in that PLAINTIFF and
15 CLASS members were exposed to the same unlawful, systematic and companywide policies
16 discussed herein.

17 22. A class action is superior to other available methods for the fair and efficient
18 adjudication of the controversy.

19 23. PLAINTIFF and his counsel will fairly and adequately protect the interests of the
20 CLASS.

21 **FIRST CAUSE OF ACTION**

22 **VIOLATION OF CALIFORNIA LABOR CODE § 2802 (FAILURE TO INDEMNIFY**
23 **NECESSARY EXPENDITURES)**

24 **(By PLAINTIFF individually and on behalf of the CLASS, against DEFENDANTS)**

25 24. PLAINTIFF hereby re-alleges and incorporates all preceding paragraphs as though
26 fully set forth herein.

25. Section 2802(a) of the California Labor Code requires DEFENDANTS to indemnify their employees for all necessary expenditures or losses they incur in direct consequence of the discharge of their duties. Such expenditures or losses include the cost of furnishing a cellular telephone or “smartphone” for work purposes, including, but not limited to, the cost of voice and data service. *See Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 (holding that reimbursement of employee expenses in providing a cellular telephone for work purposes “is always required.”). They also include the cost of furnishing a personal vehicle for work purposes. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 567 (stating that “section 2802 . . . requires an employer to indemnify its employees for expenses they necessarily incur in the discharge of their duties, requires Harte-Hanks to fully reimburse its outside sales representatives for the automobile expenses they actually and necessarily incur in performing their employment tasks.”). The purchase price of all “samples” sales persons such as PLAINTIFF and CLASS members obtained for work purposes are likewise among the expenses required to be reimbursed under section 2802(a). *In re Acknowledgment Cases* (2015) 239 Cal.App.4th 1498, 1506 (stating that “it is established that the broad purpose of Labor Code section 2802 is to require an employer to bear all of the costs inherent in conducting its business and to indemnify employees from costs incurred in the discharge of their duties for the employer’s benefit.”)

26. Throughout the Class Period, DEFENDANTS failed to reimburse or to adequately reimburse PLAINTIFF and CLASS members for the use of personal vehicles and the use of cellular telephones equipped with voice and/or data service for work purposes.

27. As a direct consequence of DEFENDANTS’ failure to reimburse them for necessary expenses as required by law, PLAINTIFF and the CLASS have suffered substantial monetary damages.

28. In addition to all unreimbursed “necessary” expenses, PLAINTIFF on behalf of himself and the CLASS, seeks recovery of all attorneys’ fees and costs as provided by California Labor Code Section 2802(c).

SECOND CAUSE OF ACTION

**UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS PRACTICES IN VIOLATION
OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.***

(By PLAINTIFF individually and on behalf of the CLASS, against DEFENDANTS)

29. PLAINTIFF hereby re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

30. The unlawful conduct alleged herein, including, but not limited to, DEFENDANTS' failure to reimburse necessary expenses as required by California Labor Code Sections 2802(a) constitutes unlawful activity prohibited by California Business and Professions Code section 17200, *et seq.*, including, but not limited to, Sections 17200, 17202, and 17203.

31. DEFENDANTS' actions herein alleged likewise constitute unfair, fraudulent and/or deceptive business practices within the meaning of California Business and Professions Code Sections 17200, *et seq.*

32. DEFENDANTS have deprived PLAINTIFF and members of the CLASS of money and/or property and PLAINTIFF and members of the CLASS have suffered injury in fact as the direct and proximate consequence of the unlawful, unfair and fraudulent conduct alleged herein.

33. Pursuant to Section 17203 of the California Business and Professions Code, PLAINTIFF seeks an order of this Court enjoining DEFENDANTS from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law, including those set forth in this Complaint. PLAINTIFF also seeks an order requiring DEFENDANTS to make full restitution of all moneys wrongfully withheld from PLAINTIFF and the CLASS members.

THIRD CAUSE OF ACTION

**(FOR CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT,
LABOR CODE §§ 2698 *ET SEQ.*)**

(By PLAINTIFF individually and on behalf of the CLASS, against DEFENDANTS)

34. PLAINTIFF hereby re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

35. As alleged herein above, on March 15, 2021, PLAINTIFF gave written notice through his counsel pursuant to the PAGA of DEFENDANT'S violations of various provisions of the Labor Code, including as alleged herein, to the LWDA. Those violations include failure to reimburse necessary expenses in violation of California Labor Code 2802(a), together with other violations of California Labor La. Such notice was also sent to ICO via registered U.S. Mail to its principal executive office on file with the California Secretary of State. On that same day, PLAINTIFF, through his counsel, tendered the filing fee as required under Labor Code Section 2699.3.

