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Superior Court of CA,
County of Santa Clara
21CV384796
Reviewed By: R. Walker

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

THOMAS HEFNER, as an individual on
behalf of himself and all similarly situated,

Plaintiff,

v.

SOLARAY, LLC, a California limited
liability company; SOLARAY
SUNGLASSES, LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **21CV384796**

**CLASS AND REPRESENTATIVE
ACTION**

**COMPLAINT FOR DAMAGES,
PENALTIES, RESTITUTION, AND
INJUNCTIVE RELIEF**

1. Failure to Provide Legally Compliant Meal Periods and/or Timely Pay Premium Wages (Labor Code §§ 204, 226.7, 512, 558, 1198, and IWC Wage Order);
2. Failure to Provide Legally Compliant Rest Periods and/or Timely Pay Premium Wages (Labor Code §§ 204, 226.7, 1198, and IWC Wage Order);
3. Failure to Timely Pay Minimum and/or Regular Wages (Labor Code §§ 204, 210, 1194, 1194.2, 1197, 1197.1, 1198, and IWC Wage Order);
4. Failure to Timely Pay All Overtime and/or Double Time Wages (Labor Code §§ 204,

510, 1194, 1198, and IWC Wage Order);

5. Unlawful Deduction and/or Underpayment of Wages (Labor Code §§ 221, 222, 223, and 224);
6. Failure to Timely Pay All Wages Due and Owing Upon Separation of Employment (Labor Code §§ 201, 202, 203, and 210);
7. Failure to Furnish Accurate Itemized Wage Statements (Labor Code §§ 226, 1198, and IWC Wage Order);
8. Failure to Maintain Accurate Records (Labor Code § 226 and IWC Wage Order);
9. Failure to Provide Employment and Personnel Records Upon Request (Labor Code § 1198.5);
10. Violation of California's Unfair Competition Law (Business & Professions Code §§ 17200 *et seq.*); and
11. Violation of the Private Attorneys General Act of 2004 (Labor Code §§ 2698 *et seq.*)

JURY TRIAL DEMANDED

Plaintiff Thomas Hefner ("Plaintiff") brings this class and representative enforcement action on behalf of himself and all others similarly situated against Defendants Solaray, LLC, Solaray Sunglass, LLC, and DOES 1 through 50, inclusive (collectively, "Defendants" or "Solaray") on the following grounds:

I. INTRODUCTION

1. This class and representative enforcement action is brought by Plaintiff on behalf of himself and all other current and former non-exempt employees of Defendants, individually and/or collectively, who performed work in California as a Route Service Representative and/or

2. Plaintiff contends that during the relevant time period, Solaray engaged in a common pattern and practice of wage and hour violations under the California Labor Code (“Labor Code”) and the Industrial Welfare Commission (“IWC”) Wage Order No. 7-2001 to decrease its employment related costs and increase its profits by, among other things:

- a. Failing to provide legally compliant meal periods and/or timely pay premium wages at the Solaray Employee's regular rate of pay for non-compliant meal periods during employment;
- b. Failing to provide legally compliant rest periods and/or timely pay premium wages at the Solaray Employee's regular rate of pay for non-compliant rest periods during employment;
- c. Failing to timely pay all minimum and/or regular wages during employment;
- d. Failing to timely pay all overtime and/or double time wages at the appropriate rate of pay during employment;
- e. Unlawfully deducting and underpaying wages;
- f. Failing to pay wages due and owing at the time of separation of employment and/or the required waiting time penalties;
- g. Failing to furnish accurate itemized wage statements;
- h. Failing to maintain accurate employment, time, and/or payroll records;
- i. Failing to timely provide employment, time, and/or payroll records upon request;
- j. Engaging in unlawful, unfair, and/or fraudulent business practices; and
- k. Violating the Private Attorneys General Act.

3. By and through this class and representative enforcement action, Plaintiff seeks to recover all available remedies including, but not limited to, damages, statutory penalties, civil penalties, restitution, and injunctive relief, as well as attorneys' fees and litigation costs, as provided under California law.

4. All allegations in this Complaint are based upon information and belief except those allegations that pertain to Plaintiff and his counsel, which are based upon personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

II. PARTIES

A. Plaintiff

5. Plaintiff Thomas Hefner at all material times mentioned herein:

- a. Was and is a resident of Kern County in the state of California;
- b. Was employed by Solaray from about June 22, 2020 through and including January 11, 2021 as a Route Service Representative for the Bakersfield territory;
- c. Was classified by Solaray as a non-exempt employee for purposes of the Labor Code and applicable IWC Wage Order;
- d. Earned an hourly wage;
- e. Was to be paid on a bi-weekly basis;
- f. Was not provided with legally compliant meal periods and/or timely paid premium wages at his regular rate for non-complaint meal periods;
- g. Was not provided with legally compliant rest periods and/or timely paid premium wages at his regular rate for non-complaint rest periods;
- h. Was not timely paid all minimum and/or regular wages for all time actually worked;
- i. Was not timely paid all overtime and/or double time wages at the appropriate rate of pay for all time actually worked;
- j. Had his wages unlawfully deducted and/or was underpaid;
- k. Was not timely paid all wages due and owing upon separation of employment;
- l. Was not paid the required waiting time penalties for late payment of final

wages;

m. Was not furnished with accurate itemized wage statements;

n. Contends his employment, time, and/or payroll records were not accurately maintained by Defendants;

o. Was not timely provided with his employment, time, and/or payroll records upon request;

p. Was subject to Defendants' unlawful, unfair, and fraudulent business practices;

q. Is a member of the class and sub-class, defined herein;

r. Is an "aggrieved employee" within the meaning of Labor Code § 2699(c); and

s. Has complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

B. Defendants

6. Defendant Solaray, LLC is a California limited liability corporation that is authorized to do business, and is actually doing business, in the state of California. Solaray, LLC is a wholesale retailer of eyewear, accessories, gift, apparel, and other merchandise. Solaray, LLC sells products throughout the United States of America, including in California, and in Canada.

7. Defendant Solaray Sunglasses, LLC is a Delaware limited liability corporation that is authorized to do business, and is actually doing business, in the state of California. Solaray Sunglasses, LLC is a company that sells eyewear, accessories, gift, apparel, and other merchandise throughout the United States of America, including in California, and in Canada.

8. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in

1 the acts and/or omissions alleged in this Complaint.

2 9. At all times mentioned herein, the acts alleged to have been done and/or caused by
3 each named defendant is also alleged to have been done and/or caused by each of the fictitiously
4 named defendants, and by each of their agents and/or employees who acted within the scope of
5 their agency and/or employment.

6 10. At all times mentioned herein, each defendant, including each fictitiously named
7 defendant, is believed to have acted individually or as an officer, agent, or employee of the other
8 defendants.

9 11. At all times mentioned herein, each defendant, including each fictitiously named
10 defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of
11 each of the other defendants, and in doing the things alleged herein acted within the course and
12 scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

13 12. At all times mentioned herein, the acts and/or omissions of each of the defendants,
14 including each fictitiously named defendant, concurrently contributed to the various acts and/or
15 omissions of each and every one of the other defendants, including each fictitiously named
16 defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein.
17 Each of the defendants, including each fictitiously named defendant, approved of, condoned,
18 and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each
19 defendant, including each fictitiously named defendant, was and is acting with authority of each
20 and every other defendant and/or are acting as agents of each and every other defendant or Doe
21 defendant.

22 13. At all times mentioned herein there was a unity of interest and ownership between
23 each defendant, including each fictitiously named defendant, such that all defendants acted as a
24 single employer of Plaintiff and all other Solaray Employees.

25 14. At all times mentioned herein, each defendant, including each fictitiously named
26 defendant, exercised supervision and control over the wages, hours, and/or working conditions of
27 Plaintiff and all other Solaray Employees, including, but not limited to, implementing standard

1 policies and procedures.

2 15. At all times mentioned herein, each defendant, including each fictitiously named
3 defendant, caused Solaray Employees, including Plaintiff, to work and/or prevented Plaintiff and
4 other Solaray Employees from working.

5 16. At all times mentioned herein, each defendant, including each fictitiously named
6 defendant, had control over Solaray Employees.

7 17. Each defendant, including each fictitiously named defendant, is alleged to have
8 caused each of the violations alleged herein.

9 18. Each defendant, including each fictitiously named defendant, is jointly and severally
10 liable for each of the violations alleged herein.

11 **III. JURISDICTION AND VENUE**

12 19. This Court has jurisdiction over this action pursuant to California Code of Civil
13 Procedure (“Code of Civil Procedure”) § 410.10. Pursuant to Code of Civil Procedure § 382,
14 California Business and Professions Code (Business & Professions Code”) § 17203, and Labor
15 Code §§ 2698 *et seq.*, Plaintiff brings this action on behalf of himself and all other Solaray
16 Employees.

17 20. This Court has personal jurisdiction over Defendants because Defendants conduct
18 business in the state of California and has caused injuries in the county of Santa Clara, as well as
19 throughout the state of California, through its acts, omissions and violations of the Labor Code
20 and Business & Professions Code.

21 21. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
22 Procedure § 395(a). Defendants transact business in Santa Clara County and are otherwise within
23 this Court’s jurisdiction for purposes of service of process. The unlawful acts alleged herein have
24 a direct effect on Plaintiff and all other Solaray Employees within the county of Santa Clara and
25 throughout the state of California.

26 22. Pursuant to rule 3.400 of the California Rules of Court, this case shall be deemed a
27 complex action because it is filed as a class action and involves specialized case management,

1 extensive discovery and evidence, difficult and/or novel issues and is likely to require extensive
2 post-judgment supervision.

3 **IV. FACTUAL ALLEGATIONS**

4 23. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
5 paragraphs of this Complaint.

6 24. Plaintiff worked as a Route Services Representative for Defendants from
7 approximately June 22, 2020 through and including January 11, 2021. Plaintiff was assigned to
8 the Bakersfield Territory, which initially encompassed the area from San Luis Obispo to Ventura.
9 The territory was later modified to encompass the area from San Jose to North Los Angeles.
10 Plaintiff spent approximately 80% of his time in the San Jose area and about 20% of his time in
11 North Los Angeles. As a Route Service Representative, Plaintiff's job duties included, but not
12 limited to, loading and/unloading a company vehicle with Defendants' merchandise, driving a
13 company vehicle in and around routes to deliver Defendants' merchandise to customers,
14 communicating with customers, and keeping supervisors abreast of deliveries of merchandise.
15 Plaintiff generally worked approximately 14-16 hours per day and drove between 600-1,000 miles
16 per week. His distant routes often required him to stay overnight in motels. Plaintiff earned an
17 hourly wage of \$15.25 per hour. Plaintiff was to be paid on a bi-weekly basis.

18 25. Defendants provided Plaintiff and other Route Services Representatives with a
19 company vehicle, a company cell phone, and a storage unit in connection with their employment.
20 Defendants also provided Solaray Employees, such as Plaintiff, with a portable printer and scanner
21 to perform administrative work on the road.

22 26. Defendants generally expected Plaintiff and other Solaray Employees to complete
23 their assigned deliveries within ten (10) minutes. However, the assigned deliveries were nearly
24 impossible to complete within such a short timeframe.

25 27. Plaintiff asserts that at all material times Defendants have employed, and will
26 continue to employ, several Solaray Employees in Santa Clara County and throughout the state of
27 California.

30. Plaintiff contends that he and all other Solaray Employees were subject to, and those currently employed continue to be subject to, the same and/or similar policies, practices, procedures guidelines, and/or culture described herein.

31. Plaintiff further asserts that he and all other Solaray Employees have suffered, and those currently employed will continue to suffer, the same and/or similar violations of law described herein.

32. Specifically, Plaintiff contends that Defendants failed to provide legally compliant meal and/or rest periods to him and other Solaray Employees; failed to timely pay premium wages at the respective Solaray Employee's regular rate of pay for unlawful meal and/or rest period; did not properly compensate Plaintiff and other Solaray Employees for all hours worked at the appropriate rate of pay, including minimum, regular, overtime, and/or double-time wages; illegally deducted wages from Solaray Employees' wages; failed to pay all wages due and owing by the times set forth by law; failed to pay the required waiting time penalties for late payment of final wages; failed to furnish accurate itemized wage statements; failed to maintain accurate records; and failed to provide employment records within a timely manner.

33. Defendants did not assign specific schedules to Plaintiff and, on information and belief, other Solaray Employees. Instead, they simply provided Solaray Employees with a list of assigned deliveries that they were instructed to make between 7:00 a.m. and 4:00 p.m. Plaintiff and, on information and belief, other Solaray Employees also needed to perform work, such as loading vehicles prior to making deliveries and driving vehicles to the appropriate parking locations.

/ / /

34. Defendants informed Plaintiff and, on information and belief, other Solaray Employees that they strongly preferred them to work less than twelve (12) hours per day, including time spent loading the vehicles for deliveries and returning vehicles to their parking locations. However, the workload was so great that Plaintiff and, on information and belief, other Solaray Employees regularly needed to work more than twelve (12) hours in order to complete all assigned deliveries.

35. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to provide legally compliant meal periods and/or timely pay premium wages at their regular rate of pay for non-compliant meal periods during employment to Solaray Employees.

36. Defendants did not impose any specific procedures for ensuring Plaintiff and, on information and belief, other Solaray Employees had the opportunity to take off-duty meal periods of thirty (30) minutes or more before the end of their fifth (5th) hour of work when they worked more than five (5) hours in a workday. Similarly, Defendants did not provide Solaray Employees, such as Plaintiff, with the ability to take a second duty-free meal period of thirty (30) minutes before the end of their tenth (10th) hour of work when they worked more than ten (10) hours in a workday.

37. Defendants required Plaintiff and, on information and belief, Solaray Employees to complete so many deliveries within a limited timeframe that they did not have the opportunity to take off-duty meal periods in accordance with California law. Defendants made no efforts to allocate time in their delivery assignments for Solaray Employees to take off-duty meal periods. As a result, Plaintiff and, on information and belief, other Solaray Employees often ate while they transported merchandise to retailers. In fact, when Plaintiff and, on information and belief, other Solaray Employees took meal periods during their shifts, they would regularly fall behind on their required deliveries and would be unable to complete all required deliveries within the twelve (12) hour workday as preferred by Defendants.

38. Defendants had no system for Plaintiff and, on information and belief, other Solaray

1 Employees to record their in and out times for meal periods. Defendants also had no way for
2 Solaray Employees to report non-compliant meal periods.

3 39. Plaintiff asserts that Defendants knew or should have known that Solaray
4 Employees, including Plaintiff, were not provided with the opportunity to take legally compliant
5 meal periods due in large part to Defendants' delivery requirements and/or workloads that could
6 not reasonably be completed within the hours allocated by Defendants.

7 40. Defendants did not pay Plaintiff and, on information and belief, other Solaray
8 Employees meal period premiums at their regular rate of pay despite consistently missing and/or
9 receiving meal periods that did not comply with California law.

10 41. Plaintiff alleges that Defendants had, and continue to have, a policy, practice,
11 procedure, guideline, and/or culture of failing to provide legally compliant rest periods and/or
12 timely pay premium wages at their regular rate of pay for non-compliant rest periods during
13 employment to Solaray Employees.

14 42. In the same and/or similar manner as meal periods, Defendants did not authorize
15 and permit Plaintiff and, on information and belief, other Solaray Employees to take off-duty rest
16 periods of at least ten (10) minutes for every four (4) hours worked or major fraction thereof.
17 Defendants failed to take any legitimate efforts to authorize and permit Solaray Employees to take
18 lawful rest periods.

19 43. Defendants did not pay Plaintiff and, on information and belief, other Solaray
20 Employees rest period premiums at their regular rate of pay despite the fact that Solaray
21 Employees were not authorized and permitted to take legally compliant rest periods for every four
22 (4) hours worked or major fraction thereof.

23 44. Plaintiff alleges that Defendants had, and continue to have, a policy, practice,
24 procedure, guideline, and/or culture of failing to pay all minimum, regular, overtime, and/or
25 double time wages at the appropriate rate of pay on the pay days designated in advance by
26 Defendants to Solaray Employees for all hours worked during employment.

27 45. Plaintiff and, on information and belief, other Solaray Employees regularly worked

1 more than eight (8) hours per day (often without meal and rest periods), and often in excess of
2 twelve (12) hours per day in order to complete their delivery assignments because of their large
3 workload and traffic. Despite regularly working during meal periods and in excess of eight (8)
4 hours per day, Defendants did not pay Plaintiff and, on information and belief, Solaray Employees
5 at the appropriate rate of pay for all time actually worked and/or spent under the control of the
6 employer on the pay days designated in advance by Defendants.

