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Attorneys for Plaintiff
Raul Antonio Castro

FILED
Superior Court of California
County of Los Angeles

05/13/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: L. Marquez Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

RAUL ANTONIO CASTRO,
Plaintiff,

v.

CLAY LACY AVIATION, INC., and DOES
1 to 100,
Defendants.

) NO. 21VECV00304
) Hon. Huey Cotton
) Dept. A
)

FIRST AMENDED COMPLAINT

1. Wrongful Termination Under CFRA
2. Wrongful Termination Under FEHA
3. Failure to Provide Meal Breaks
(Labor Code §§226.7 & 512, et seq.)
4. Failure to Provide Rest Periods
(Labor Code §§226.7 & 512);
5. Inaccurate Wage Statements (LC §226);
6. Unpaid Wages Due to Illegal Rounding (Labor Code §§ 204, 218, 510, 1194, 1194.2, 1197, 1198);
7. Waiting Time Penalties (LC §200, et seq.)
8. Violation of Labor Code §2698 et seq. Private Attorney General Act (PAGA)

PRELIMINARY ALLEGATIONS

1. Plaintiff Raul Antonio Castro is a resident of Los Angeles County.

2. Defendant Clay Lacy Aviation, Inc. is a corporation based in Los Angeles County

3. Plaintiff does not know the true names and capacities of Does 1 to 100 and therefore uses fictitious names. Plaintiff will amend the complaint pursuant to Code of Civil Procedure section 474 to allege the true names and capacities when ascertained.

4. Plaintiff is informed and believes that each of the Defendants was the agent or employee of the other and acted in the scope of agency or employment.

5. Defendants provide private aviation services and employed Plaintiff as a shipping and retail clerk at their Burbank Airport location, from March 26, 2019 to March 25, 2020. Prior to Plaintiff's termination on March 25, 2020, Plaintiff was approved for baby bonding leave pursuant to California Family Rights Act to begin on March 26, 2020.

6. Despite approving Plaintiff's CFRA leave, Defendant terminated Plaintiff two hours prior due to the alleged elimination of position.

7. However, on information and belief, Defendants applied for a PPP loan that reported 500 jobs before the wrongful termination.

8. On information and belief, Defendants posted a job listing for the shipping and retail clerk position after the termination.

9. On April 15, 2020, Defendants' PPP loan was approved for \$10,000,000.

10. Further, on September 23, 2020, the Orange County Board of Supervisors awarded Defendants a 35-year FBO lease at John Wayne Airport.

11. Further, Plaintiff is a diabetic thus Plaintiff is a member of a protected class under FEHA based on his disability.

12. Plaintiff required an accommodation to use the bathroom at more frequent intervals, but Defendants did not comply with Plaintiff's accommodation request.

13. Instead, Defendants retaliated against Plaintiff for his disability and wrongfully terminated him in violation of FEHA.

14. Thus, Plaintiff was wrongfully terminated in violation of both CFRA and FEHA.

15. On March 3, 2021, Plaintiff obtained a right-to-sue letter from DFEH.

1 **FIRST CAUSE OF ACTION**

2 **WRONGFUL TERMINATION UNDER CFRA**

3 **Against All Defendants**

4 16. Plaintiff incorporates by reference paragraphs all prior paragraphs of the complaint
5 as though fully set forth herein.

6 17. On March 6, 2020 Defendants approved, leave for bonding time for Plaintiff with
7 his newborn son under the CFRA. Defendants approved Plaintiff's leave to start on March 26,
8 2020.

9 18. Pursuant to Government Code section 12945.2(a), Plaintiff was eligible for CFRA
10 leave based on the newborn.

11 19. Defendants wrongfully terminated Plaintiff's March 25, 2020 in violation of the
12 CFRA.

13 20. Plaintiff was harmed from the wrongful termination.

14 21. Defendant's conduct was a substantial factor in causing Plaintiff's harm, including
15 but not limited to back pay, front pay, general damages, attorney fees, and punitive damages.