36. Accordingly, PLAINTIFF hereby seeks to recover on his behalf and on behalf of all Aggrieved Employees civil penalties to the extent provided by the PAGA and all provisions of the California Labor Code incorporated therein, including but not limited to, civil penalties for violation of California Labor Code Section 2802(a).

37. In addition to civil penalties, PLAINTIFF seeks her reasonable attorney fees and costs as provided by Labor Code Section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, on behalf of himself all CLASS members and all aggrieved employees of DEFENDANTS, pray for relief and judgment as follows:

1. Actual damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages;
4. Civil penalties;
5. Restitution;
6. An award of reasonable attorneys' fees pursuant to Labor Code Sections 2802(c), 218.5, and any other applicable law(s) that may provide for recovery of attorneys' fees;
7. An order enjoining DEFENDANTS from continuing the unlawful conduct described herein;

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8. Costs of suit; and
9. All such other remedies, legal or equitable as the Court may deem proper or necessary.

Dated: March 16, 2021

Law Offices of Corbett H. Williams

By:

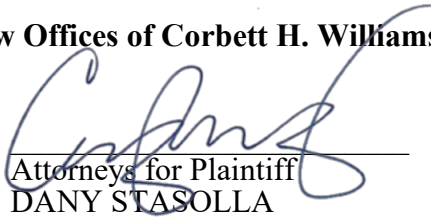

Attorneys for Plaintiff
DANY STASOLLA

EXHIBIT A

March 15, 2021

Via Electronic Submission

California Labor & Workforce
Development Agency
PAGAfilings@dir.ca.gov

Re: PAGA Notice Pursuant to California Labor Code § 2699: Indo Cali Operations

Dear Sir or Madam:

Please be advised that Dany Stasolla (“Plaintiff”) has retained the Law Offices of Corbett H. Williams to represent him and other aggrieved employees for wage and hour claims against his former employer, Indo Cali Operations (“Employer”). This notice is being provided via electronic submission to the California Labor and Workforce Development Agency (“LWDA”) and Employer via certified United States Mail at its corporate offices located at 4265 Marina del Rey Drive, Suite 1015, Marina Del Rey, California 90292.

Plaintiff requests that the LWDA regard this Notice as written notice of his intent to seek civil penalties against Employer. The specific provisions of the California Labor Code that Employer has violated requiring this notice include, but are not limited to, California Labor Code Sections 2802(a), 510, 558, 1194, 1182.12, 1194, 1194.2, 1197, 1197.1, 226.7, 512, 1194, 1174, 1174.5, 201-208, 218.5, 227.3, and 1199.

Employer

Employer and its managing agents operate an enterprise engaged the delivery of cannabis products throughout Southern California. Employer does business as “CanEx Delivery” and may operate under other names as well. Employer has violated or caused to be violated provisions of the California Labor Code and is therefore liable for civil penalties under California Labor Code § 2698, *et seq.* We respectfully request that your agency investigate the claims alleged against them herein. This letter will serve as notice of these allegations pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2699.3.

Plaintiff and Aggrieved Employees

At all relevant times, Plaintiff was employed as a delivery driver by Employer with responsibility for delivering Employer's products, including cannabis products, to the homes of individual customers throughout the Los Angeles area. Employer uses an array of similarly situated employees throughout the state of California to carry out the same or similar functions as Plaintiff (collectively, "Aggrieved Employees").

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 violations set forth herein on behalf of himself and other current and former employees, including, but not limited to: all employees who worked for Employer in the State of California within one year of the date of this notice. Plaintiff believes and thereon alleges that Employer employs dozens of similarly situated employees in California at any given time.

Labor Code Violations

Unlawful Failure to Reimburse for Necessary Expenses, Including the Cost of Employee-Provided Vehicles and Cellular Telephones in Violation of California Labor Code Section 2802(a)

Employer failed to reimburse or indemnify Plaintiff's and the Aggrieved Employees' necessary expenditures or losses incurred as a direct consequence of the discharge of their duties in service to Employer as required by California Labor Code section 2802(a).

Employer has violated California Labor Code section 2802(a) by failing to reimburse Plaintiff and the Aggrieved Employees for substantial costs they incurred in furnishing a personal vehicle for work purposes. In particular, although Employer has and continues to require Plaintiff and the Aggrieved Employees to provide a personal vehicle for work purposes, and although Plaintiff and the Aggrieved Employees frequently drive multiple hundreds of miles per day delivering Employer's cannabis products, Employer reimburses Plaintiff and the Aggrieved Employees nothing for the cost of providing those vehicles.

Further, although Employer, whether expressly or implicitly requires Plaintiff and the Aggrieved Employees to provide a personal cellular telephone or "smartphone" equipped with both voice and data service for work purposes, Employer reimburses Plaintiff and the Aggrieved Employees nothing for the cost of providing those devices. Indeed, Employer uses Plaintiff's and the Aggrieved Employees' electronic devices to communicate with them and requires Plaintiff and the Aggrieved Employees to use such devices for navigation purposes, among other uses.