7 46. For example, despite working overtime and earning non-discretionary bonuses,
8 Defendants compensated Plaintiff at one and one-half (1.5) times his hourly rate for overtime,
9 instead of his regular rate of pay as required by law. Additionally, when Defendants terminated
10 Plaintiff's employment, Defendants required Plaintiff to return the company vehicle to a specific
11 parking location. Defendants removed Plaintiff's credentials to clock in for work on the day he
12 was to return the vehicle. As a result, he drove the company vehicle on behalf of Defendants for
13 approximately one (1) hour without compensation. Plaintiff also remained under Defendants'
14 control when his supervisor had to drive him home from the specific parking location. On
15 information and belief, Plaintiff asserts Defendants denied other Solaray Employees earned wages
16 in the same and/or similar manner.

17 47. Additionally, when Plaintiff and, on information and belief, other Solaray
18 Employees worked in excess of twelve (12) hours per day, Defendants did not pay them the
19 required double time wages. Instead, they paid one and one half (1.5) times their hourly rate of
20 pay. In fact, several months into his employment, Plaintiff complained to his supervisors about
21 Defendants' failure to pay him double time wages for work in excess of twelve (12) hours.
22 Defendants admitted that they did not pay him appropriately and issued him a lump sum without
23 a wage statement or any other information to assess whether Defendants paid all double time
24 wages owed. Even after Plaintiff reported the non-payment of double time wages, Defendants
25 continually engaged in instances of failing to pay double time wages for all subsequent occasions
26 in which Plaintiff and, on information and belief, other Solaray Employees worked in excess of
27 twelve (12) hours in one workday.

1 and address of the legal entity that is each Solaray Employee's employer.

2 55. Due to the lack of information on the wage statements furnished, Solaray
3 Employees, including Plaintiff, were unable to promptly and easily determine, for instance, the
4 total number of hours actually worked, the correct applicable hourly rates in effect during the pay
5 period, and/or the corresponding number of hours worked at each hourly rate, among other things.

6 56. Plaintiff alleges that Defendants had, and continue to have, a policy, practice,
7 procedure, guideline, and/or culture of knowingly and intentionally failing maintain, for at least
8 three years, a duplicate of the itemized wage statement furnished to Solaray Employees or a
9 computer-generated record that accurately shows all of the information required by Labor Code §
10 226(a). It is Plaintiff's understanding and belief that Defendants do not maintain duplicate
11 itemized wage statements furnished to Solaray Employees or a computer-generated record that
12 accurately shows all of the information required by Labor Code § 226(a).

13 57. Defendants also intentionally maintained inaccurate time records, for a period of at
14 least three years, when they did not provide Plaintiff and, on information and belief, other Solaray
15 Employees with a method to record meal periods.

16 58. Plaintiff alleges that Defendants had, and continue to have, a policy, practice,
17 procedure, guideline, and/or culture of failing to provide complete employment records to Solaray
18 Employees within a timely manner after Solaray Employees request the records.

19 59. Plaintiff, for instance, requested his complete payroll records, time records and
20 personnel files from Defendants on February 20, 2021. Instead of providing Plaintiff with the
21 information requested, Defendants informed Plaintiff he could attain all payroll and time records
22 via an online portal. Until Defendants restored his credentials, Plaintiff did not have access to the
23 online portal. Once his credentials were restored and he logged in to the online portal, Plaintiff
24 found that the online portal did not contain Plaintiff's time records. Defendants did not produce
25 copies of Plaintiff's time records. More than thirty (30) days have passed after Plaintiff requested
26 his employment records, but Defendants have not yet provided his time records. On this basis,
27 Plaintiff is informed and believes that Defendants regularly fail to provide Solaray Employees

1 with complete payroll and time records within the required time period.

2 60. As a result of the blatant Labor Code violations addressed herein, Defendants
3 engaged in a consistent pattern of unfair, unlawful, and/or fraudulent business practices.

4 61. On April 12, 2021, Plaintiff submitted written notice to the California Labor and
5 Workforce Development Agency (“LWDA”) and Defendants as required by the PAGA,
6 informing them of Defendants’ alleged violations of the Labor Code. A true and correct copy of
7 the April 12, 2021 written notice is attached hereto as **Exhibit 1** and is incorporated herein by
8 reference. On April 28, 2021, Plaintiff submitted a written amended notice to the LWDA and
9 Defendants as required by the PAGA. A true and correct copy of the April 28, 2021 written notice
10 is attached hereto as **Exhibit 2** and is incorporated herein by reference. On May 19, 2021, Plaintiff
11 submitted a written second amended notice to the LWDA and Defendants as required by the
12 PAGA. A true and correct copy of the May 19, 2021 written notice is attached hereto as **Exhibit**
13 **3** and is incorporated herein by reference.

14 62. To date, more than sixty-five (65) days after submission of Plaintiff’s written
15 notices, the LWDA has not provided notice of its intent to investigate Plaintiff’s alleged violations
16 of the Labor Code.

17 63. Plaintiff further believes that additional violations may be discovered and therefore
18 reserves his right to allege additional violations of the law as investigation and discovery warrants.
19 In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative
20 complaint as necessary.

21 **V. CLASS ACTION DESIGNATION**

22 64. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
23 paragraphs of this Complaint.

24 65. Plaintiff brings Causes of Action One through Ten as class allegations pursuant to
25 Code of Civil Procedure § 382.

26 66. Plaintiff seeks to represent the following class and sub-class, which are defined as
27 follows:

RSR Class

All current and former non-exempt employees of Defendants, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar position during the period commencing on the date that is within four years prior to the filing of the Complaint through and including the last day of trial (hereinafter, the “Class Period”). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the Route Service Representative Class against Defendants, the time period should be adjusted accordingly.

Waiting Time Sub-Class

All former non-exempt employees of Defendants, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar position during the period commencing on the date that is within three years prior to the filing of the Complaint through and including the last day of trial. To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the Waiting Time Sub-Class against Defendants, the time period should be adjusted accordingly.

67. Members of the Class and/or Sub-class are all “employees” as the term is used in the Labor Code and relevant IWC Wage Order regulating wages, hours, and working conditions in the state of California.

68. **Reservation of Rights:** Pursuant to California Rule of Court, rule 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into Sub-Classes, and/or limitation to particular issues.

69. Causes of Action One through Ten are appropriately suited for a class action pursuant to § 382 of the Code of Civil Procedure because the following requirements are met:

A. Numerosity

70. The members of the Class and/or Sub-Class (“class members”) are sufficiently numerous to render the joinder of all their members impracticable. While Plaintiff has not yet determined the precise number of class members, Plaintiff is informed and believes that the Class

1 and Sub-Class likely consist of over 50 individuals. Although the exact number is currently
2 unknown to Plaintiff, this information is easily ascertainable from Defendants' time and payroll
3 records and other personnel records.

4 **B. Commonality and Predominance**

5 71. Common questions of law and fact exist as to all class members and predominate
6 over any questions affecting only individual members of the Class and/or Sub-Class. The
7 common questions of law and fact that predominate include, but are not limited to:

- 8 a. Whether Defendants failed to provide RSR Class members with
9 uninterrupted and off-duty meal and/or rest periods;
- 10 b. Whether Defendants failed to pay one additional hour of pay at the
11 employees' regular rate of compensation to RSR Class members when they
12 were not provided with compliant and timely meal and/or rest periods;
- 13 c. Whether Defendants failed to pay RSR Class members at least minimum
14 wages and/or all regular wages owed for all hours or fractions of an hour
15 worked and under the control of Defendants;
- 16 d. Whether Defendants failed to pay RSR Class members all overtime wages at
17 the appropriate rate of pay for all hours, or fraction of hours, worked over
18 eight in a workday or over forty in a workweek;
- 19 e. Whether Defendants failed to pay RSR Class members all double time wages
20 at the appropriate rate of pay for all hours, or fraction of hours, worked over
21 twelve (12) hours in a workday;
- 22 f. Whether Defendants illegally deducted wages from members of the RSR
23 Class;
- 24 g. Whether Defendants underpaid earned wages to members of the RSR Class;
- 25 h. Whether Defendants failed to timely pay all wages due and owing upon
26 separation of employment to all Waiting Time Sub-Class members;
- 27 i. Whether Defendants failed to pay waiting time penalties to all Waiting Time

Sub-Class Members;

j. Whether Defendants furnished members of the RSR Class with inaccurate non-itemized wage statements;

k. Whether Defendants failed to maintain accurate employment, time and/or payroll records for members of the RSR Class; and

l. Whether Defendants engaged in fraudulent, unlawful, and/or unfair business practices.

C. Typicality

72. Plaintiff's claims are typical of the claims of all class members because Plaintiff and all class members' claims arise from the same event, practice, and/or course of conduct of Defendants. Plaintiff and all class members sustained injuries and damages as a result of Defendants' illegal policies, practices, and/or common course of conduct in violation of California wage and hour laws and/or illegal, unfair, or fraudulent business practices.

73. Furthermore, Plaintiff's claims under the Labor Code and IWC Wage Order No. 7-2001 are typical of the Class and/or Sub-Class because Defendants' failure to comply with the provisions of California's wage and hour laws entitles Plaintiff and each class member to similar pay, benefits, and other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies sought by Plaintiff and all class members are the same.

D. Adequacy of Representation

74. Plaintiff has no conflict of interest with the class members he seeks to represent. Plaintiff will adequately protect the interests of all class members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to him and putative class members.

75. Plaintiff retained attorneys who are experienced employment law litigators with significant wage and hour and class action experience.

E. Superiority of Class Action

76. Plaintiff believes a class action is a superior method of litigation for the fair and

1 efficient adjudication of this controversy. Individual joinder of all class members is not
2 practicable. Class action treatment will allow similarly situated employees to litigate their claims
3 in the manner that is most efficient and economical for the parties and the judicial system.

4 77. Plaintiff currently knows of no difficulty that might be encountered in the
5 management of this suit, which would preclude maintenance as a class action.

6 **VI. PRIVATE ATTORNEYS GENERAL ACT DESIGNATION**

7 78. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
8 paragraphs of this Complaint.

9 79. By and through this representative enforcement action, Plaintiff intends to represent
10 the following group of aggrieved employees:

11 All current and former non-exempt employees of Defendants,
12 individually and/or collectively, who performed work in California as
13 a Route Service Representative and/or similar position during the
14 period commencing on the date that is within one year and sixty-five
15 days prior to the submission of the initial LWDA written notice
through and including the last date of trial (hereinafter the “PAGA
Period”). To the extent that California Rules of Court, Appendix I,
Emergency Rule 9 and/or equitable tolling operates to toll the claims
against Defendants, the PAGA Period should be adjusted accordingly.

16 80. Solaray Employees are all “employees” as the term is used in the Labor Code and
17 the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

18 81. A more precise definition of the group of aggrieved employees may be determined
19 after further investigation and discovery. Plaintiff reserves his right to redefine the group of
20 aggrieved employees as permitted by California law.

21 82. Pursuant to Labor Code §§ 2698 *et seq.*, any provision of the Labor Code that
22 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
23 divisions, commissions, boards, agencies or employees for violation of the code may, as an
24 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
25 himself or herself and other current or former employees pursuant to the procedures specified in
26 Labor Code § 2699.3.

27 83. Pursuant to the PAGA all civil penalties recovered must be allocated seventy-five

1 percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant
2 to Labor Code § 2699(i).

3 84. During all, or a portion of, the one-year and sixty-five day period before Plaintiff
4 filed notice of his claims with LWDA, Defendants were Plaintiff's and all other Solaray
5 Employees' employer or person acting on behalf of Solaray Employees employer, either
6 individually or as an officer, agent, or employee of another person, within the meaning of Labor
7 Code §§ 558(a) and 1197.1, who paid or caused to be paid to any employee a wage less than the
8 minimum fixed by California state law, and as such, is subject to civil penalties for each underpaid
9 employee, as well as liquidated damages pursuant to Labor Code § 1194.2, and any applicable
10 penalties imposed pursuant to Labor Code § 203.

11 85. Plaintiff is an "aggrieved employee" under the PAGA because he was employed by
12 the alleged violator, Defendants, and experienced one or more of the alleged violations committed
13 against him, and is therefore properly suited to represent the interests of other Solaray Employees.
14 (See *Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761;
15 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519.)

16 86. Plaintiff alleges that all other Solaray Employees are also "aggrieved employees"
17 under the PAGA as Defendants employed them and all Solaray Employees experienced one or
18 more of the alleged violations outlined herein.

19 87. Plaintiff has exhausted his administrative remedies because he complied with the
20 notice requirements outlined in Labor Code § 2699.3. On April 12, 2021, April 28, 2021, and May
21 19, 2021, Plaintiff submitted written notice to the LWDA and Defendants informing them of the
22 Defendants' alleged Labor Code violations pursuant to the PAGA. (See Exhs. 1-3.) Pursuant to
23 the PAGA, the LWDA had sixty-five (65) days to provide notice of whether it intended to
24 investigate the alleged violations. To date, the LWDA has not provided notice of its intent to
25 investigate the alleged violations. Plaintiff, thus, has the right to pursue, and does pursue, the
26 asserted claims under PAGA in a representative capacity pursuant to Labor Code §§ 2698 *et seq.*

27 88. As set forth herein, Defendants have committed, and continue to commit, numerous
28

1 violations for which the Labor Code and IWC Wage Order No. 7-2001 entitles Plaintiff, in his
2 representative capacity, to recover, on behalf of himself, all other Solaray Employees, the state of
3 California, and the general public, civil penalties as well as attorneys' fees and costs from
4 Defendants for the alleged violations, described herein.

5 89. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee
6 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for
7 all Labor Code provisions for which a civil penalty is not specifically provided, including, but not
8 limited to, Labor Code §§ 201, 202, 203, 204, 221, 222, 223, 224, 226, 226.7, 510, 512, 558, 1174,
9 1194, 1197, 1197.1, and 1198. Plaintiff and other Solaray Employees are entitled to, and therefore
10 seek, the civil penalties described in Labor Code § 2699(f) for the violations of law described
11 herein.

12 90. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
13 brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and
14 costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Solaray
15 Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

16 91. Plaintiff expressly disclaims the recovery of any "amount sufficient to recover
17 underpaid wages" on behalf himself and all other Solaray Employees for the claims alleged
18 under the PAGA.

19 **VII. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **(By Plaintiff, individually and on behalf of the RSR Class, against Defendants and Does 1-50)**

22 **FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS**

23 **AND/OR TIMELY PAY PREMIUM WAGES**

24 **(Labor Code §§ 204, 226.7, 512, 558, 1198, and the "Meal Periods" section of**
25 **IWC Wage Order No. 7-2001)**

26 92. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
27 paragraphs of this Complaint.

93. Labor Code § 512(a) mandates, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” and “[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

94. The “Meal Periods” section of IWC Wage Order No. 7-2001 provides, in pertinent part,

[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.

Furthermore, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

95. The “Meal Periods” section of IWC Wage Order No. 7-2001 also states,

[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

96. Labor Code § 226.7(b) states, “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission...” Labor Code § 226.7(c) further provides, “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... 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 or recovery period is not provided.”

98. Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due and payable in accordance with Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

99. Labor Code § 558 provides that “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” of \$50 for each underpaid employee for each pay period for which the employee was underpaid plus an amount sufficient to recover underpaid wages for any initial violation, and \$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 for each subsequent violation.

100. Plaintiff and the members of the RSR Class are or were non-exempt employees of Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.

101. Plaintiff contends that he and all other RSR Class members were subject to, and those currently employed continue to be subject to, the same and/or similar policies, practices, procedures guidelines, and/or culture governing meal periods.

102. Defendants did not schedule meal periods for Plaintiff and, on information and belief, other members of the RSR Class. Instead, they simply provided them with a list of deliveries which they were instructed to make between 7:00 a.m. and 4:00 p.m. Plaintiff and, on information and belief, other members of the RSR Class also needed to perform work such as

loading vehicles prior to making deliveries and driving vehicles to appropriate parking locations.

103. Defendants informed Plaintiff and, on information and belief, members of the RSR Class that they strongly preferred the employees to work less than twelve (12) hours per day, including time spent loading the vehicles for deliveries and returning vehicles to specific parking locations. However, the workload was so great that Plaintiff and, on information and belief, other members of the RSR Class regularly needed to work more than twelve (12) hours in order to complete all the assignments given to them by Defendants.

104. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to provide legally compliant meal periods and/or timely pay premium wages at their regular rate of pay for non-compliant meal periods during employment to members of the RSR Class.

105. Defendants did not impose any specific procedures for ensuring Plaintiff and, on information and belief, other members of the RSR Class had the opportunity to be relieved of all duties for meal periods of at least thirty (30) minutes before the end of their fifth (5th) hour of work when they worked more than five (5) hours in a workday. Similarly, Defendants did not provide RSR Class members, such as Plaintiff, with the ability to take a second off-duty meal period of thirty (30) minutes before the end of their tenth (10th) hour of work when they worked more than ten (10) hours in a workday.