16 **SECOND CAUSE OF ACTION**

17 **WRONGFUL TERMINATION UNDER FEHA**

18 **Against All Defendants**

19 22. Plaintiff incorporates by reference all prior paragraphs as though fully set forth
20 herein.

21 23. Plaintiff was a member of a protected class under FEHA based on his diabetic
22 condition.

23 24. Plaintiff requested an accommodation where he could use the bathroom more
24 frequently to address his disability.

25 25. Defendants retaliated against Plaintiff for his disability by wrongfully terminating
26 him.

27 26. As a result, Plaintiff is entitled to back pay, front pay, general damages, attorney
28 fees, and punitive damages.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL BREAKS**

3 27. Plaintiff incorporates by reference as if fully set forth herein, the allegations of
4 paragraphs above.

5 28. Labor Code §226.7 requires an employer to pay an additional hour of compensation
6 at the employees' regular rate of pay for each meal period the employer fails to provide. Plaintiff
7 alleges that Defendant failed to provide legally compliant off-duty meals in addition to impeding,
8 discouraging and/or dissuading employees from taking legally compliant meal periods. Employees
9 are entitled to a meal period of at least thirty (30) minutes per five (5) hour work period. Plaintiff
10 consistently worked over five (5) hour shifts without meal periods due to Defendants' policy of
11 discouraging, dissuading and/or impeding Plaintiff from taking meal periods. Pursuant to the
12 Code, Plaintiff is entitled to a meal period of not less than thirty (30) minutes prior to exceeding
13 five (5) hours of employment, and a second meal period for hours worked over ten (10) in a day.
14 Further, Plaintiff alleges that Defendant fails to provide meal periods for shift worked in excess of
15 10 hours.

16 29. Defendant failed to provide, and/or impeded and/or discouraged Plaintiff from
17 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during
18 the relevant time period and/or failed to obtain legal waivers waiving the right to a meal period
19 and/or valid on-duty meal agreements.

20 30. Pursuant to Labor Code §226.7, Plaintiff is entitled to damages in an amount equal
21 to one (1) hour of wages at the employees' regular rate of compensation per missed meal break, in
22 a sum to be proven at trial.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REST PERIOD**

25 31. The Plaintiff alleges and incorporates by reference all prior paragraphs, as though
26 fully set forth herein.

27 32. Labor Code §226.7 provides that employers authorize and permit all employees to
28 take rest periods at the rate of ten (10) minutes rest time per four (4) work hours or major fraction
thereof.

33. Labor Code §226.7(c) provides that if an employer fails to provide and employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

34. Defendant failed and/or refused to implement a relief system by which Plaintiff could receive rest breaks and/or work free rest breaks for every four hours worked, or major fraction thereof. Furthermore, due to Defendant's relief system, Plaintiff did not receive his rest breaks within the required statutory time frame. By and through its actions, Defendant intentionally and improperly denied rest periods to the Plaintiff in violation of Labor Code §§226.7 and 512.

35. At all times relevant hereto, the Plaintiff has worked more than four (4) hours in a workday.

36. By virtue of the Defendant's unlawful failure to provide rest periods, Plaintiff has suffered, and will continue to suffer, damages, in amounts which are presently unknown, which will be ascertained according to proof at trial.

37. Plaintiff requests recovery of rest period compensation pursuant to Labor Code §226.7, which is owed beginning four (4) years before the filing of this action through the date of judgment as the assessment of any statutory penalties against the Defendant, and each of them, in a sum as provided by the Labor Code and/or any other statute.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

PURSUANT TO LABOR CODE §226

(Against All Defendants)

38. Plaintiff re-alleges and incorporates by reference herein the allegations of all preceding paragraphs as though fully set forth herein.

39. The applicable Wage Order provides:

Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all

1 deductions; (2) the inclusive dates of the period for which the employee is paid; (3)
2 the name of the employee or the employee's social security number; and (4) the
3 name of the employer, provided all deductions made on written orders of the
4 employee may be aggregated and shown as one item. Subsection (e) provides:

5 "Any employee suffering injury as a result of a knowing and intentional failure by
6 an employer to comply with subdivision (a) shall be entitled to recover the greater of
7 all actual damages or fifty dollars (\$50) for the initial pay period in which a
8 violation occurs and one hundred dollars (\$100) per employee for each violation in a
9 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
10 (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees."