California Labor Code Section 2802(a) requires all employers to reimburse California employees for all "necessary" expenses incurred in service to the Employer. Employer has violated California Labor Code section 2802(a) and is liable for civil penalties pursuant to California Labor Code sections 2698 *et seq.*

Unlawful Failure to Pay Overtime (Lab. Code §§ 510, 558, 1194)

Employer regularly failed to pay Plaintiff and Aggrieved Employees earned overtime wages by, among other things: (1) failing to compensate Plaintiff and Aggrieved Employees for overtime worked in excess of 40 hours in a single workweek but not in excess of 8 hours in a day; and (2) misclassifying Plaintiff and Aggrieved Employees as exempt employees and therefore failing to compensate them for the many hours of overtime they work and for which they are entitled to be paid. Moreover, 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 2698 *et seq.*

As a result of violations of the Labor Code sections 510, 1194, and applicable Industrial Welfare Commission Wage Orders (“wage orders”) for failure to pay overtime, Employer is liable for civil penalties pursuant to Labor Code sections 558 and 2698 *et seq.*

Unlawful Failure to Pay Minimum Wages and Straight Wages (Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1)

Employer regularly failed to pay Plaintiff and Aggrieved Employees earned minimum wages and straight time wages by, among other things, misclassifying Plaintiff and Aggrieved Employees as exempt employees and therefore failing to compensate them for the many hours of minimum wages and straight time wages they work and for which they are entitled to be paid as required by Labor Code sections 1182.12, 1194, 1194.2, 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.

As a result of violations of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, 1199 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 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods (Lab. Code §§ 226.7, 512, 1194)

Labor Code section 512 and Work Order 5, section 12(A)-(C) 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, by misclassifying Plaintiff and Aggrieved Employees as exempt 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 section and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods (Lab. Code §§ 226.7, 512, 1194)

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, by misclassifying Plaintiff and Aggrieved Employees as exempt 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 section 2698 *et seq.*

Unlawful Failure to Maintain Adequate Records (Lab. Code §§ 1174, 1174.5),

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” In addition, Labor Code section 353 also requires employers to keep accurate records of all gratuities or tips they receive, directly or indirectly, which may not be collected by “managers” or owners under Labor Code section 351. 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 herein, Employer has, among other things, willfully failed to adequate records regarding Plaintiff and Aggrieved Employees. As a result of Employer’s violations of Labor Code sections 1174 and 1174.5, Employer is liable for civil penalties pursuant to Labor Code sections 1174.5 and 2698 *et seq.*

Unlawful Failure to Furnish Accurate Wage Statements (Lab. Code §§ 226, 226.3)

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 a 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. Wage Order 5, section 7(B) 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), Employer is liable for civil penalties pursuant to Labor Code sections 226.3 and 2698 *et seq.*

Unlawful Failure to Timely Pay Wages Owed Upon Termination (Lab. Code §§ 201-208, 218.5, 227.3, 1199)

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 certain former Aggrieved Employees at the time employment was terminated because of, as noted herein, said unpaid overtime wages, regular wages, minimum wages, one-hour penalties for missed, interrupted, or untimely meal periods and rest periods, and unreimbursed work-related expenses, among others.

Labor Code sections 201 and 227.3 requires 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 2698 *et seq.*

As a result of Employers’ violations of Labor Code sections 201-204, 206, 216, and 512, 1174, Employer is liable for civil penalties pursuant to Labor Code sections 210 and 2698 *et seq.*

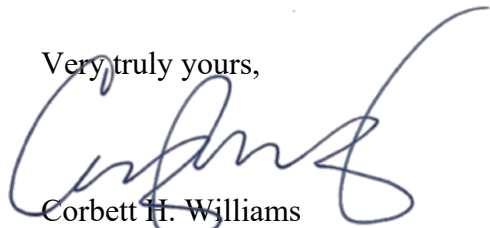
Unlawful Violation of Labor Code § 1199

Under Labor Code sections 1199(a) and (c) and 2699.5 *et seq.*, an employer who “requires or causes an employee to work for longer hours than those fixed” or “violates or refuses or neglects to comply with any provision of” the Labor Code regarding employees’ wages, hours, and working conditions is subject to PAGA penalties. Employers have violated the Labor Code in various ways set forth herein.

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. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may include claims in his lawsuit for the violations discussed in this letter.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Corbett H. Williams', is written over the typed name.

Corbett H. Williams

Law Offices of Corbett H. Williams

cc via U.S. Certified Mail:

Indio Cali Operations
4265 Marina del Rey Drive, Suite 1015
Marina Del Rey, California 90292