106. Defendants required Plaintiff and, on information and belief, members of the RSR Class to travel long distances and complete a large amount of deliveries within such a limited timeframe that they did not have the opportunity to take off-duty meal periods. Defendants made no efforts to allocate time in their assigned delivery schedule for members of the RSR Class to take off-duty meal periods. As a result, Plaintiff and, on information and belief, other RSR Class members often ate while they drove to deliver merchandise to retailers.

107. Plaintiff contends that his and other RSR Class members' delivery schedules were so onerous that even if they took meal periods during their shifts, they would fall behind on their required deliveries and would be unable to complete all required deliveries within the twelve (12)

1 hour workday as preferred by Defendants.

2 108. Defendants had no system for Plaintiff and, on information and belief, other RSR
3 Class members to record their in and out times for meal periods. Defendants also had no way for
4 members of the RSR Class to report non-compliant meal periods.

5 109. Plaintiff further alleges that Defendants knew or should have known that RSR Class
6 Members, including Plaintiff, were not provided with the opportunity to take legally compliant
7 meal periods due in large part to Defendants' delivery requirements and/or workloads that could
8 not reasonably be completed within the hours allocated by Defendants.

9 110. Defendants did not pay Plaintiff and, on information and belief, other RSR Class
10 members meal period premiums wages at their regular rate of pay despite consistently missing
11 and/or receiving meal periods that did not comply with California law.

12 111. Therefore, as a result of Defendants' conduct, including the conduct alleged herein,
13 Defendants violated Labor Code §§ 204, 226.7, 512, and 1198, as well as the Meal Period section
14 of IWC Wage Order 7-2001.

15 112. Plaintiff and the RSR Class members suffered and continue to suffer losses related
16 to Defendants' failure to pay an additional hour of pay at the employee's regular rate for each day
17 a legally compliant meal period was not provided and the associated use and enjoyment of
18 compensation due and owing to them as a direct result of Defendants' Labor Code and IWC Wage
19 Order violations.

20 113. Defendants' unlawful conduct caused Plaintiff and other members of the RSR Class
21 to suffer, and current members of the RSR Class will continue to suffer, damages in an amount
22 which is presently unknown, but will be ascertained according to proof at trial.

23 114. Pursuant to Labor Code § 226.7(c) and IWC Wage Order No. 7-2001, Plaintiff and
24 other RSR Class members are entitled to, and seek to, recover the full amount of unpaid premium
25 wages for non-compliant meal periods.

26 115. Pursuant to Labor Code § 558, Plaintiff and other RSR Class members are entitled
27 to, and seek to, recover the penalty outlined in Labor Code § 558 for non-compliant meal periods.

116. Pursuant to Labor Code § 218.6, Plaintiff and other RSR Class members are entitled to, and seek to, recover prejudgment interest on the amount of premium wages owed.

117. Plaintiff, on behalf of himself and other members of the RSR Class, is entitled to, and seeks to recover reasonable attorneys' fees and costs as permitted by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

118. Plaintiff on behalf of himself and other RSR Class members, requests further relief as described in the below prayer.

SECOND CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the RSR Class, against Defendants and Does 1-50)

FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS

AND/OR TIMELY PAY PREMIUM WAGES

(Violation of Labor Code §§ 204, 226.7, 1198 and the "Rest Periods" section of IWC Wage Order 7-2001)

119. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

120. In pertinent part, Labor Code § 226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

121. The "Rest Periods" section of IWC Order No. 7-2001, states:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time

per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, 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. (Emphasis added.)

122. Unless an employer relieves its employees of any and all work-related duties and also relinquishes all control over how its employees spent their time during rest periods, the employer has not authorized and permitted lawful off-duty rest periods. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

123. Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due and payable in accordance with Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

124. Plaintiff and the members of the RSR Class are or were non-exempt employees of Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.

125. Plaintiff contends that he and all other RSR Class members were subject to, and those currently employed continue to be subject to, the same and/or similar policies, practices, procedures guidelines, and/or culture governing rest periods.

126. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to provide legally compliant rest periods and/or timely pay premium wages at their regular rate of pay for non-compliant rest periods during employment to RSR Class members.

127. Defendants did not impose any specific procedures for ensuring Plaintiff and, on information and belief, other members of the RSR Class were authorized and permitted to be relieved of all duties for rest periods of at least ten (10) minutes for every four (4) hours worked

1 in a single workday.

2 128. Defendants required Plaintiff and, on information and belief, members of the RSR
3 Class to travel long distances and complete a large amount of deliveries within such a limited
4 timeframe that they did not have the opportunity to take off-duty rest periods for every four (4)
5 hours worked or major fraction thereof. Defendants made no effort to allocate time in Solaray
6 Employee's delivery assignments for members of the RSR Class to take off-duty rest periods for
7 every four (4) hours worked or major fraction thereof.

8 129. Plaintiff contends that his and other RSR Class members' delivery assignments were
9 so onerous that if they took rest periods during their shifts, they would fall behind on their required
10 deliveries and would be unable to complete all required deliveries within the twelve (12) hour
11 workday as preferred by Defendants.

12 130. Defendants had no system for Plaintiff and, on information and belief, other RSR
13 Class members to report non-compliant rest periods.

14 131. Plaintiff further alleges that Defendants knew or should have known that RSR Class
15 Members, including Plaintiff, were not authorized and permitted to take legally compliant rest
16 periods due in large part to Defendants' delivery requirements and/or workloads that could not
17 reasonably be completed within the hours allocated.

18 132. Defendants did not pay Plaintiff and, on information and belief, other RSR Class
19 members rest period premiums wages at their regular rate of pay despite consistently missing
20 and/or receiving rest periods that did not comply with California law.

21 133. Therefore, as a result of Defendants' conduct, including the conduct alleged herein,
22 Defendants violated Labor Code §§ 204, 226.7, and 1198, as well as the Rest Period section of
23 IWC Wage Order 7-2001.

24 134. Plaintiff and the RSR Class suffered and continue to suffer losses related to
25 Defendants' failure to pay an additional hour of pay at the employee's regular rate of pay for each
26 day a rest period was not provided and the associated use and enjoyment of compensation due and
27 owing to them as a direct result of Defendants' Labor Code and IWC Wage Order violations.

1 135. Defendants' unlawful conduct caused Plaintiff and other RSR Class members to
2 suffer, and current RSR Class members will continue to suffer, damages in an amount which is
3 presently unknown, but will be ascertained according to proof at trial.

4 136. Pursuant to Labor Code § 226.7(c) and IWC Wage Order No. 7-2001, Plaintiff and
5 other RSR Class members are entitled to, and seek to, recover the full amount of unpaid premium
6 wages for non-compliant rest periods.

7 137. Pursuant to Labor Code § 218.6, Plaintiff and other RSR Class members are entitled
8 to, and seek to, recover prejudgment interest on the amount of premium wages owed.

9 138. Plaintiff, on behalf of himself and other RSR Class members, is entitled to, and
10 seeks to recover reasonable attorneys' fees and costs as permitted by Labor Code § 218.5 and
11 Code of Civil Procedure § 1021.5.

12 139. Plaintiff, on behalf of himself and other RSR Class members, requests further relief
13 as described in the below prayer.

14 **THIRD CAUSE OF ACTION**

15 **(By Plaintiff, individually and on behalf of the RSR Class, against Defendants and Does 1-50)**

16 **FAILURE TO TIMELY PAY MINIMUM AND/OR REGULAR WAGES**

17 **(Violation of Labor Code §§ 204, 210, 1194, 1194.2, 1197, 1197.1, 1198, and the "Minimum**
18 **Wages" section of IWC Wage Order 7-2001)**

19 140. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
20 paragraphs of this Complaint.

21 141. Labor Code § 204 establishes an employee's fundamental right in the state of
22 California to be paid wages in a timely manner for their work. Labor Code § 204(a) states in
23 pertinent part, "[a]ll wages...earned by any person in any employment are due and payable twice
24 during each calendar month, on days designated in advance by the employer as the regular
25 paydays."

26 142. Labor Code section 210 provides that, "every person who fails to pay the wages of
27 an employee as provided in Sections 201.3, 204, ... shall be subject to a civil penalty" of \$100 for

1 an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent
2 violation.

3 143. Labor Code § 1197 provides, “[t]he minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a less wage than
5 the minimum wage so fixed is unlawful.”

6 144. The “Minimum Wages” section of IWC Wage Order 7-2001 provides that an
7 employer may not pay employees less than the applicable minimum for all hours worked.

8 145. The IWC Wage Order 7-2001 defines the term “hours worked” as “the time during
9 which an employee is subject to the control of an employer, and includes all the time the employee
10 is suffered or permitted to work, whether or not required to do so.”

11 146. Labor Code § 1197.1 further provides,

12 [a]ny employer or other person acting either individually or as an
13 officer, agent, or employee of another person, who pays or causes to be
14 paid to any employee a wage less than the minimum fixed by an
15 applicable state or local law or by an order of the commission shall be
subject to a civil penalty, restitution of wages, liquidated damages
payable to the employee, and any applicable penalties imposed
pursuant to Section 203...

16 147. California law does not permit an employer to pay “less than the applicable
17 minimum wage for all hours worked in the payroll period, whether the remunerations is measured
18 by time, piece, commission, or otherwise.” (*Gonzalez v. Downtown LA Motors, LP* (2013) 215
19 Cal.App.4th 36, 44.)

20 148. Furthermore, pursuant to Labor Code § 1198:

21 [t]he maximum hours of work and the standard conditions of labor
22 fixed by the commission shall be the maximum hours of work and the
23 standard conditions of labor for employees. The employment of any
employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful.

24 149. Labor Code § 1194 provides, in part, that any employee receiving less than the legal
25 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage,
26 including interest thereon, reasonable attorney’s fees, and costs of suit.

27 150. Labor Code § 1194.2 allows an employee to recover liquidated damages in an

1 amount equal to the wages unlawfully unpaid and interest thereon for any action under Labor
2 Code § 1194.

3 151. Plaintiff and the RSR Class members are or were non-exempt employees of
4 Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.

5 152. Plaintiff contends that he and all other RSR Class members were subject to, and
6 those currently employed continue to be subject to, the same and/or similar policies, practices,
7 procedures guidelines, and/or culture governing the payment of minimum and regular wages.

8 153. Plaintiff alleges that Defendants had, and continue to have, a policy, practice,
9 procedure, guideline, and/or culture of failing to pay all minimum and regular wages for all hours
10 worked or otherwise time spent under the control of Defendants on the pay days designated in
11 advance by Defendants.

12 154. For example, Defendants did not timely pay Plaintiff and, on information and belief,
13 RSR Class members for time spent delivering vehicles to specific parking locations when
14 Defendants removed their credentials to clock in for work.

15 155. Defendants also failed to timely pay Plaintiff and RSR Class members their regular
16 wages based upon improper recording of their hours worked.

17 156. Plaintiff and the RSR Class suffered and continue to suffer losses related to the use
18 and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful
19 acts and Labor Code violations in an amount to be shown according to proof at trial and within
20 the jurisdictional limitations of this Court.

21 157. Having received less than the legal minimum wage and/or applicable regular rate,
22 Plaintiff and other RSR Class members are entitled to, and now seek to recover, all wages and
23 penalties owed, including penalties and liquidated damages available under Labor Code §§ 210,
24 1194.2, 1197.1, as well as interest and reasonable attorneys' fees and costs pursuant to Labor Code
25 §§ 218.5 and 1194 and Code of Civil Procedure § 1021.5.

26 158. Plaintiff, on behalf of himself and other RSR Class members, requests further relief
27 as described in the below prayer.

FOURTH CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the RSR Class, against Defendants and Does 1-50)

FAILURE TO TIMELY PAY ALL OVERTIME AND/OR DOUBLE TIME WAGES

(Violation of Labor Code §§ 204, 210, 510, 558, 1194, 1198, and the “Hours and Days of Work” section of IWC Wage Order 7-2001)

159. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

160. Labor Code § 204(b)(1) states, “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.”

161. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections 201.3, 204, ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

162. Labor Code § 510 provides:

[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The “Hours and Days of Work” section of the IWC Wage Order No. 7-2001 mandate the same requirements.

163. Labor Code § 1194 provides that any employee receiving less than the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

164. Furthermore, pursuant to Labor Code § 1198:

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

165. IWC Wage Order 7-2001 defines the term “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

166. Labor Code § 558 provides that “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” of \$50 for each underpaid employee for each pay period for which the employee was underpaid plus an amount sufficient to recover underpaid wages for any initial violation, and \$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 for each subsequent violation.

167. Plaintiff and the RSR Class members are or were non-exempt employees of Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.

168. Plaintiff and RSR Class members regularly worked over eight (8) hours per day and forty (40) hours per week while employed by Defendants. On information and belief, Plaintiff asserts RSR Class members regularly did not receive the appropriate overtime pay during their employment with Defendants when they worked in excess of eight (8) hours per day and/or forty (40) hours per workweek.

169. Members of the RSR Class, including Plaintiff, regularly worked in excess of twelve (12) hours per day. However, Plaintiff and RSR Class members did not receive all double time compensation owed for all hours worked over twelve (12) hours per day.

170. Members of the RSR Class were not paid the appropriate overtime and/or double time wages by the next regular payroll period.

171. For instance, despite working overtime and earning non-discretionary bonuses,

1 Defendants compensated Plaintiff at one and one-half (1.5) times his hourly rate for overtime,
2 instead of his regular rate of pay as required by law.

3 172. Additionally, Defendants failed to compensate Plaintiff and, on information and
4 belief, other members of the RSR Class double time wages for all work in excess of twelve (12)
5 hours. Instead, Defendants compensated RSR Class members, such as Plaintiff, one and one-half
6 times their hourly rate for hours in excess of twelve (12) hours in a workday. For example, when
7 Plaintiff demanded double time wages from Defendants, Defendants tacitly admitted their failure
8 to pay owed double time wages by giving Plaintiff a lump sum of money. Defendants, however,
9 did not provide a wage statement or any calculations for Plaintiff to verify whether Defendants
10 appropriately paid him for all double time wages earned through that point. After that payment,
11 Defendants continued to only pay Plaintiff 1.5 times his hourly rate when he worked in excess of
12 twelve (12) hours in a day.

13 173. Thus, Defendants did not timely pay all overtime and/or double time wages earned
14 by the next regular payroll period as required by California law.

15 174. Plaintiff and RSR Class members suffered and continue to suffer losses related to
16 the use and enjoyment of compensation due and owing to them as a direct result of Defendants'
17 unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and
18 within the jurisdictional limitations of this Court.

19 175. Plaintiff seeks all available remedies for Defendants' violations including, but not
20 limited to, any and all wages due, penalties, interest, attorney's fees, and costs to the extent
21 permitted by law including Labor Code §§ 218.6, 210, 558, and 1194.

22 176. Plaintiff, on behalf of himself and other RSR Class members, is entitled to, and
23 seeks to recover reasonable attorneys' fees and costs as permitted by Labor Code § 218.5 and
24 Code of Civil Procedure § 1021.5.

25 177. Plaintiff, on behalf of himself and other RSR Class members, requests further relief
26 as described in the below prayer.

27 ///

FIFTH CAUSE OF ACTION

**(By Plaintiff, individually and on behalf of the Waiting Time Sub-Class, against
Defendants and Does 1-50)**

**UNLAWFUL DEDUCTION AND/OR UNDERPAYMENT OF WAGES
(Violation of Labor Code §§ 221, 222, 223, and 224)**

178. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

179. Labor Code § 221 disallows an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.”

180. Labor Code § 225.5 provides the following penalties for violations of Labor Code §§ 221, 222 or 223: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

181. Plaintiff and Waiting Time Sub-Class members were non-exempt employees of Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.

182. Plaintiff contends that he and all other Waiting Time Sub-Class members were subject to the same and/or similar policies, practices, procedures guidelines, and/or culture governing deduction and/or underpayment wages.

183. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of unlawfully deducting and/or underpaying members of the Waiting Time Sub-Class, including Plaintiff.

184. Defendants illegally deducted from earned wages and/or underpaid Plaintiff and the Waiting Time Sub-Class. For example, Defendants required Plaintiff to pay a \$20 wiring fee in order to attain his final paycheck. Had Plaintiff not paid the wiring fee, Defendants would not have paid him his final pay. Plaintiff’s final pay was unlawfully reduced by \$20. On information and belief, Plaintiff asserts Defendants had a pattern, policy and practice of deducting wiring fees

1 from employees' final pay in the same manner as they deducted from his final pay.

2 185. As a direct result of Defendants' violations alleged herein, Plaintiff and Waiting
3 Time Sub-Class members suffered substantial harm, including the use and enjoyment of such
4 monies, lost interest on such monies and expenses, and attorney's fees and costs in seeking to
5 compel Defendants to fully perform their obligations under state law, all to their respective
6 damage in amounts according to proof at trial and within the jurisdictional limitations of this
7 Court.