11 40. During the relevant time period covering this cause of action, Defendant knowingly
12 and intentionally failed to provide Plaintiff with timely and accurate wage statements showing
13 gross wages earned, total hours worked, all deductions made, the correct name of the employer, net
14 wages earned, and all applicable hourly rates in effect during each pay period and the
15 corresponding number of hours worked at each hourly rate by Plaintiff.

16 41. Defendants thus required Plaintiff to work under conditions prohibited by order of
17 the Industrial Welfare Commission, in violation of those orders.

18 42. Plaintiff suffered injury as a result of Defendant's knowing and intentional failure to
19 provide him with the wage statements required by law.

20 43. Based on Defendant's conduct as alleged herein, Defendant is liable for actual
21 damages, statutory damages and/or statutory penalties pursuant to California Labor Code §226,
22 including attorney's fees and costs.

23 **SIXTH CAUSE OF ACTION**

24 **FAILURE TO PAY ALL WAGES DUE TO ILLEGAL ROUNDING**

25 44. Plaintiff incorporates by reference and realleges each and every one of the
26 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
27 forth herein.

28 45. Labor Code §510(a) states in pertinent part: "Any work in excess of eight hours in
one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at

1 the rate of no less than one and one-half times the regular rate of pay for any employee.”

2 46. California Code of Regulations Title 8, §11000(2) and the IWC Wage Orders §4(A)
3 state: “Every employer shall pay to each employee ... wages not less than eight dollars (\$8.00) per
4 hour for all hours worked, effective January 1, 2008...”.

5 47. Labor Code §§1194(a) states: “Notwithstanding any agreement to work for a lesser
6 wage, any employee receiving less than the legal minimum wage or the legal overtime
7 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
8 of the full amount of this minimum wage or overtime compensation, including interest thereon,
9 reasonable attorney’s fees, and costs of suit.”

10 48. Further, pursuant to Labor Code §1197, payment of less than the minimum wage
11 fixed by the Labor Commission is unlawful.

12 49. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than the
13 hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage
14 Order(s).

15 50. Pursuant to the IWC Wage Order(s), Defendant is required to pay its employees for
16 all time worked, meaning the time during which an employee is subject to the control of an
17 employer, including all the time the employee is suffered or permitted to work, whether or not
18 required to do so.

19 51. Defendant, as a matter of established company policy and procedure, at each and
20 every one of the individual facilities owned and/or operated by Defendant, consistently:

- 21 a. Administered a uniform company policy and practice as to the rounding
22 policies regarding Plaintiff; and
- 23 b. Rounded the actual time worked and recorded by Plaintiff, usually down, so
24 that during the course of his employment, Plaintiff was paid far less than
25 they would have been paid had he been paid for actual recorded time rather
26 than “rounded” time.

27 52. Because Defendant required Plaintiff to remain under Defendant’s control without
28 paying therefore, this resulted in Plaintiff earning less than the legal minimum wage in the State of
California or the full amount of overtime compensation for overtime hours worked.

53. Defendant's pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §218, to recovery by Plaintiff in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the appropriate rate.

54. Further, Defendant's pattern and practice in uniform administration of corporate policy regarding Defendant's failure to pay the legal minimum wage to Plaintiff, as described herein, is unlawful and creates entitlement, pursuant to Labor Code §1194(a), to recovery by Plaintiff,

55. Pursuant to Labor Code §218.6, Labor Code §1194(a) and CC §3287, Plaintiff seeks recovery of pre-judgment interest on all amounts recovered herein, along with an award of reasonable attorneys' fees and costs incurred by him in this action.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES

56. The Plaintiff re-alleges and incorporates by reference all prior paragraphs, as though fully set forth herein.

57. Plaintiff who ended his employment with the Defendant during the statutory time frame, was entitled to be promptly paid lawful straight time, minimum wages and any overtime premiums, as well as compensation for unpaid meal or rest periods, as required by Labor Code §§ 201-203. Defendant refused and/or failed to promptly compensate Plaintiff owed as a result of their failure to provide meal and/or rest periods as well as pay proper premium overtime compensation or all wages due to illegal rounding. Pursuant to Labor Code § 203, Plaintiff seeks the payment of penalties pursuant to Labor Code § 203, according to proof.

58. Accordingly, Plaintiff is entitled to attorneys' fees, and costs, pursuant to Labor Code § 203 and prejudgment interest.

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EIGHTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE
PRIVATE ATTORNEY GENERAL ACT
[CAL. LABOR CODE §§2698-2699]
(Against All Defendants)

59. Plaintiff re-alleges and incorporates each and every one of the allegations of all preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth herein.

60. Labor Code §§2698 - 2699, the Labor Code Private Attorney General Act of 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current or former employees.

61. Whenever the LWDA, or any of its departments, divisions, commissions, boards agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions to assess a civil penalty.

62. Plaintiff, and all hourly employees of Defendants are "aggrieved employees" as defined by Labor Code §2699, in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

63. Prior to filing this First Amended Complaint (FAC), Plaintiff gave written notice to the LWDA on March 9, 2021, via mandatory online filing through the State of California LWDA/ Department of Industrial Relations website with a copy to the employer via certified mail, of the specific provisions of this code alleged to have been violated, including listing some facts and some theories to support the alleged violations as required by Labor Code §2699.3; A true and correct copy of which is attached hereto as Exhibit 1. Plaintiff alleges that he has exhausted all administrative remedies and filed the herein complaint 65 days after mailing said notice. At the date of filing this FAC, the LWDA has not responded with any intention to investigate. As such,

1 Plaintiff has exhausted his administrative requirements pursuant to LC §2699.3(a)(1) and (2) (A-
2 C).

3 64. Pursuant to Labor Code §2699.3, notwithstanding any other provision of law,
4 Plaintiff may as a matter of right amend the existing complaint, to add a cause of action under
5 Labor Code §2699 at any time within 60 days under the code.

6 65. Plaintiff asserts all of the claims in this Complaint against Defendants, and each of
7 them, individually and on behalf of all aggrieved employees in his capacity as private attorney
8 general and seeks all statutory penalties available under the Labor Code.

9 66. Pursuant to Labor Code §2699, Plaintiff, individually and on behalf of all aggrieved
10 employees, requests and is entitled to recover from the Defendants, and each of them; penalties for
11 Defendant's failure to pay all earned and unpaid wages, including but not limited to straight time,
12 minimum wages and overtime compensation as a result of the Defendant's rounding mechanism,
13 missed meal and rest period penalties, waiting time penalties, and PAGA penalties according to
14 proof, and Plaintiff is further entitled to recover interest, attorney's fees and costs pursuant to Labor
15 Code §§218.5 and 1194(a), as well as all statutory penalties and attorneys' fees against Defendants,
and each of them, including, but not limited to:

- 16 A. Penalties under Labor Code §2699 in the amount of \$100 for each aggrieved
17 employee per pay period for each initial violation, and \$200 for each
18 aggrieved employee per pay period for each subsequent violation;
- 19 B. Penalties under Code of Regulations, Title 8 §11070 or corresponding Wage
20 Order in the amount of \$50 for each aggrieved employee per pay period for
21 the initial violation, and \$100 for each aggrieved employee per pay period
22 for each subsequent violation;
- 23 C. Penalties under Labor Code §210, in addition to and entirely independent
24 and apart from other penalty provided in the Labor Code, in the amount of
25 \$100 for each aggrieved employee per pay period for each violation, and
26 \$200 for each aggrieved employee per pay period for each subsequent
27 violation, plus 25% of the wage wrongly withheld;
- 28 D. Penalties under Labor Code §256, in addition to and entirely independent