8 186. Plaintiff seeks to recover in a civil action to the fullest extent permissible all
9 available damages by Labor Code §§ 218.6, 221, 222, 223, 224, and 225.5, interest, reasonable
10 attorney's fees and costs of suit, and declaratory relief. The exact amount of damages will be in
11 an amount to be proved at time of trial.

12 187. Plaintiff, on behalf of himself and other Waiting Time Sub-Class members, is
13 entitled to, and seeks to recover reasonable attorneys' fees and costs as permitted by Labor Code
14 § 218.5 and Code of Civil Procedure § 1021.5.

15 188. Plaintiff, on behalf of himself and other Waiting Time Sub-Class members, requests
16 further relief as described in the below prayer.

17 **SIXTH CAUSE OF ACTION**

18 **(By Plaintiff, individually and on behalf of the Waiting Time Sub-Class, against**
19 **Defendants and Does 1-50)**

20 **FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION**
21 **OF EMPLOYMENT**

22 **(Violations of Labor Code §§ 201, 202, 203, and 210)**

23 189. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
24 paragraphs of this Complaint.

25 190. Labor Code § 201 requires Defendants to immediately pay any wages, without
26 abatement or reduction, to any employee who is discharged. Labor Code § 202 requires
27 Defendants to pay any and all wages due and owing to an employee not having a written contract

1 for a definite period, who quits his or her employment, within 72 hours of the employee quitting
2 his or her employment, unless the employee has given 72 hours previous notice of his or her
3 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

4 191. For violations of Labor Code §§ 201 and 202, Labor Code § 203 causes the unpaid
5 wages of an employee to continue as a penalty from the due date thereof, at the same rate until
6 paid or until an action is commenced, but the wages shall not continue for more than 30 days.

7 192. Labor Code section 210 provides that, “every person who fails to pay the wages of
8 an employee as provided in Sections 201.3, 204, ... shall be subject to a civil penalty” of \$100 for
9 an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent
10 violation.

11 193. Plaintiff contends that he and all other Waiting Time Sub-Class members were
12 subject to the same and/or similar policies, practices, procedures guidelines, and/or culture
13 governing the payment of final wages.

14 194. Plaintiff alleges that Defendants had, and continue to have, a policy, practice,
15 procedure, guideline, and/or culture of failing to provide final wage payments within a timely
16 manner following the separation of employment.

17 195. As described above, Defendants willfully failed to pay Plaintiff and, on information
18 and belief, the Waiting Time Sub-Class all wages due and owing to them, including minimum,
19 regular, overtime, and/or double-time wages for all the time they were suffered or permitted to
20 work or were engaged in work under Defendants’ control, as well as all meal period premiums
21 and/or rest period premiums owed within the time required by Labor Code §§ 201 and 202, as
22 applicable.

23 196. To date, Plaintiff has not yet received all wages due and payable upon separation
24 of employment, including, but not limited to, minimum, regular, overtime, and/or double-time
25 wages, and meal and/or rest period premium wages owing to him. On information and belief,
26 members of the Waiting Time Sub-Class have not yet received all minimum, regular, overtime
27 and/or double-time wages, and/or meal and/or rest period premium wages due and owing to them.

197. In addition, Defendants deducted \$20 from Plaintiff's final pay in order to pay for wiring fees. Plaintiff was entitled to those wages, and Defendants have not paid him those wages within a timely manner following the separation of employment. On information and belief, Defendants maintain a policy, practice, procedure, guideline, and/or culture of failing to pay Waiting Time Sub-Class members the deducted wages for wiring fees in a timely manner after the separation of their employment.

198. As a direct result of Defendants' violations alleged herein, Plaintiff and the Waiting Time Sub-Class members suffered losses related to the use and enjoyment of wages due and owing to them, all to their respective damages in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

199. As a consequence of Defendants' willful and deliberate refusal to render such wages, Plaintiff and the members of the Waiting Time Sub-Class are entitled to, and thus seek a maximum of thirty (30) days' wages at their daily rate of pay as a waiting time penalty, pursuant to Labor Code § 203, as well as penalties pursuant to Labor Code § 210.

200. Plaintiff, on behalf of himself and the Waiting Time Sub-Class, is also entitled to, and seeks to recover reasonable attorneys' fees and costs as permitted by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

201. Plaintiff, on behalf of himself and other Waiting Time Sub-Class members, requests further relief as described in the below prayer.

SEVENTH CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the RSR Class, against Defendants and Does 1-50)

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code §§ 226, 1198, and the "Records" section of IWC Wage Order 7-2001)

202. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

203. Labor Code § 226 states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number... (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

204. The "Records" section of IWC Wage Order No. 7-2001 states in pertinent part,

[e]very employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee and the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.

205. An injury occurs where the employer fails to provide accurate information and the employee cannot "promptly and easily determine" the total number of hours worked or the "applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate." (Labor Code § 226(a)(9)-(e)(2)(B)(i).)

206. Labor Code § 226(e)(2)(c) explains that the phrase "promptly and easily determine" means that "a reasonable person would be able to readily ascertain the information without reference to documents or information."

207. Labor Code § 226(e)(1) further provides,

[a]n employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

208. According to Labor Code § 226(h), "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

209. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

210. Plaintiff contends that he and all other RSR Class members were subject to, and those currently employed continue to be subject to, the same and/or similar policies, practices, procedures guidelines, and/or culture governing wage statements.

211. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to furnish accurate itemized wage statements to RSR Class members, such as Plaintiff.

212. Defendants also knowingly and intentionally furnished wage statements to Plaintiff and members of the RSR Class that did not, and do not, accurately reflect all hours worked; all meal and/or rest period premiums earned and owed; the appropriate minimum, regular, overtime, and/or double time wages earned and owed; all gross wages actually earned; or the correct net wages earned and owed.

213. The wage statements also did not, and do not, accurately reflect the minimum, regular, overtime, and/or double time rate, and the correct corresponding number of hours worked at each hourly rate.

214. Further, the wage statements furnished did not, and do not, identify the name and address of the legal entity that is the RSR Class member's employer.

215. Due to the lack of information on the wage statements furnished, Plaintiff and other RSR Class members, were unable to promptly and easily determine, for instance, the total number of hours worked, the applicable hourly rates in effect during the pay period, and/or the corresponding number of hours worked at each hourly rate, among other things.

216. Plaintiff and members of the RSR Class, therefore, had no way to dispute any error in the payment or calculation of their wages, all of which resulted in an unjustified economic enrichment to Defendants, and Plaintiff and members of the RSR Class suffered actual damages as a result.

217. Defendants' failure to furnish accurate itemized wage statements constitutes an injury as defined under Labor Code § 226(e)(2)(B). Therefore, Plaintiff and members of the RSR Class have suffered an injury for purposes of Labor Code § 226 and are entitled to recover the greater of all actual damages or the penalty specified in Labor Code § 226 per violation and injunctive relief.

218. Plaintiff and all other RSR Class members are further entitled to, and seek to recover, reasonable attorneys' fees and costs as provided under Labor Code § 226(e)(1) and (h) and Code of Civil Procedure § 1021.5.

219. Plaintiff, on behalf of himself and all other RSR Class members, requests further relief as described in the below prayer.

EIGHTH CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the RSR Class, against Defendants and Does 1-50)

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code § 226 and the "Records" section of IWC Wage Order 7-2001)

220. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

221. Labor Code § 226 states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number... (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee... a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

222. The “Records” section of IWC Wage Order No. 7-2001 states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

223. Labor Code § 226(e)(1) provides,

[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

224. Plaintiff asserts that at all material times Defendants have employed members of the RSR Class, including Plaintiff, in the state of California.

225. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of knowingly and intentionally failing maintain, for at least three years, a duplicate of the itemized wage statement furnished to RSR Class members or a computer-generated record that accurately shows all of the information required by Labor Code § 226(a). It is Plaintiff’s understanding and belief that Defendants do not maintain a duplicate itemized wage statements furnished to RSR Class members or a computer-generated record that accurately shows all of the information required by Labor Code § 226(a) because Defendants have failed to accurately record all hours worked, all meal periods and all wages actually earned.

226. Plaintiff and other RSR Class members have suffered, and continue to suffer, injuries and damages as a consequence of Defendants’ deliberate failure to maintain accurate employment records as required by the Labor Code. Specifically, Plaintiff and other RSR Class members were denied their legal right and protected interest in having accurate and complete employment records available to them.

227. Plaintiff and other RSR Class members are entitled to, and seek damages and

1 penalties, as outlined in Labor Code § 226(e)(1).

2 228. Plaintiff, on behalf of himself and all other members of RSR Class, is entitled to,
3 and seeks to recover reasonable attorneys' fees and costs as provided by Code of Civil Procedure
4 § 1021.5.

5 229. Plaintiff, on behalf of himself and all other RSR Class members, requests further
6 relief as described in the below prayer.

7 **NINTH CAUSE OF ACTION**

8 **(By Plaintiff, individually and on behalf of the RSR Class, against Defendants and Does 1-50)**

9 **FAILURE TO PROVIDE EMPLOYMENT AND PERSONNEL RECORDS**

10 **UPON REQUEST**

11 **(Labor Code §§ 226 and 1198.5)**

12 230. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
13 paragraphs of this Complaint.

14 231. Labor Code § 226(b) mandates that employers, "shall afford current and former
15 employees the right to inspect or receive a copy of records pertaining to their employment, upon
16 reasonable request to the employer."

17 232. Labor Code § 226(c) further provides,
18 [a]n employer who receives a written or oral request to inspect or
19 receive a copy of records pursuant to subdivision (b) pertaining to a
20 current or former employee shall comply with the request as soon as
21 practicable, but no later than 21 calendar days from the date of the
22 request. A violation of this subdivision is an infraction.

23 233. Labor Code § 1198.5 grants every current and former employee the right to receive
24 a copy of the personnel records that the employer maintains. Labor Code § 1198.5 mandates that
25 the contents of the personnel records be available for inspection within, but no later than thirty
26 (30) days from the date the employer receives the written request.

27 234. Labor Code § 226(f) imposes a penalty on employers for violations of Labor Code
28 § 226(c). Labor Code § 226(f) states that "[a] failure by an employer to permit a current or former

1 employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles
2 the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-
3 dollar (\$750) penalty from the employer.”

4 235. An employer who fails to provide a copy of the records requested is also subject to
5 a penalty of \$750 as outlined in Labor Code § 1198.5(k), which states,

6 [i]f an employer fails to permit a current or former employee, or his or
7 her representative, to inspect or copy personnel records within the times
8 specified in this section, or times agreed to by mutual agreement as
9 provided in this section, the current or former employee or the Labor
Commissioner may recover a penalty of seven hundred fifty dollars
(\$750) from the employer.

10 236. Plaintiff alleges that Defendants had, and continue to have, a policy, practice,
11 procedure, guideline, and/or culture of failing to provide complete employment records in a timely
12 manner to RSR Class members who requested their employment records from Defendants.

13 237. Defendants, individually and/or collectively, violated the Labor Code by failing to
14 provide Plaintiff and, on information and belief, other RSR Class members with a complete copy
15 of their personnel and/or employment records.

16 238. Plaintiff, for instance, requested his complete payroll records, time records and
17 personnel files from Defendant Solaray, LLC on February 20, 2021. Instead of providing Plaintiff
18 with the information requested, Defendants informed Plaintiff he could attain all payroll and time
19 records via an online portal. Until Defendants restored his credentials, Plaintiff did not have access
20 to the online portal. Once his credentials were restored and he logged in to the online portal,
21 Plaintiff found that the online portal did not contain his time records. Defendants did not produce
22 copies of Plaintiff’s time records.

23 239. More than thirty (30) days have passed after Plaintiff requested his employment
24 records, but Defendants have not yet provided his time records.

25 240. On this basis, Plaintiff is informed and believes Defendants regularly fail to provide
26 RSR Class Members with complete employment records within the required time period.

27 241. As a result, Defendants have denied RSR Class members access to a complete copy

of their employment records within the required time period(s).

242. Defendants have violated Labor Code §§ 226(b) and (c) and Labor Code § 1198.5 by failing to provide Plaintiff and, on information and belief, other RSR Class members with a copy of their personnel and/or employment records, such as his time records, upon request within the prescribed time frame.

243. Plaintiff seeks to recover all available penalties, including those outlined in Labor Code §§ 226(f) and 1198.5.

244. Plaintiff, on behalf of himself and other RSR Class members, requests further relief as described in the below prayer.

TENTH CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the RSR Class, against Defendants and Does 1-50)

VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW

(Business & Professions Code §§ 17200, *et seq.*)

245. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

246. As codified in Business & Professions Code §§ 17200 *et seq.*, California’s Unfair Competition Law (“UCL”) broadly prohibits “any unlawful, unfair or fraudulent business act or practice.”

247. A cause of action may be brought under the UCL if a practice violates some other law. The “unlawful” prong of the UCL effectively deems a violation of the underlying law a per se violation of Business & Professions Code §§ 17200 *et seq.* (*Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state, statutory, or common law – can serve as a predicate for a section 17200 “unlawful” violation. (*Farmers Ins. Exch. v. Superior Court* (1992) 2 Cal.4th 377, 383.)

248. The “unfair” prong of the UCL does not require a practice to be specifically proscribed by any law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134, 1143.) Pursuant to the California Supreme Court, the “unfair standard” is intentionally broad to

1 give maximum discretion to courts in prohibiting new schemes to defraud. (*Cel-Tech Commc'ns,*
2 *Inc.*, 20 Cal.4th at 180-181.)

3 249. Under the UCL, a “fraudulent” business act or practice is one where “members of
4 the public are likely to be deceived.” (*Blakemore v. Superior Court* (2005) 129 Cal. App. 4th 36,
5 49.) A showing of actual deception, reasonable reliance, or damages is not required. (*Ibid.*) The
6 fraudulent prong may be used to attack the deceptive manner in which otherwise lawful contract
7 terms are presented to an individual. (*Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th
8 230, 253.) As such, even a true statement may be unlawful under section 17200 if it is “couched
9 in such a manner that is likely to mislead or deceive..., such as by failing to disclose other relevant
10 information.” (*Ibid.*)

11 250. As discussed herein, Defendants’ business practices violate all three prongs of
12 California’s UCL.

13 **A. Unlawful Business Practices**

14 251. Defendants’ Labor Code and IWC Wage Order violations alleged herein constitute
15 “unlawful business act or practices.” For instance, Defendants’ (i) failure to provide proper meal
16 periods and/or timely pay employees premium wages for failure to provide compliant meal
17 periods; (ii) failure to provide proper rest periods and/or pay employees premium wages for failure
18 to provide compliant rest periods; (iii) failure to timely pay employees all regular and/or minimum
19 wages for all hours suffered or permitted to work and under the control of Defendants during
20 employment; (iv) failure to timely pay employees all overtime and double time wages for all hours
21 suffered or permitted to work and under the control of Defendants during employment; (v)
22 unlawful deductions from wages and/or underpayment of wages; (vi) failure to timely pay Plaintiff
23 and members of the employees all wages due and owing upon separation of their employment;
24 (vii) failure to furnish employees with accurate itemized wage statements; (viii) failure to maintain
25 accurate records; (ix) failure to maintain accurate employment records; and (x) failure to provide
26 employment records upon request in a timely manner are all unlawful business acts or practices
27 prohibited by Business & Professions Code §§ 17200-17208.

1 **B. Unfair Business Practices**

2 252. Defendants intentionally avoided paying Plaintiff and members of the RSR Class,
3 and Waiting Time Sub-Class all wages and/or monies, and other financial obligations attached
4 thereto, to create for Defendants an artificially lower cost of doing business, and thus, undercut
5 its competitors. They did so by making unlawful deductions to wages, which unfairly deprived
6 employees of all monies earned. They also acted unfairly by denying meal and/or rest periods and
7 associated premium wages, which resulted in employees working without breaks or payments,
8 which the Labor Code set as the fair compensation for employees who are deprived breaks.
9 Additionally, Defendants unfairly denied earned wages to employees who only provided their
10 services under the understanding that they would be paid for all time spent rendering their
11 services.

12 253. Defendants lowered their costs of doing business by paying Plaintiff and members
13 of the RSR Class an amount less than what is required by the California Labor Code and the
14 applicable Wage Order of the Industrial Welfare Commission, thereby unfairly forcing Plaintiff
15 and other members of the RSR Class to perform work without fair compensation and benefits.

16 **C. Fraudulent Business Practices**

17 254. Defendants acted fraudulently by denying RSR Class members wages and break
18 premiums without their knowledge of their entitlement to the payments. Additionally, Defendants
19 regularly provided employees with wage statements containing false information. Given that
20 Defendants provided no method for recording meal periods, they knew that the wage statements
21 may be inaccurate when they issued the inaccurate wage statements. Further, Defendants
22 fraudulently informed Plaintiff where he could attain time records, while the reality was that
23 Defendants did not provide access to those records.