1 and apart from other penalty provided in the Labor Code, including Labor
2 Code §2699, et seq., for any aggrieved employee who was discharged or
3 quit, and was not paid all earned wages at termination in accordance with
4 Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil
5 penalty of one day of pay, at the same rate, for each day that he or she was
6 paid late, until payment was/is made, up to a maximum of thirty (30) days;

7 E. Penalties under Labor Code §558, in addition to and entirely independent
8 and apart from other penalty provided in the Labor Code, in the amount of
9 \$50 for each underpaid aggrieved employee for each pay period the
10 aggrieved employee was underpaid, and \$100 for each subsequent violation
11 for each underpaid employee for each pay period for which the employee
12 was underpaid.

13 F. Penalties under Labor Code §226.3, in addition to and entirely independent
14 and apart from other penalty provided in the Labor Code, in the amount of
15 \$250 for each aggrieved employee per pay period for each violation, and
16 \$1,000 for each aggrieved employee per pay period for each subsequent
17 violation;

18 G. Penalties under Labor Code §2699(f), in addition to and entirely independent
19 and apart from other penalty provided in the Labor Code and for Labor Code
20 violations without a specific civil penalty, in the amount of \$100 for each
21 aggrieved employee per pay period for each violation, and \$200 for each
22 aggrieved employee per pay period for each subsequent violation;

23 H. Any and all additional penalties and sums as provided by the Cal. Labor
24 Code and/or other statutes.

25 67. In addition thereto, Plaintiff seeks and is entitled to 50% of all penalties obtained
26 under Labor Code §2699 to be allocated to the General Fund, and 25% of all penalties obtained to
27 be allocated to the LWDA, for education of employers and employees about their rights and
28 responsibilities under the Labor Code, and 25% to all aggrieved employees.

68. Further, Plaintiff is entitled to seek and recover reasonable attorney's fees and costs

pursuant to Labor Codes §§ 2699, 1194, 210, and 212 and any other applicable statute.

PRAYER

As to the First Cause of Action:

1. Back pay
2. Front pay
3. General damage
4. Attorney fees
5. Punitive damages
6. Other relief the court deems proper

As to the Second Cause of Action:

7. Back pay
8. Front pay
9. General damage
10. Attorney fees
11. Punitive damages
12. Other relief the court deems proper

As to the Third Cause of Action:

13. One (1) hour of pay at Plaintiff's regular rate of compensation for each workday that a meal break was not provided, and/or was impeded, discouraged and/or dissuaded;

As to the Fourth Cause of Action:

14. One (1) hour of pay at Plaintiff's regular rate of compensation for each workday that a rest break was not provided, impeded, interrupted, discouraged and/or dissuaded;

As to the Fifth Cause of Action:

15. For recovery as authorized by Labor Code §226(e);
16. For injunctive relief to ensure Defendant's compliance with Labor Code §226 and the IWC Wage Orders §7(A) pursuant to Labor Code §226(g);
17. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §226(e);

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1 **As to the Sixth Cause of Action:**

2 18. For recovery of the unpaid balance of the full amount of unpaid minimum wage or
3 overtime and double time compensation, per Labor Code §§ 204, 218, 510, 1194, 1194.2, 1197,
4 and 1198 due and owing, according to proof;

5 19. For liquidated damages in an amount equal to the wages unlawfully unpaid and
6 interest thereon for the uncompensated non-overtime hours of work, as authorized by Labor Code
7 §1194.2(a);

8 20. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code §1194(a)
9 and CC §3287;

10 21. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5
11 and/or Labor Code §1194(a).

12 **As to the Seventh Cause of Action:**

13 22. For waiting time penalties for Plaintiff, not timely paid his last paycheck, including
14 vacation pay;

15 23. For reasonable attorneys' fees and costs;

16 **As to the Eighth Cause of Action:**

17 24. On behalf of all current and former employees, for all civil penalties authorized
18 by Labor Code Private Attorney General Act of 2004 as specified in California Labor Code §558
19 plus Labor Code §1197.1 for former or current employees who are due overtime and other wage
20 payments;

21 25. For civil penalties per Labor Code §226.3 in the amount of \$250 for each aggrieved
22 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay
23 period for each subsequent violation;

24 26. For civil penalties per Labor Code §256 in the amount of one day of pay, at the
25 same rate, for each day that an aggrieved employee was paid late, at the time of termination, until
26 payment was/is made, up to a maximum of thirty (30) days;

27 27. For civil penalties pursuant to Labor Code § 558 as follows:

28 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
each pay period for which the employee was underpaid;

1 (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was underpaid.

3 28. For civil penalties under Labor Code §210, in addition to and entirely independent
4 and apart from other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
5 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period
6 for each subsequent violation, plus 25% of the wage wrongly withheld;

7 29. For civil penalties under Labor Code §2699(f), in addition to and entirely
8 independent and apart from other penalty provided in the Labor Code and for Labor Code
9 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per
10 pay period for each violation, and \$200 for each aggrieved employee per pay period for each
11 subsequent violation.

As to All Causes of Action:

12 30. For such other and further relief as this Court may deem just and proper.

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14 Date: May 13, 2021

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

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17 Janelle Carney Attorney for Plaintiff
18 Raul Antonio Castro
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Exhibit 1



March 9, 2021

Via Online Filing

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>
PAGA Administrator

Via Certified Mail

Clay Lacy Aviation, Inc.
7435 Valjean Avenue
Van Nuys, CA 91406

Subject: *Raul Antonio Castro v. Clay Lacy Aviation, Inc.*

Dear Representative:

This office along with Janelle Carney – Attorney at Law, APC represent Raul Antonio Castro (“**Mr. Castro**”) for Labor Code violation claims in conjunction with his employment with Clay Lacy Aviation, Inc. (“**Clay Lacy**”), through his employment as a Shipping and Receiving Clerk at Clay Lacy’s location in Van Nuys, CA. The employer can be contacted directly at:

Clay Lacy Aviation, Inc.
7435 Valjean Avenue
Van Nuys, CA 91406

Mr. Castro intends to seek PAGA penalties on behalf of himself and all employees of **Clay Lacy** in California who were employed by **Clay Lacy** and were subjected to any of the Labor Code violations referenced herein during the PAGA Period (“Aggrieved Employees”). This letter is sent pursuant to the requirements of Labor Code section 2699.3. The PAGA Period as defined herein is from one year prior to the filing of this PAGA notice through the date of final disposition of any action filed pursuant to this PAGA notice. The alleged violations are ongoing, and thus, the PAGA period runs beyond the present date.

Violation of Labor Code sections 226.7 and 512 – Meal and Rest Break Premiums

California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than 5 hours per day without providing an uninterrupted meal period of not less than 30 minutes. Labor Code section 226.7 provides that every employer shall authorize and permit all employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four 4 hours or major fraction thereof. Section 226.7 further provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission, and that if an employer fails to provide an employee a meal period or rest period, the employer shall

pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

Relevant to this case is the requirement that, an employer properly provides an off-duty break "if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, **and does not impede or discourage them from doing so.**" *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012) (emphasis added). In other words, the employer "may not undermine a formal policy of providing meal breaks by pressuring [its] employees to perform their duties in ways that omit breaks." (*Ibid.*)

In this case, **Clay Lacy** had a practice of discouraging and/or penalizing Mr. Castro and the Aggrieved Employees from taking timely meal or rest breaks. Accordingly, **Clay Lacy's** practice undermined the meal and rest break requirement by "pressuring its employees to perform their duties in ways that omit breaks." Anytime an employer institutes a policy which discourages or penalizes employees for taking meal and rest breaks, the employer is obligated to provide its employees with premium pay pursuant to Labor Code section 226.7. **Clay Lacy** failed to provide Mr. Castro and the Aggrieved Employees with premium pay for missed and/or non-compliant meal periods, notwithstanding their legal obligation to do so.

Because **Clay Lacy** did not provide compliant rest and meal breaks and did not pay Mr. Castro and the Aggrieved Employees the proper premium pay for these missed breaks, the civil penalties in Labor Code section 2699 apply.