24 255. As a direct and proximate result of Defendants' unlawful, unfair and fraudulent
25 business practices, Plaintiff and all other members of the RSR Class have suffered injury-in-fact
26 and have lost wages rightfully owed to them.

27 256. Through their unlawful, unfair, and fraudulent conduct, Defendants have been

1 unjustly enriched by receiving and continuing to receive benefits and profits at the expense of
2 RSR Class members. Therefore, pursuant to Business & Professions Code §§ 17200 *et seq.*,
3 Defendants should be enjoined from this activity and made to disgorge all ill-gotten gains and
4 restore Plaintiff and all other RSR Class members the wages wrongfully withheld from them.

5 257. Moreover, the unlawful, unfair and fraudulent conduct alleged herein has continued,
6 and there is no indication that Defendants will refrain from such activity in the future. Plaintiff
7 believes and alleges that if Defendants are not enjoined from the conduct described herein,
8 Defendants will continue to violate California law at the expense of members of the RSR Class.
9 Accordingly, Plaintiff requests that the Court issue a preliminary and permanent injunction against
10 Defendants.

11 258. Plaintiff, on behalf of himself and all other members of the RSR Class, requests
12 further relief as described in the below prayer.

13 **ELEVENTH CAUSE OF ACTION**

14 **(By Plaintiff, individually and on behalf of all Aggrieved Employees, against Defendants**
15 **and Does 1-50)**

16 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

17 **(Labor Code §§ 2698 *et seq.*)**

18 259. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
19 paragraphs of this Complaint.

20 260. Plaintiff, in his representative capacity on behalf of himself and all other Solaray
21 Employees, is entitled to and thus seeks to recover civil penalties through a representative
22 enforcement action based on violations of the following Labor Code and/or IWC Wage Order
23 provisions:

- 24 a. Failing to provide legally compliant meal periods and/or timely pay premium
25 wages at the employee's regular rate of pay for non-compliant meal periods
26 during employment in violation of Labor Code §§ 204, 210, 226.7, 512, 558,
27 1198, and the "Meal Periods" section of IWC Wage Order 7-2001;

- b. Failing to provide legally compliant rest periods and/or timely pay premium wages at the employee's regular rate of pay for non-compliant rest periods during employment in violation of Labor Code §§ 204, 210, 226.7, 1198, and the "Rest Periods" section of IWC Wage Order 7-2001;
- c. Failing to timely pay all minimum and/or regular wages during employment in violation of Labor Code §§ 204, 210, 1194, 1194.2, 1197, 1197.1, 1198, and IWC Wage Order 7-2001;
- d. Failing to timely pay all overtime wages during employment Labor Code §§ 204, 210, 510, 558, 1194, 1198, and IWC Wage Order 7-2001;
- e. Unlawfully deducting wages and/or underpayment of during employment in violation of Labor Code §§ 212, 221, 223, 224, and 225.5;
- f. Failing to timely pay all wages due and owing at the time of separation and/or the required waiting time penalties in violation of Labor Code §§ 201-203 and 210;
- g. Failing to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and the "Records" section of IWC Wage Order 7-2001;
- h. Failing to maintain accurate employment, time, and/or payroll records in violation of Labor Code §§ 226, 1174, 1174.5, and the "Records" section of IWC Wage Order 7-2001; and
- i. Failing to timely provide employment, time and/or payroll records upon request in violation of Labor Code §§ 226, 1198, and 1198.5.

261. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 201.3, 203, 204, 204(b), 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in his representative capacity on behalf of himself and all other Solaray Employees, is entitled to,

1 and therefore seeks, the civil penalty imposed by Labor Code § 210.

2 262. Labor Code § 225.5 provides that “every person who unlawfully withholds wages
3 due to any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil
4 penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
5 each employee. (b) For each subsequent violation, or any willful or intentional violation, two
6 hundred dollars (\$200) for each failure to pay each employee, plus twenty-five percent (25%) of
7 the amount unlawfully withheld.” Plaintiff, in his representative capacity on behalf of himself and
8 all other Solaray Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor
9 Code § 225.5.

10 263. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation for
11 an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
12 the employer fails to provide the employee a wage deduction statement or fails to keep the records
13 required in section 226(a), this civil penalty in addition to any other penalty provided by law.
14 Plaintiff, in his representative capacity on behalf of himself and all other Solaray Employees, is
15 entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 226.3.

16 264. For violations of Labor Code §§ 510 and 512, in addition to any other recovery
17 provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each
18 underpaid employee for the initial violation and \$100 per pay period for each underpaid employee
19 for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any
20 provision regulating hours and days of work in any order of the IWC. Plaintiff, in his
21 representative capacity on behalf of himself and all other Solaray Employees, is entitled to, and
22 therefore seeks, the civil penalty imposed by Labor Code § 558.

23 265. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to
24 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of
25 \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code §
26 2699 for a violation of Labor Code § 1174(d). Plaintiff, in his representative capacity on behalf
27 of himself and all other Solaray Employees, is entitled to, and therefore seeks, the civil penalty

1 imposed by § 1174.5.

2 266. Labor Code § 1197.1 imposes a civil penalty of \$100 for each underpaid employee
3 for each pay period for which the employee is underpaid and a subsequent civil penalty of \$250
4 for each underpaid employee for each pay period for which the employee is underpaid for paying
5 or causing an employee to be paid a wage less than the minimum wage. Plaintiff, in his
6 representative capacity on behalf of himself and all other Solaray Employees, is entitled to, and
7 therefore seeks, the civil penalty imposed by Labor Code § 1197.1.

8 267. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee
9 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for
10 all Labor Code provisions for which a civil penalty is not specifically provided, including, but not
11 limited to, Labor Code §§ 201, 202, 203, 204, 221, 222, 223, 224, 226(a), 226.7, 510, 512, 1174,
12 1194, 1197, 1197.1, and 1198. Plaintiff, in his representative capacity on behalf of himself and all
13 other Solaray Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor
14 Code § 2699(f).

15 268. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
16 brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and
17 costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Solaray
18 Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

19 269. Plaintiff, in his representative capacity on behalf of himself and all Solaray
20 Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor
21 Code § 218.5 and Code of Civil Procedure § 1021.5.

22 270. Plaintiff, in his representative capacity on behalf of himself and all other Solaray
23 Employees, requests further relief as described in the below prayer for relief.

24 **PRAYER FOR RELIEF**

25 Plaintiff prays for judgment against Defendants in favor of the class and representative
26 action as follows:

27 a. For an order determining that this action may be maintained as a class action

- with the named Plaintiff as the class representative;
- b. For the attorneys for Plaintiff to be named as class counsel;
- c. For all wages and benefits due to Plaintiff and other Solaray Employees pursuant to California law;
- d. For premium wages at the regular rate of pay pursuant to Labor Code § 226.7 and/or other applicable law;
- e. For all minimum, regular, overtime, and/or double time wages pursuant to Labor Code §§ 510, 558, 1194, 1197.1, and/or other applicable law;
- f. For waiting time penalties pursuant to Labor Code § 203 and/or other applicable law;
- g. For damages pursuant to Labor Code §§ 221, 226, Civil Code § 3281, and/or other applicable law;
- h. For liquidated damages pursuant to Labor Code §§ 1194, 1197.1, and/or other applicable law;
- i. For any and all statutory penalties available for the violations alleged herein, including penalties under Labor Code §§ 203, 210, 225.5, 226, 226.3, 558, 1174.5, 1197.1, and/or other applicable law;
- j. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 210, 225.5, 558, 1174.5, 1197.1, 2699(f), and/or other applicable law;
- k. For injunctive relief, pursuant to Labor Code § 226(h), Business & Professions Code § 17203, and/or other applicable law.
- l. For restitution for Defendants' unfair, unlawful, and/or fraudulent business practices as provided by Business & Professions Code §§ 17200 *et seq.*;
- m. For an order imposing a constructive trust upon Defendants to compel it to transfer wages that have been wrongfully obtained and held by Defendants to unpaid employees;

- n. For an accounting to determine all money wrongfully obtained and held by Defendants;
- o. For pre- and post- judgment interest as provided under California law;
- p. For a declaratory judgment that Defendants violated Labor Code §§ 201, 202, 204, 221, 222, 223, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198; Business & Professions Code §§ 17200 *et seq.*; and the “Hours and Days of Work,” “Minimum Wages,” “Records,” “Meal Periods,” and “Rest Periods” sections of the Wage Order of the Industrial Welfare Commission;
- q. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 11971, 2699(g)(1), Code of Civil Procedure § 1021.5, the “common fund” theory, the “substantial benefit” theory, the “catalyst” theory, and/or other applicable law;
- r. For appropriate equitable relief pursuant to California law; and
- s. For any other further relief as this Court deems proper and just.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues triable to a jury.

Dated: July 27, 2021

GRAHAMHOLLIS APC

By: Monique R. Rodriguez
GRAHAM S.P. HOLLIS
VILMARIE CORDERO
HALI M. ANDERSON
MONIQUE R. RODRIGUEZ
RIDGEWAY WOULFE
Attorneys for Plaintiff
THOMAS HEFNER

EXHIBIT 1

April 12, 2021

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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Solaray, LLC
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
620 S. Linden Street
Sapulpa, OK 74066

Solaray, LLC
620 S. Linden Street
Sapulpa, OK 74066

SRP Companies, Inc.
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
c/o C T Corporation System
818 West Seventh Street, Ste. 930
Los Angeles, CA 90017

SRP Companies, Inc.
215 N. 1800 W Street
Lindon, UT 84042

Solaray Sunglasses, LLC
P.O. Box 1168
Sapulpa, OK 74067

SRP Companies, Inc.
401 S. Wilcox Street
Castle Rock, CO 80104

Re: Tom Hefner's PAGA Claims Against Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Dear California Labor and Workforce Development Agency, Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.:

Please be advised that Tom Hefner ("Claimant") has retained our firm, Graham**Hollis** APC, to represent him for various claims against Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc. (together, the "Companies").

Please be advised that this letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Companies of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Companies, individually and/or collectively, committed against him and all other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar

position during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support his Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, “PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent himself and all other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar position during the relevant time period (referred to herein as the “Route Service Employees”). All Route Service Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant contends that he and all other Route Service Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Solaray, LLC is a limited liability company that is organized in the state of California. Solaray, LLC is a wholesale supplier of sunglasses and other apparel. Solaray LLC is managed by SRP Companies.

Solaray Sunglasses, LLC is a limited liability company that is organized in the state of Delaware. Solaray Sunglasses, LLC is a wholesale supplier of sunglasses and other apparel. Solaray Sunglasses, LLC is managed by SRP Companies.

SRP Companies, Inc. is a private retail company that manages numerous brands and whose services include delivering merchandise throughout the state of California. Its primary place of business is believed to be in Castle Rock, Colorado.

Claimant was employed by the Companies from approximately June 22, 2020 through January 11, 2021 as a Route Service Representative. Claimant was initially assigned to a route within the Bakersfield Territory, which encompassed the area from San Luis Obispo to Ventura. Approximately two months after his employment began, the Companies restructured their routes to require Claimant to drive in an area between San Jose and North Los Angeles. The Companies provided Claimant and other Route Service Representatives with a company vehicle, a company cell phone, and a storage unit in connection with his employment. The Companies also provided a portable printer and scanner so that he could complete any administrative work within the vehicle. As a Route Service Representative, Claimant’s job duties included, but were not limited to, loading and/unloading a company vehicle with the Companies’ merchandise, driving a company vehicle in and around routes to deliver the Companies’ merchandise to customers, communicating with customers, and keeping supervisors abreast of deliveries of merchandise. Generally, Claimant worked approximately 14-16 hours per day and/or 60-68 hours per week, and his distant routes often required him to stay overnight in motels. He earned \$15.25 per hour, plus bonuses. At all relevant times, Claimant was classified by the Companies as a non-exempt employee, earned an hourly wage, and was to be paid on a biweekly basis.

Claimant contends that at all relevant times, the Companies, individually and/or collectively employed, and continue to employ, Route Service Employees in various non-exempt positions. Claimant also contends that all policies, practices, procedures, and/or guidelines of the Companies, individually and/or collectively, applicable to Claimant were also applicable to all other Route Service Employees throughout the relevant time period. Claimant further contends that he and all other Route Service Employees suffered, and current Route Service Employees will continue to suffer, the same and/or similar violations of law described herein.

Claimant alleges that the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Route Service Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Companies, individually and/or collectively, failed, and continue to fail, to provide Claimant and other Route Service Employees with legally compliant meal and/or rest periods and/or pay them premium wages for non-compliant meal and/or rest periods; failed, and continue to fail, to pay Route Service Employees all minimum, regular, overtime and/or double time wages for all hours worked; failed, and continue to fail, to maintain accurate employment records; failed, and continue to fail, to furnish all Route Service Employees, including Claimant, with accurate itemized wage statements; failed to timely pay former Route Service Employees, including Claimant, all wages due and owing upon separation of employment and/or pay the required waiting time penalties; and unlawfully deducted earned wages when the Companies, individually and/or collectively, made former Route Service Employees, such as Claimant, pay a fee in connection with receipt of their final payment via wire transfer.

Claimant contends that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure and/or guideline of not providing Route Service Employees, including Claimant, with the opportunity to take timely 30-minute, off-duty, uninterrupted meal periods that are free from the employer’s control when they work more than six (6) hours in a day. Claimant also alleges that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to provide Claimant and other Route Service Employees with the opportunity to take a timely second 30-minute, off-duty, uninterrupted meal period that is free from the employer’s control when they work more than ten (10) hours in a day. Instead, the Companies, individually and/or collectively, provided such a heavy workload that taking meal periods was impossible if Route Service Employees were to complete their assignments in the allotted time frame. The Companies, individually and/or collectively, expressed disapproval of employees to work in excess of 12 hours per day, and the Companies expected them to complete their work while working a maximum 10 hours per day. The Companies planned for Claimant and, on information and belief, other Route Service Employees to make deliveries within 10 minutes, which is an impossibly short amount of time to complete the deliveries, particularly because the Companies wanted the deliveries made between the hours of 7:00 a.m. and 4:00 p.m. The Companies, individually and/or collectively, made no efforts to allocate time for Claimant and, on information and belief, other Route Service Employees to have off-duty meal periods. As a result, Claimant and, on information and belief, other Route Service Employees could only eat while driving. Further, the Companies, individually and/or collectively, did not provide any system for recording meal periods. The Companies, individually and/or collectively, did not pay premium wages to Route Service

Employees, such as Claimant, for non-compliant meal periods despite depriving employees the ability to take meal periods.

Claimant asserts that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to authorize and permit Route Service Employees to take at least a 10-minute duty free rest period for every four hours worked or major fraction thereof. Claimant asserts that due to the same workload and time constraints imposed by the Companies, individually and/or collectively, the Companies, individually and/or collectively, deprived Claimant and, on information and belief, other Route Service Employees of the ability to take legally compliant rest periods. The Companies, individually and/or collectively, made no effort to allocate time for rest periods. The Companies, individually and/or collectively, did not pay premium wages for non-compliant rest periods despite knowing their assignments were too substantial to allow two or more 10-minute rest periods per day.

Claimant asserts that the Companies, individually and/or collective, had, and continue to have, a policy, practice, procedure, and/or guideline of not timely paying Claimant and, on information and belief, other Route Service Employees all minimum, regular, overtime and/or double time wages for all time worked. For instance, the Companies, individually and/or collectively, provided Claimant and other Route Service Employees work assignments without specific schedules (although the Companies wanted Route Service Employees to visit customers and/or deliver product between 7:00 a.m. and 4:00 p.m.), though it disfavored work in excess of 12 hours per day. Often, Claimant and, on information and belief, Route Service Employees had to work in excess of 8 hours, and often in excess of 12 hours per day to complete their assignments, due to the workload and traffic delays. When Route Service Employees worked in excess of 8 hours per day, the Companies, individually and/or collectively, did not pay the appropriate overtime compensation. Additionally, when Route Service Employees worked in excess of 12 hours, the Companies, individually and/or collectively, did not pay double time and instead only paid the hours at their respective overtime rates. In fact, after Claimant complained about not being paid double time wages several months into his employment, the Companies, individually and/or collectively, purported to pay all double time wages he earned. However, the Companies, individually and/or collectively, did not provide Claimant with any information by which to assess whether the Companies, individually and/or collectively, paid all double time wages owed. Even after this "correction," the Companies, individually and/or collectively, continued their failure to pay Claimant the double time rate for any subsequent wages even though Claimant continued to work in excess of 12 hours per day. On that basis, Claimant believes the Companies regularly did not pay Route Service Employees all minimum, regular, overtime and/or double time wages owed for all time actually worked or spent under the control of the Companies, individually and/or collectively.