Further, if Clay Lacy did pay any premium pay for missed meal or rest periods, it did so at the employees' base rate and not the regular rate of compensation. Additionally, **Clay Lacy's** rounding policy, as discussed infra, fails to provide Mr. Castro and the Aggrieved Employees with compliant meal periods of at least thirty (30) minutes due to its rounding of all punches which results in short meals being rounded to thirty (30) minutes.

Violation of Labor Code sections 204, 218, 510, 1194, 1194.2, 1197 and 1198 - Illegal Rounding

Clay Lacy further adopted, implemented and enforced a uniform policy and practice of rounding time punches worked by Mr. Castro and the Aggrieved Employees, so that during the course of their employment, they were paid far less than they would have been had they been paid for actual recorded time. As a result, **Clay Lacy** has violated Labor Code §§ 204, 218, 510, 1194, 1194.2, 1197, and 1198, as a result of the unlawful rounding policies. It is believed that **Clay Lacy** rounds each punch recorded, which results in meal periods being rounded to thirty (30) minutes.

The failure to pay for all time worked results in Clay Lacy being subject to penalties pursuant to Labor Code sections 558, 1197.1 and 2699 et seq.

Violation of Labor Code Sections 226(a) Wage Statement Violations

Labor Code section 226 requires **Clay Lacy** to provide Mr. Castro and the Aggrieved Employees with wage statements that *accurately* show, among other things: (1) the total amount of wages earned; (2) the total amount of hours they worked; and (3) all applicable hourly rates in effect and the number of hours worked at those hourly rates.

First, **Clay Lacy** has committed numerous Labor Code violations, including: (1) failing to provide Mr. Castro and the Aggrieved Employees with compliant meal and/or rest periods, and failing to provide them premium pay for those missed meal and/or rest periods at the correct rate; and (2) failing to properly compensate Mr. Castro and the Aggrieved Employees for all hours worked due to its rounding practice. As a result of these Labor Code violations, it follows that **Clay Lacy** failed to provide Mr. Castro the Aggrieved employees with *accurate* wage statements.

Second, **Clay Lacy** utilized a rounding policy in determining Mr. Castro and the Aggrieved Employees' wages earned. However, as a result of the rounding policy, Mr. Castro and the Aggrieved Employees' wage statements did not *accurately* list the total hours worked or the number of hours worked at each hourly rate. Therefore, Defendants' failed to comply with the mandates of Labor Code §226 which subjects **Clay Lacy** to Labor Code § 226.3 penalties.

Violation of Labor Code Sections 201 – 203 – Waiting Time Penalties

Labor Code sections 201 – 203 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee's resignation. When an employer fails to comply with the above, the employee is entitled to the equivalent of a day's wage at their regular rate of pay for each day the employer is late; these penalties cap at 30 days.

Clay Lacy has committed numerous Labor Code violations, including: (1) failing to provide Mr. Castro and the Aggrieved Employees with compliant meal and/or rest periods, and failing to provide them premium pay for those missed meal and/or rest periods; (2) failing to properly compensate Mr. Castro and the Aggrieved Employees for all hours worked; and (3) failing to provide accurate wage statements. As a result of these Labor Code violations, it follows that **Clay Lacy** failed to provide Mr. Castro and the Aggrieved employees with all wages due and payable at the time of termination, or withing 72 hours of resignation. Accordingly, **Clay Lacy** is subject to the civil penalties listed in Labor Code section 256 and 2699.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Castro becomes aware of additional compensation owed or losses incurred by Mr. Castro or by any other aggrieved employee of **Clay Lacy**, Mr. Castro expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Mr. Castro intends to pursue his claims and those of the aggrieved employees under PAGA as stated supra in a civil lawsuit. Please also consider this letter as providing notice on behalf of other aggrieved employees working for **Clay Lacy** that were subject to the same Labor Code violations described above.

Very Truly Yours,

A handwritten signature in dark ink, appearing to read "DGinzburg", with a stylized flourish at the end.

Daniel Ginzburg, Esq.