Claimant attests that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure and/or guideline of not maintaining accurate employment records. As described above, the Companies, individually and/or collectively, did not even provide Claimant and, on information and belief, other Route Service Employees with a method by which to record meal periods. Therefore, the Companies, individually and/or collectively, did not maintain the required meal period records whatsoever, let alone maintain accurate records.

Claimant contends that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of furnishing Route Service Employees, including Claimant, with wage statements that do not comply with California law. The wage statements the Companies, individually and/or collectively, furnished to Route Service Employees did not accurately reflect meal and/or rest period premiums owed, and/or did not reflect the minimum, regular, overtime and/or double time wages owed. As a result, the wage statements did not accurately reflect the accurate minimum, regular, overtime and/or double time rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. The wage statements also did not identify the name and address of the legal entity that is the employer.

Claimant asserts that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of not timely paying former Route Service Employees all wages due and owing upon separation of employment and/or the required waiting time penalties for the late payment of wages. As described above, the Companies, individually and/or collectively, routinely denied Claimant and, on information and belief, other Route Service Employees all premium wages for non-compliant meal and/or rest periods and all minimum, regular, overtime and/or double time wages for all time actually worked or spent under the control of the Companies. Due to the late payment of all wages due and owing upon separation of employment, the Companies must also pay waiting time penalties to all former Route Service Employees.

Claimant asserts that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of unlawfully deducting earned wages from former Route Service Employees. For instance, the Companies, individually and/or collectively, required Claimant and, on information and belief, other Route Service Employees to pay the wire transfer fees when the Companies, individually and/or collectively, wired him his final paycheck. The Companies, individually and/or collectively, paid Claimant \$20 less for his final paycheck because the fees were deducted from his pay.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Solaray, LLC, Solaray Sunglasses, LLC, and/or SRP Companies, Inc. are liable for the PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations alleged herein. (See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 [“if there is evidence and a finding that a party other than the employer ‘violates, or causes of be violated’ the overtime laws (§ 558(a)), or ‘pays or causes to be paid to an employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”]; see also *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 [holding the same].)

Due to the foregoing Labor Code violations, the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Route Service Employees certain rights afforded to them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Companies, individually and/or collectively, on behalf of himself and all other Route Service Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Route Service Employees. The facts, claims and/or legal theories contained in this written notice are based on information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or legal theories discovered after the sending of this letter on behalf of himself and other current and former Route Service Employees against the Companies, individually and/or collectively, and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Companies, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Companies, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Companies. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to his civil complaint.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS
AND/OR PAY PREMIUM WAGES FOR NON-COMPLIANT MEAL PERIODS**

(Labor Code §§ 204, 226.7, 512, and 558, and the "Meal Periods" section of IWC Wage Order No. 7-2001)

Labor Code § 512(a) provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 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 worked 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.

In pertinent part, the "Meal Periods" section of IWC Wage Order No. 7-2001 states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal

period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to.

(B) An employer may not employ an 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 worked 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....

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at 1040.)

Pursuant to Labor Code § 226.7(c),

[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

Labor Code § 558 provides that "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" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial

violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to provide Claimant and, on information and belief, other Route Service Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth (6th) hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other Route Service Employees were entitled to receive, and did not receive, one-hour of premium wages for each day a compliant meal period was not provided on the payday designated by the Companies. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS
AND/OR PAY PREMIUM WAGES FOR NON-COMPLIANT REST PERIODS**
(Labor Code §§ 204, 226.7, and the “Rest Periods” section of IWC Wage Order No. 7-2001)

The “Rest Periods” section of IWC Wage Order No. 7-2001 provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, 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.

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,

or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to authorize and permit Claimant and, on information and belief, other Route Service Employees to take an off-duty, uninterrupted 10-minute rest period for every four hours worked or major fraction thereof. Therefore, Claimant and other Route Service Employees were entitled to receive, and did not receive, one-hour of premium wages on the designated payday for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, OVERTIME
AND/OR DOUBLE TIME WAGES**

(Labor Code §§ 204, 210, 510, 558, and the "Hours and Days of Work"
sections of IWC Wage Order No. 7-2001)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime and double time wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an

employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”).)

The “Minimum Wages” section of IWC Wage Order No. 7-2001 further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 510(a), which codifies an employee’s right to overtime and double time compensation, provides:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The “Hours and Days of Work” and “Minimum Wages” sections of IWC Wage Order No. 7-2001 mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code § 558 provides that “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” of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to timely pay all minimum, regular, overtime, and/or double time wages owed to Claimant and, on information and belief, other Route Service Employees. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226(a), 226(e), 1174, and 1174.5, and the “Records” section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) mandates, in pertinent part:

The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Labor Code § 1174(c) requires every employer to “keep a recording showing the names and addresses of all employees employed....” Labor Code § 1174(d) further requires:

Every person employing labor in this state shall...[k]eep, 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...employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

The “Records” section of IWC Wage Order No. 7-2001 provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

As set forth above, the Companies, individually and/or collectively, violated their record keeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the meal periods whatsoever, as well as failing to accurately record the total hours worked at the appropriate rate of pay during the pay period, and the actual wages earned and paid. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

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FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 226.3, and the “Records” section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) states in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and... (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

The “Records” section of IWC Wage Order No. 7-2001 further provides, in pertinent part:

Every employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee and the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys’ fees.

Labor Code § 226(h) states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.”

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Companies, individually and/or collectively, failed to furnish Claimant and other Route Service Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include all applicable hourly rates in effect during the pay period, including the proper overtime and/or double time rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON
SEPARATION OF EMPLOYMENT**
(Labor Code §§ 201, 202, 203 and 210)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides, in pertinent part,

[i]f 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.

Labor Code § 203(a) further states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

As discussed herein, the Companies, individually and/or collectively, violated these Labor Code sections by not timely paying to Claimant and other former Route Service Employees all minimum,

regular, overtime and/or double time wages, as well as meal and/or rest period premium wages, within the required time upon separation of their employment. The Companies, individually and/or collectively, also did not pay Claimant and, on information and belief, other former Route Service Employees the required waiting time penalties for the late payment of wages. Thus, the Companies, individually and/or collectively, violated California law. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of California law on behalf of himself and all former Route Service Employees to the extent allowed by law.

UNLAWFUL DEDUCTION AND UNDERPAYMENT OF WAGES

(Labor Code §§ 212, 221, 223, 224, 225.5.)

Labor Code § 212 requires employers to ensure that paychecks maybe cashed without delay and without a fee or discount. Labor Code § 221 states, “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code § 223 provides “where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or contract. Labor Code § 224 disallows employers from making deductions from wages without authorization from the employee, with limited exceptions.

Labor Code § 225.5 provides the following penalties for violations of Labor Code §§ 212, 216, 221, 222 or 223: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As set forth above, the Companies, individually and/or collectively, did not provide Claimant, and on information and belief other Route Service Employees with their final wages without a fee or discount, because the Companies, individually and/or collectively, required Claimant to pay the wiring fees on his final paycheck and thus deducted the fee from Claimant’s final wages. On information and belief, Claimant asserts the Companies, individually and/or collectively, similarly illegally deducted wages from other Route Service Employees. Claimant will pursue all available remedies for the Companies’, individual and/or collective, violations on behalf of himself and other Route Service Employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND APPLICABLE IWC WAGE ORDER

(Labor Code §§ 210, 225.5, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in section 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

Labor Code § 225.5 provides the following penalties for violations of Labor Code §§ 212, 216, 221, 222 or 223: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects an employer or any person acting on behalf of an employer who violates Labor Code Labor Code §§ 500-558, or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation. Labor Code § 558.1(a) states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (c) and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is

intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 223, 224, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, and 1198 and relevant IWC Wage Orders.

As set forth above, the Companies, individually and/or collectively, violated the Labor Code and IWC Wage Order No. 7-2001 by failing to timely pay Claimant and all Route Service Employees all meal and/or rest period premium wages; failing to pay all minimum, regular, overtime, and/or double time wages for all time actually worked; failing to furnish accurate itemized wage statements; failing to pay all waiting time penalties owed; failing to maintain accurate employee records; and making illegal deductions from wages, as required under the Labor Code and the applicable sections of IWC Wage Order No. 7-2001. As a result, the Companies, individually and/or collectively, are liable for civil penalties under the Labor Code and Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Companies', individual and/or collective, violations on behalf of himself and all Route Service Employees to the extent allowed by law.

ATTORNEYS' FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 1197.1, 2698 *et seq.*, and 2802)

Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 1197.1, 225.5, 2802 and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorneys' fees and costs.

Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Companies, individually and/or collectively, are liable for these items. Claimant has already incurred actual damages, costs and attorney's fees, and he will continue to incur such costs as a result of the Companies', individual and/or collective, unlawful actions. Claimant will pursue all available remedies against the Companies, individually and/or collectively, including those provided under the PAGA, on behalf of himself and other Route Service Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

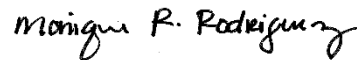
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CONCLUSION

Based on the foregoing, the Companies, individually and/or collectively, have violated, and will continue to violate, the Labor Code and IWC Wage Order No. 7-2001, thereby depriving Claimant and other Route Service Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Route Service Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the California agency declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Route Service Employees, as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez

EXHIBIT 2

April 28, 2021

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Monique R. Rodriguez
mrodriguez@grahamhollis.com
619.546.4373 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Solaray, LLC
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
620 S. Linden Street
Sapulpa, OK 74066

Solaray, LLC
620 S. Linden Street
Sapulpa, OK 74066

SRP Companies, Inc.
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
c/o C T Corporation System
818 West Seventh Street, Ste. 930
Los Angeles, CA 90017

SRP Companies, Inc.
215 N. 1800 W Street
Lindon, UT 84042

Solaray Sunglasses, LLC
P.O. Box 1168
Sapulpa, OK 74067

SRP Companies, Inc.
401 S. Wilcox Street
Castle Rock, CO 80104

Re: Amendment to Tom Hefner's Notice of PAGA Claims Against Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Dear California Labor and Workforce Development Agency, Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.:

Please be advised that this letter shall serve as Tom Hefner's ("Claimant") amended written notice to the California Labor and Workforce Development Agency ("LWDA") and Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc. (collectively, the "Companies") of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Companies, individually and/or collectively, committed against him and all other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar position during the relevant statutory period. Claimant provides this amended notice which includes the facts and theories to support the Labor Code violations Claimant contends the Companies, individually

and/or collectively, violated in accordance with the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this amended notice, Claimant intends to represent himself and other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar position during the relevant time period (“Route Service Employees”). All Route Service Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant contends that he and all other Route Service Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Claimant’s initial written notice, dated April 12, 2021, is attached hereto as **Exhibit 1** (“Initial Notice”) and incorporated herein by reference. The Initial Notice was submitted to the LWDA via online upload on April 12, 2021 and sent to Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc. via certified mail on the same date.

Since the submission of the Initial Notice, Claimant has become aware of new information and amends the Initial Notice to add the following additional claims and/or factual allegations. The claims in the Initial Notice, as well as this amended written notice, are asserted on behalf of Claimant and all other Route Service Employees.

Claimant contends that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to provide employment and personnel records to Route Service Employees upon request in the time frame proscribed by California law. For example, Claimant sent a written request to Solaray, LLC on February 10, 2021 and to SRP Companies on April 6, 2021 to obtain and/or inspect his personnel file and employment records. Despite sending the written requests, the Companies, individually and/or collectively, failed to provide the requested information on or before the time designated by statute. Additionally, the Companies, individually and/or collectively, did not provide Claimant’s time and payroll records and instead directed Claimant to download the documents from a website – paycom.com. Notably, Claimant no longer had access to the paycom website due to his termination. After obtaining access to the website and resetting his credentials, Claimant was unable to locate, view and/or download his time records on the paycom website. To date, Claimant has not received or been able to access his time records. Based on Claimant’s experience, it is his understanding and belief that the Companies, individually and/or collectively, do not provide employment and personnel records to Route Service Employees upon request.

Claimant contends that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to maintain employment and personnel records, such as time records, for a period of at least three years. For instance, Claimant requested to obtain and/or inspect his personnel file and employment records, such as this time records. Despite being directed to download his time records from the paycom website, upon accessing and

searching the site, it is evident that the website does not contain Claimant's time records. To date, Claimant has not received his time records. Based on the foregoing, it is Claimant's understanding and belief that the Companies, individually and/or collectively, do not maintain personnel and employment records for a period of at least three years for all Route Service Employees as required by California law.

Due to the foregoing Labor Code violations, as well as those outlined in the Initial Notice, the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Route Service Employees certain rights afforded to them under the Labor Code and the applicable IWC Wage Order. Claimant makes all claims included in this amended notice and the Initial Notice against the Companies, individually and/or collectively, on behalf of himself and all other Route Service Employees.

All facts, claims and/or legal theories contained in this amended notice, as well as the Initial Notice, are alleged and/or asserted on behalf of Claimant and all other Route Service Employees. The facts, claims, and/or legal theories contained in the Initial Notice and this amended notice are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories discovered after the sending of this amended notice on behalf of himself and all other current and former Route Service Employees against the Companies, individually and/or collectively, and/or other persons that may be discovered after the sending of this amended written notice. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Companies, individually and collectively, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Companies, individually and collectively, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained in the Initial Notice and this amended written notice, and those who were acting within the authority and/or scope of the Companies, individually and collectively. Claimant reserves the right to modify the facts and/or add any new claims by amending this amended notice and/or by adding facts and/or claims to any civil complaint.

FAILURE TO PROVIDE EMPLOYMENT AND PERSONNEL RECORDS UPON REQUEST
(Labor Code §§ 226(b), 226(c), 226(f), 1198.5 and 1198.5(k))

Labor Code § 226(b) mandates that employers, "shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." Labor Code § 226(c) further provides,

[a]n employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.

Labor Code § 226(f) imposes a civil penalty on employers for violations of Labor Code § 226(c). Labor Code § 226(f) states that “[a] failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

Labor Code § 1198.5 grants every current and former employee the right to receive a copy of the personnel records that the employer maintains. Labor Code § 1198.5 mandates that the contents of the personnel records be available for inspection within, but no later than, 30 days from the date the employer receives the written request. An employer who fails to provide a copy of the records requested is subject to a penalty of \$750 as outlined in Labor Code § 1198.5(k), which states,

[i]f an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

As set forth above, the Companies, individually and/or collectively, violated these requirements by failing to provide Claimant with a copy of his personnel and/or employment records, despite Claimant requesting a copy of these records in writing as permitted by California law. Thus, the Companies, individually and/or collectively, have violated Labor Code §§ 226(b) and (c) and Labor Code § 1198.5 by failing to provide Claimant with a copy of his personnel and/or employment records, such as his time records, within the prescribed time frame. Claimant will pursue all available remedies for the Companies’, individual and/or collective, violations on behalf of himself and other Route Service Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226(a), 226(e), 1174, and 1174.5, and the “Records” section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) mandates, in pertinent part:

The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Labor Code § 1174(c) requires every employer to “keep a recording showing the names and addresses of all employees employed....” Labor Code § 1174(d) further requires:

Every person employing labor in this state shall...[k]eep, 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...employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

The “Records” section of IWC Wage Order No. 7-2001 provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

As set forth above, the Companies, individually and/or collectively, violated their recordkeeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the meal periods, as well as failing to accurately record the total hours worked at the appropriate rate of pay during the pay period, and the actual wages earned and paid. The Companies, individually and/or collectively, failed to maintain the time records for Route Service Employees, such as Claimant for a period of at least three years. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

CONCLUSION

Based on this amended notice and the Initial Notice, the Companies, individually and/or collectively, have violated the Labor Code and IWC Wage Order 7-2001, thereby depriving Claimant and other Route Service Employees of the rights and protections afforded to them. Claimant has satisfied the

California Labor and Workforce Development Agency
Solaray, LLC
Solaray Sunglasses, LLC
SRP Companies, Inc.
April 28, 2021
Page 6



prerequisites of the PAGA to serve as a representative of all Route Service Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate a separate civil action and/or amend a current civil action, on behalf of himself and all other Route Service Employees, as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink that reads "Monique R. Rodriguez". The signature is written in a cursive, flowing style.

Monique R. Rodriguez

Enclosure: Exhibit 1 – April 12, 2021 Initial Notice

EXHIBIT 1

April 12, 2021

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Monique R. Rodriguez
mrodriguez@grahamhollis.com
619.546.4373 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Solaray, LLC
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
620 S. Linden Street
Sapulpa, OK 74066

Solaray, LLC
620 S. Linden Street
Sapulpa, OK 74066

SRP Companies, Inc.
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
c/o C T Corporation System
818 West Seventh Street, Ste. 930
Los Angeles, CA 90017

SRP Companies, Inc.
215 N. 1800 W Street
Lindon, UT 84042

Solaray Sunglasses, LLC
P.O. Box 1168
Sapulpa, OK 74067

SRP Companies, Inc.
401 S. Wilcox Street
Castle Rock, CO 80104

Re: Tom Hefner's PAGA Claims Against Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Dear California Labor and Workforce Development Agency, Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.:

Please be advised that Tom Hefner ("Claimant") has retained our firm, Graham**Hollis** APC, to represent him for various claims against Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc. (together, the "Companies").

Please be advised that this letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Companies of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Companies, individually and/or collectively, committed against him and all other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar

position during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support his Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, “PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent himself and all other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar position during the relevant time period (referred to herein as the “Route Service Employees”). All Route Service Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant contends that he and all other Route Service Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Solaray, LLC is a limited liability company that is organized in the state of California. Solaray, LLC is a wholesale supplier of sunglasses and other apparel. Solaray LLC is managed by SRP Companies.

Solaray Sunglasses, LLC is a limited liability company that is organized in the state of Delaware. Solaray Sunglasses, LLC is a wholesale supplier of sunglasses and other apparel. Solaray Sunglasses, LLC is managed by SRP Companies.

SRP Companies, Inc. is a private retail company that manages numerous brands and whose services include delivering merchandise throughout the state of California. Its primary place of business is believed to be in Castle Rock, Colorado.

Claimant was employed by the Companies from approximately June 22, 2020 through January 11, 2021 as a Route Service Representative. Claimant was initially assigned to a route within the Bakersfield Territory, which encompassed the area from San Luis Obispo to Ventura. Approximately two months after his employment began, the Companies restructured their routes to require Claimant to drive in an area between San Jose and North Los Angeles. The Companies provided Claimant and other Route Service Representatives with a company vehicle, a company cell phone, and a storage unit in connection with his employment. The Companies also provided a portable printer and scanner so that he could complete any administrative work within the vehicle. As a Route Service Representative, Claimant’s job duties included, but were not limited to, loading and/unloading a company vehicle with the Companies’ merchandise, driving a company vehicle in and around routes to deliver the Companies’ merchandise to customers, communicating with customers, and keeping supervisors abreast of deliveries of merchandise. Generally, Claimant worked approximately 14-16 hours per day and/or 60-68 hours per week, and his distant routes often required him to stay overnight in motels. He earned \$15.25 per hour, plus bonuses. At all relevant times, Claimant was classified by the Companies as a non-exempt employee, earned an hourly wage, and was to be paid on a biweekly basis.

Claimant contends that at all relevant times, the Companies, individually and/or collectively employed, and continue to employ, Route Service Employees in various non-exempt positions. Claimant also contends that all policies, practices, procedures, and/or guidelines of the Companies, individually and/or collectively, applicable to Claimant were also applicable to all other Route Service Employees throughout the relevant time period. Claimant further contends that he and all other Route Service Employees suffered, and current Route Service Employees will continue to suffer, the same and/or similar violations of law described herein.

Claimant alleges that the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Route Service Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Companies, individually and/or collectively, failed, and continue to fail, to provide Claimant and other Route Service Employees with legally compliant meal and/or rest periods and/or pay them premium wages for non-compliant meal and/or rest periods; failed, and continue to fail, to pay Route Service Employees all minimum, regular, overtime and/or double time wages for all hours worked; failed, and continue to fail, to maintain accurate employment records; failed, and continue to fail, to furnish all Route Service Employees, including Claimant, with accurate itemized wage statements; failed to timely pay former Route Service Employees, including Claimant, all wages due and owing upon separation of employment and/or pay the required waiting time penalties; and unlawfully deducted earned wages when the Companies, individually and/or collectively, made former Route Service Employees, such as Claimant, pay a fee in connection with receipt of their final payment via wire transfer.

Claimant contends that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure and/or guideline of not providing Route Service Employees, including Claimant, with the opportunity to take timely 30-minute, off-duty, uninterrupted meal periods that are free from the employer’s control when they work more than six (6) hours in a day. Claimant also alleges that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to provide Claimant and other Route Service Employees with the opportunity to take a timely second 30-minute, off-duty, uninterrupted meal period that is free from the employer’s control when they work more than ten (10) hours in a day. Instead, the Companies, individually and/or collectively, provided such a heavy workload that taking meal periods was impossible if Route Service Employees were to complete their assignments in the allotted time frame. The Companies, individually and/or collectively, expressed disapproval of employees to work in excess of 12 hours per day, and the Companies expected them to complete their work while working a maximum 10 hours per day. The Companies planned for Claimant and, on information and belief, other Route Service Employees to make deliveries within 10 minutes, which is an impossibly short amount of time to complete the deliveries, particularly because the Companies wanted the deliveries made between the hours of 7:00 a.m. and 4:00 p.m. The Companies, individually and/or collectively, made no efforts to allocate time for Claimant and, on information and belief, other Route Service Employees to have off-duty meal periods. As a result, Claimant and, on information and belief, other Route Service Employees could only eat while driving. Further, the Companies, individually and/or collectively, did not provide any system for recording meal periods. The Companies, individually and/or collectively, did not pay premium wages to Route Service

Employees, such as Claimant, for non-compliant meal periods despite depriving employees the ability to take meal periods.

Claimant asserts that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to authorize and permit Route Service Employees to take at least a 10-minute duty free rest period for every four hours worked or major fraction thereof. Claimant asserts that due to the same workload and time constraints imposed by the Companies, individually and/or collectively, the Companies, individually and/or collectively, deprived Claimant and, on information and belief, other Route Service Employees of the ability to take legally compliant rest periods. The Companies, individually and/or collectively, made no effort to allocate time for rest periods. The Companies, individually and/or collectively, did not pay premium wages for non-compliant rest periods despite knowing their assignments were too substantial to allow two or more 10-minute rest periods per day.

Claimant asserts that the Companies, individually and/or collective, had, and continue to have, a policy, practice, procedure, and/or guideline of not timely paying Claimant and, on information and belief, other Route Service Employees all minimum, regular, overtime and/or double time wages for all time worked. For instance, the Companies, individually and/or collectively, provided Claimant and other Route Service Employees work assignments without specific schedules (although the Companies wanted Route Service Employees to visit customers and/or deliver product between 7:00 a.m. and 4:00 p.m.), though it disfavored work in excess of 12 hours per day. Often, Claimant and, on information and belief, Route Service Employees had to work in excess of 8 hours, and often in excess of 12 hours per day to complete their assignments, due to the workload and traffic delays. When Route Service Employees worked in excess of 8 hours per day, the Companies, individually and/or collectively, did not pay the appropriate overtime compensation. Additionally, when Route Service Employees worked in excess of 12 hours, the Companies, individually and/or collectively, did not pay double time and instead only paid the hours at their respective overtime rates. In fact, after Claimant complained about not being paid double time wages several months into his employment, the Companies, individually and/or collectively, purported to pay all double time wages he earned. However, the Companies, individually and/or collectively, did not provide Claimant with any information by which to assess whether the Companies, individually and/or collectively, paid all double time wages owed. Even after this "correction," the Companies, individually and/or collectively, continued their failure to pay Claimant the double time rate for any subsequent wages even though Claimant continued to work in excess of 12 hours per day. On that basis, Claimant believes the Companies regularly did not pay Route Service Employees all minimum, regular, overtime and/or double time wages owed for all time actually worked or spent under the control of the Companies, individually and/or collectively.

Claimant attests that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure and/or guideline of not maintaining accurate employment records. As described above, the Companies, individually and/or collectively, did not even provide Claimant and, on information and belief, other Route Service Employees with a method by which to record meal periods. Therefore, the Companies, individually and/or collectively, did not maintain the required meal period records whatsoever, let alone maintain accurate records.

Claimant contends that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of furnishing Route Service Employees, including Claimant, with wage statements that do not comply with California law. The wage statements the Companies, individually and/or collectively, furnished to Route Service Employees did not accurately reflect meal and/or rest period premiums owed, and/or did not reflect the minimum, regular, overtime and/or double time wages owed. As a result, the wage statements did not accurately reflect the accurate minimum, regular, overtime and/or double time rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. The wage statements also did not identify the name and address of the legal entity that is the employer.

Claimant asserts that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of not timely paying former Route Service Employees all wages due and owing upon separation of employment and/or the required waiting time penalties for the late payment of wages. As described above, the Companies, individually and/or collectively, routinely denied Claimant and, on information and belief, other Route Service Employees all premium wages for non-compliant meal and/or rest periods and all minimum, regular, overtime and/or double time wages for all time actually worked or spent under the control of the Companies. Due to the late payment of all wages due and owing upon separation of employment, the Companies must also pay waiting time penalties to all former Route Service Employees.

Claimant asserts that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of unlawfully deducting earned wages from former Route Service Employees. For instance, the Companies, individually and/or collectively, required Claimant and, on information and belief, other Route Service Employees to pay the wire transfer fees when the Companies, individually and/or collectively, wired him his final paycheck. The Companies, individually and/or collectively, paid Claimant \$20 less for his final paycheck because the fees were deducted from his pay.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Solaray, LLC, Solaray Sunglasses, LLC, and/or SRP Companies, Inc. are liable for the PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations alleged herein. (See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 [“if there is evidence and a finding that a party other than the employer ‘violates, or causes of be violated’ the overtime laws (§ 558(a)), or ‘pays or causes to be paid to an employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”]; see also *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 [holding the same].)

Due to the foregoing Labor Code violations, the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Route Service Employees certain rights afforded to them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Companies, individually and/or collectively, on behalf of himself and all other Route Service Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Route Service Employees. The facts, claims and/or legal theories contained in this written notice are based on information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or legal theories discovered after the sending of this letter on behalf of himself and other current and former Route Service Employees against the Companies, individually and/or collectively, and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Companies, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Companies, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Companies. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to his civil complaint.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS
AND/OR PAY PREMIUM WAGES FOR NON-COMPLIANT MEAL PERIODS**

(Labor Code §§ 204, 226.7, 512, and 558, and the "Meal Periods" section of IWC Wage Order No. 7-2001)

Labor Code § 512(a) provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 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 worked 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.

In pertinent part, the "Meal Periods" section of IWC Wage Order No. 7-2001 states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal

period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to.

(B) An employer may not employ an 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 worked 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....

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at 1040.)

Pursuant to Labor Code § 226.7(c),

[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

Labor Code § 558 provides that "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" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial

violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to provide Claimant and, on information and belief, other Route Service Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth (6th) hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other Route Service Employees were entitled to receive, and did not receive, one-hour of premium wages for each day a compliant meal period was not provided on the payday designated by the Companies. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS
AND/OR PAY PREMIUM WAGES FOR NON-COMPLIANT REST PERIODS**
(Labor Code §§ 204, 226.7, and the “Rest Periods” section of IWC Wage Order No. 7-2001)

The “Rest Periods” section of IWC Wage Order No. 7-2001 provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, 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.

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,

or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to authorize and permit Claimant and, on information and belief, other Route Service Employees to take an off-duty, uninterrupted 10-minute rest period for every four hours worked or major fraction thereof. Therefore, Claimant and other Route Service Employees were entitled to receive, and did not receive, one-hour of premium wages on the designated payday for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, OVERTIME
AND/OR DOUBLE TIME WAGES**

(Labor Code §§ 204, 210, 510, 558, and the "Hours and Days of Work"
sections of IWC Wage Order No. 7-2001)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime and double time wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an

employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”).)

The “Minimum Wages” section of IWC Wage Order No. 7-2001 further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 510(a), which codifies an employee’s right to overtime and double time compensation, provides:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The “Hours and Days of Work” and “Minimum Wages” sections of IWC Wage Order No. 7-2001 mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code § 558 provides that "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" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to timely pay all minimum, regular, overtime, and/or double time wages owed to Claimant and, on information and belief, other Route Service Employees. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226(a), 226(e), 1174, and 1174.5, and the "Records" section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) mandates, in pertinent part:

The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Labor Code § 1174(c) requires every employer to "keep a recording showing the names and addresses of all employees employed...." Labor Code § 1174(d) further requires:

Every person employing labor in this state shall...[k]eep, 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...employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

The “Records” section of IWC Wage Order No. 7-2001 provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

As set forth above, the Companies, individually and/or collectively, violated their record keeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the meal periods whatsoever, as well as failing to accurately record the total hours worked at the appropriate rate of pay during the pay period, and the actual wages earned and paid. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

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FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 226.3, and the “Records” section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) states in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and... (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

The “Records” section of IWC Wage Order No. 7-2001 further provides, in pertinent part:

Every employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee and the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys’ fees.

Labor Code § 226(h) states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.”

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Companies, individually and/or collectively, failed to furnish Claimant and other Route Service Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include all applicable hourly rates in effect during the pay period, including the proper overtime and/or double time rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON
SEPARATION OF EMPLOYMENT**
(Labor Code §§ 201, 202, 203 and 210)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides, in pertinent part,

[i]f 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.

Labor Code § 203(a) further states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

As discussed herein, the Companies, individually and/or collectively, violated these Labor Code sections by not timely paying to Claimant and other former Route Service Employees all minimum,

regular, overtime and/or double time wages, as well as meal and/or rest period premium wages, within the required time upon separation of their employment. The Companies, individually and/or collectively, also did not pay Claimant and, on information and belief, other former Route Service Employees the required waiting time penalties for the late payment of wages. Thus, the Companies, individually and/or collectively, violated California law. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of California law on behalf of himself and all former Route Service Employees to the extent allowed by law.

UNLAWFUL DEDUCTION AND UNDERPAYMENT OF WAGES

(Labor Code §§ 212, 221, 223, 224, 225.5.)

Labor Code § 212 requires employers to ensure that paychecks maybe cashed without delay and without a fee or discount. Labor Code § 221 states, “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code § 223 provides “where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or contract. Labor Code § 224 disallows employers from making deductions from wages without authorization from the employee, with limited exceptions.

Labor Code § 225.5 provides the following penalties for violations of Labor Code §§ 212, 216, 221, 222 or 223: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As set forth above, the Companies, individually and/or collectively, did not provide Claimant, and on information and belief other Route Service Employees with their final wages without a fee or discount, because the Companies, individually and/or collectively, required Claimant to pay the wiring fees on his final paycheck and thus deducted the fee from Claimant’s final wages. On information and belief, Claimant asserts the Companies, individually and/or collectively, similarly illegally deducted wages from other Route Service Employees. Claimant will pursue all available remedies for the Companies’, individual and/or collective, violations on behalf of himself and other Route Service Employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND APPLICABLE IWC WAGE ORDER

(Labor Code §§ 210, 225.5, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in section 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

Labor Code § 225.5 provides the following penalties for violations of Labor Code §§ 212, 216, 221, 222 or 223: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code §558 subjects an employer or any person acting on behalf of an employer who violates Labor Code Labor Code §§ 500-558, or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation. Labor Code § 558.1(a) states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (c) and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is

intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 223, 224, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, and 1198 and relevant IWC Wage Orders.

As set forth above, the Companies, individually and/or collectively, violated the Labor Code and IWC Wage Order No. 7-2001 by failing to timely pay Claimant and all Route Service Employees all meal and/or rest period premium wages; failing to pay all minimum, regular, overtime, and/or double time wages for all time actually worked; failing to furnish accurate itemized wage statements; failing to pay all waiting time penalties owed; failing to maintain accurate employee records; and making illegal deductions from wages, as required under the Labor Code and the applicable sections of IWC Wage Order No. 7-2001. As a result, the Companies, individually and/or collectively, are liable for civil penalties under the Labor Code and Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Companies', individual and/or collective, violations on behalf of himself and all Route Service Employees to the extent allowed by law.

ATTORNEYS' FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 1197.1, 2698 *et seq.*, and 2802)

Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 1197.1, 225.5, 2802 and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorneys' fees and costs.

Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Companies, individually and/or collectively, are liable for these items. Claimant has already incurred actual damages, costs and attorney's fees, and he will continue to incur such costs as a result of the Companies', individual and/or collective, unlawful actions. Claimant will pursue all available remedies against the Companies, individually and/or collectively, including those provided under the PAGA, on behalf of himself and other Route Service Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

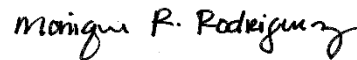
///

CONCLUSION

Based on the foregoing, the Companies, individually and/or collectively, have violated, and will continue to violate, the Labor Code and IWC Wage Order No. 7-2001, thereby depriving Claimant and other Route Service Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Route Service Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the California agency declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Route Service Employees, as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez

EXHIBIT 3

May 19, 2021

Attorneys at Law

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San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Monique R. Rodriguez
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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Solaray, LLC
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
620 S. Linden Street
Sapulpa, OK 74066

Solaray, LLC
620 S. Linden Street
Sapulpa, OK 74066

SRP Companies, Inc.
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
c/o C T Corporation System
818 West Seventh Street, Ste. 930
Los Angeles, CA 90017

SRP Companies, Inc.
215 N. 1800 W Street
Lindon, UT 84042

Solaray Sunglasses, LLC
P.O. Box 1168
Sapulpa, OK 74067

SRP Companies, Inc.
401 S. Wilcox Street
Castle Rock, CO 80104

Re: Second Amendment to Tom Hefner's PAGA Claims Against Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Dear California Labor and Workforce Development Agency, Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.:

Please be advised that this letter shall serve as Tom Hefner's ("Claimant") second amended written notice to the California Labor and Workforce Development Agency ("LWDA") and Solaray, LLC, Solaray Sunglasses, LLC, and SRP Companies, Inc. (collectively, the "Companies") of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Companies, individually and/or collectively, committed against him and all other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar position during the relevant statutory period. Claimant provides this second amended notice, which includes the facts and theories to support the Labor Code violations, Claimant contends the Companies,

individually and/or collectively, violated in accordance with the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this second amended notice, Claimant intends to represent himself and other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar position during the relevant time period (“Route Service Employees”). All Route Service Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant contends that he and all other Route Service Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Claimant’s initial written notice, dated April 12, 2021, is attached hereto as **Exhibit 1** (“Initial Notice”) and incorporated herein by reference. The Initial Notice was submitted to the LWDA via online upload on April 12, 2021 and sent to Solaray, LLC, Solaray Sunglasses, LLC, and SRP Companies, Inc. via certified mail on the same date.

Claimant’s amended written notice, dated April 28, 2021, is attached hereto as **Exhibit 2** (“Amended Notice”) and incorporated herein by reference. The Amended Notice was submitted to the LWDA via online upload on April 28, 2021 and sent to Solaray, LLC, Solaray Sunglasses, LLC, and SRP Companies, Inc. via certified mail on the same date.

Since the submission of the Initial Notice and the Amended Notice, Claimant has become aware of new information and amends the Initial Notice and the Amended Notice to add the following additional claims and/or factual allegations. The claims in the Initial Notice, the Amended Notice, as well as this second amended written notice are asserted on behalf of Claimant and all other Route Service Employees.

The Initial Notice and Amended Notice assert that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to timely pay Route Service Employees all minimum, regular, overtime, and/or double time wages for all hours worked and/or spent under the control of the Companies, individually and/or collectively, at least twice per calendar month on the dates designated in advance by the Companies. In addition to the facts previously alleged in the Initial Notice and Amended Notice, Claimant alleges the Companies, individually and/or collectively, required him, and on information and belief other Route Service Employees, to engage in work on their final day of work without compensation. For example, the Companies, individually and/or collectively, required Claimant to spend time delivering the Companies’ vehicle to its storage facility, which required him to make a one-hour drive to the storage facility and another hour or so spent under the control of the employer when his supervisor had to drive him home from the storage facility. Prior to Claimant’s last day of work, the Companies, individually and/or collectively, had removed his credentials to clock in and out. Therefore, Claimant did not have the capability to record his time worked. The Companies, individually and/or collectively, made no attempt to rectify this and/or compensate him for this time spent performing work for or spent under the Companies,

individually and/or collectively, on his final day of employment. On information and belief, Claimant asserts the Companies, individually and/or collectively, denied other Route Service Employees of wages owed at the conclusion of their employment.

For the same and/or similar reasons, the Companies, individually and/or collectively, also failed to timely compensate Claimant and other Route Service Employees all wages due and owing upon separation of employment and/or the necessary waiting time penalties for late payment of such wages. This is particularly true as Claimant and, on information and belief, other Route Service Employees have yet to be paid for the time they spent engaged in work and/or otherwise spent under the control of the Companies, individually and/or collectively, on their last day of work. Claimant and, on information and belief, other Route Service Employees have yet to receive waiting time penalties for late payment of such wages.

Due to the foregoing Labor Code violations, as well as those outlined in the Initial Notice and Amended Notice, the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Route Service Employees certain rights afforded to them under the Labor Code and the applicable IWC Wage Order. Specifically, the Companies failed to timely pay all minimum, regular, overtime, and/or double time wages for all time actually worked; failed to timely pay all wages due and owing upon separation of employment; and failed to pay the required waiting time penalties. Claimant makes all claims asserted in this second amended notice, the Amended Notice, and the Initial Notice against the Companies, individually and/or collectively, on behalf of himself and all other Route Service Employees.

All facts, claims and/or legal theories contained in this second amended notice, as well as the Amended Notice and the Initial Notice, are alleged and/or otherwise asserted on behalf of Claimant and all other Route Service Employees. The facts, claims, and/or legal theories contained in the this second amended notice, the Initial Notice and the Amended Notice are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories discovered after the sending of this second amended notice on behalf of himself and all other current and former Route Service Employees against the Companies, individually and/or collectively, and/or other persons that may be discovered after the sending of this second amended written notice. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Companies, individually and collectively, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Companies, individually and collectively, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained in the Amended Notice, the Initial Notice, and this second amended written notice, and those who were acting within the authority and/or scope of the Companies, individually and collectively. Claimant reserves the right to modify the facts and/or add any new claims by amending this second amended notice and/or by adding facts and/or claims to any civil complaint.

**FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, OVERTIME AND/OR DOUBLE
TIME WAGES**

(Labor Code §§ 204, 210, 510, 558, and the “Hours and Days of Work” sections of IWC Wage Order No. 7-2001)

Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime and double time wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”].)

The “Minimum Wages” section of IWC Wage Order No. 7-2001 further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 510(a), which codifies an employee’s right to overtime and double time compensation, provides:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The "Hours and Days of Work" and "Minimum Wages" sections of IWC Wage Order No. 7-2001 mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code § 558 provides that "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" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth herein, in the Amended Notice, and in the Initial Notice, the Companies, individually and/or collectively, have a policy, practice, procedure, and/or guideline of failing to timely pay all minimum, regular, overtime, and/or double time wages owed to Claimant and, on information and belief, other Route Service Employees. This includes all of the allegations alleged herein, the Amended Notice, and the Initial Notice for the Companies failure to timely pay Route Service Employees for all work

performed by Claimant and other Route Service Employees. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for its violations of the Labor Code on behalf of himself and all Route Service Employees to the extent permitted by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON
SEPARATION OF EMPLOYMENT**
(Labor Code §§ 201, 202, 203 and 210)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides, in pertinent part,

[i]f 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.

Labor Code § 203(a) further states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

As set forth herein, in the Amended Notice, and in the Initial Notice, the Companies, individually and/or collectively, have a policy, practice, procedure, and/or guideline of failing to timely pay all wages due and owing upon separation of employment Claimant and, on information and belief, other former Route Service Employees. The Companies, individually and/or collectively, also did not pay Claimant and, on information and belief, other former Route Service Employees the required waiting time penalties for the late payment of wages. This claim includes all of the allegations asserted herein, the Amended Notice, and the Initial Notice for the Companies, individually and/or collectively. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for its violations of the Labor Code on behalf of himself and all Route Service Employees to the extent permitted by law.

California Labor and Workforce Development Agency
Solaray, LLC
Solaray Sunglasses, LLC
SRP Companies, Inc.
May 19, 2021
Page 7



CONCLUSION

Based on this second amended notice, the Amended Notice, and the Initial Notice, the Companies, individually and/or collectively, have violated the Labor Code and IWC Wage Order 7-2001, thereby depriving Claimant and other Route Service Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Route Service Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene and/or act within the time prescribed by the PAGA, Claimant may elect to initiate a separate civil action and/or amend a current civil action, on behalf of himself and all other Route Service Employees, as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink that reads 'Monique R. Rodriguez'. The signature is written in a cursive, flowing style.

Monique R. Rodriguez

Enclosures: Exhibit A (April 12, 2021 Initial Notice)
Exhibit B (April 28, 2021 Amended Notice)

EXHIBIT 1

April 12, 2021

Attorneys at Law

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619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Monique R. Rodriguez
mrodriguez@grahamhollis.com
619.546.4373 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Solaray, LLC
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
620 S. Linden Street
Sapulpa, OK 74066

Solaray, LLC
620 S. Linden Street
Sapulpa, OK 74066

SRP Companies, Inc.
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
c/o C T Corporation System
818 West Seventh Street, Ste. 930
Los Angeles, CA 90017

SRP Companies, Inc.
215 N. 1800 W Street
Lindon, UT 84042

Solaray Sunglasses, LLC
P.O. Box 1168
Sapulpa, OK 74067

SRP Companies, Inc.
401 S. Wilcox Street
Castle Rock, CO 80104

Re: Tom Hefner's PAGA Claims Against Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Dear California Labor and Workforce Development Agency, Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.:

Please be advised that Tom Hefner ("Claimant") has retained our firm, Graham**Hollis** APC, to represent him for various claims against Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc. (together, the "Companies").

Please be advised that this letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Companies of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Companies, individually and/or collectively, committed against him and all other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar

position during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support his Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, “PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent himself and all other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar position during the relevant time period (referred to herein as the “Route Service Employees”). All Route Service Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant contends that he and all other Route Service Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Solaray, LLC is a limited liability company that is organized in the state of California. Solaray, LLC is a wholesale supplier of sunglasses and other apparel. Solaray LLC is managed by SRP Companies.

Solaray Sunglasses, LLC is a limited liability company that is organized in the state of Delaware. Solaray Sunglasses, LLC is a wholesale supplier of sunglasses and other apparel. Solaray Sunglasses, LLC is managed by SRP Companies.

SRP Companies, Inc. is a private retail company that manages numerous brands and whose services include delivering merchandise throughout the state of California. Its primary place of business is believed to be in Castle Rock, Colorado.

Claimant was employed by the Companies from approximately June 22, 2020 through January 11, 2021 as a Route Service Representative. Claimant was initially assigned to a route within the Bakersfield Territory, which encompassed the area from San Luis Obispo to Ventura. Approximately two months after his employment began, the Companies restructured their routes to require Claimant to drive in an area between San Jose and North Los Angeles. The Companies provided Claimant and other Route Service Representatives with a company vehicle, a company cell phone, and a storage unit in connection with his employment. The Companies also provided a portable printer and scanner so that he could complete any administrative work within the vehicle. As a Route Service Representative, Claimant’s job duties included, but were not limited to, loading and/unloading a company vehicle with the Companies’ merchandise, driving a company vehicle in and around routes to deliver the Companies’ merchandise to customers, communicating with customers, and keeping supervisors abreast of deliveries of merchandise. Generally, Claimant worked approximately 14-16 hours per day and/or 60-68 hours per week, and his distant routes often required him to stay overnight in motels. He earned \$15.25 per hour, plus bonuses. At all relevant times, Claimant was classified by the Companies as a non-exempt employee, earned an hourly wage, and was to be paid on a biweekly basis.

Claimant contends that at all relevant times, the Companies, individually and/or collectively employed, and continue to employ, Route Service Employees in various non-exempt positions. Claimant also contends that all policies, practices, procedures, and/or guidelines of the Companies, individually and/or collectively, applicable to Claimant were also applicable to all other Route Service Employees throughout the relevant time period. Claimant further contends that he and all other Route Service Employees suffered, and current Route Service Employees will continue to suffer, the same and/or similar violations of law described herein.

Claimant alleges that the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Route Service Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Companies, individually and/or collectively, failed, and continue to fail, to provide Claimant and other Route Service Employees with legally compliant meal and/or rest periods and/or pay them premium wages for non-compliant meal and/or rest periods; failed, and continue to fail, to pay Route Service Employees all minimum, regular, overtime and/or double time wages for all hours worked; failed, and continue to fail, to maintain accurate employment records; failed, and continue to fail, to furnish all Route Service Employees, including Claimant, with accurate itemized wage statements; failed to timely pay former Route Service Employees, including Claimant, all wages due and owing upon separation of employment and/or pay the required waiting time penalties; and unlawfully deducted earned wages when the Companies, individually and/or collectively, made former Route Service Employees, such as Claimant, pay a fee in connection with receipt of their final payment via wire transfer.

Claimant contends that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure and/or guideline of not providing Route Service Employees, including Claimant, with the opportunity to take timely 30-minute, off-duty, uninterrupted meal periods that are free from the employer’s control when they work more than six (6) hours in a day. Claimant also alleges that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to provide Claimant and other Route Service Employees with the opportunity to take a timely second 30-minute, off-duty, uninterrupted meal period that is free from the employer’s control when they work more than ten (10) hours in a day. Instead, the Companies, individually and/or collectively, provided such a heavy workload that taking meal periods was impossible if Route Service Employees were to complete their assignments in the allotted time frame. The Companies, individually and/or collectively, expressed disapproval of employees to work in excess of 12 hours per day, and the Companies expected them to complete their work while working a maximum 10 hours per day. The Companies planned for Claimant and, on information and belief, other Route Service Employees to make deliveries within 10 minutes, which is an impossibly short amount of time to complete the deliveries, particularly because the Companies wanted the deliveries made between the hours of 7:00 a.m. and 4:00 p.m. The Companies, individually and/or collectively, made no efforts to allocate time for Claimant and, on information and belief, other Route Service Employees to have off-duty meal periods. As a result, Claimant and, on information and belief, other Route Service Employees could only eat while driving. Further, the Companies, individually and/or collectively, did not provide any system for recording meal periods. The Companies, individually and/or collectively, did not pay premium wages to Route Service

Employees, such as Claimant, for non-compliant meal periods despite depriving employees the ability to take meal periods.

Claimant asserts that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to authorize and permit Route Service Employees to take at least a 10-minute duty free rest period for every four hours worked or major fraction thereof. Claimant asserts that due to the same workload and time constraints imposed by the Companies, individually and/or collectively, the Companies, individually and/or collectively, deprived Claimant and, on information and belief, other Route Service Employees of the ability to take legally compliant rest periods. The Companies, individually and/or collectively, made no effort to allocate time for rest periods. The Companies, individually and/or collectively, did not pay premium wages for non-compliant rest periods despite knowing their assignments were too substantial to allow two or more 10-minute rest periods per day.

Claimant asserts that the Companies, individually and/or collective, had, and continue to have, a policy, practice, procedure, and/or guideline of not timely paying Claimant and, on information and belief, other Route Service Employees all minimum, regular, overtime and/or double time wages for all time worked. For instance, the Companies, individually and/or collectively, provided Claimant and other Route Service Employees work assignments without specific schedules (although the Companies wanted Route Service Employees to visit customers and/or deliver product between 7:00 a.m. and 4:00 p.m.), though it disfavored work in excess of 12 hours per day. Often, Claimant and, on information and belief, Route Service Employees had to work in excess of 8 hours, and often in excess of 12 hours per day to complete their assignments, due to the workload and traffic delays. When Route Service Employees worked in excess of 8 hours per day, the Companies, individually and/or collectively, did not pay the appropriate overtime compensation. Additionally, when Route Service Employees worked in excess of 12 hours, the Companies, individually and/or collectively, did not pay double time and instead only paid the hours at their respective overtime rates. In fact, after Claimant complained about not being paid double time wages several months into his employment, the Companies, individually and/or collectively, purported to pay all double time wages he earned. However, the Companies, individually and/or collectively, did not provide Claimant with any information by which to assess whether the Companies, individually and/or collectively, paid all double time wages owed. Even after this "correction," the Companies, individually and/or collectively, continued their failure to pay Claimant the double time rate for any subsequent wages even though Claimant continued to work in excess of 12 hours per day. On that basis, Claimant believes the Companies regularly did not pay Route Service Employees all minimum, regular, overtime and/or double time wages owed for all time actually worked or spent under the control of the Companies, individually and/or collectively.

Claimant attests that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure and/or guideline of not maintaining accurate employment records. As described above, the Companies, individually and/or collectively, did not even provide Claimant and, on information and belief, other Route Service Employees with a method by which to record meal periods. Therefore, the Companies, individually and/or collectively, did not maintain the required meal period records whatsoever, let alone maintain accurate records.

Claimant contends that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of furnishing Route Service Employees, including Claimant, with wage statements that do not comply with California law. The wage statements the Companies, individually and/or collectively, furnished to Route Service Employees did not accurately reflect meal and/or rest period premiums owed, and/or did not reflect the minimum, regular, overtime and/or double time wages owed. As a result, the wage statements did not accurately reflect the accurate minimum, regular, overtime and/or double time rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. The wage statements also did not identify the name and address of the legal entity that is the employer.

Claimant asserts that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of not timely paying former Route Service Employees all wages due and owing upon separation of employment and/or the required waiting time penalties for the late payment of wages. As described above, the Companies, individually and/or collectively, routinely denied Claimant and, on information and belief, other Route Service Employees all premium wages for non-compliant meal and/or rest periods and all minimum, regular, overtime and/or double time wages for all time actually worked or spent under the control of the Companies. Due to the late payment of all wages due and owing upon separation of employment, the Companies must also pay waiting time penalties to all former Route Service Employees.

Claimant asserts that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of unlawfully deducting earned wages from former Route Service Employees. For instance, the Companies, individually and/or collectively, required Claimant and, on information and belief, other Route Service Employees to pay the wire transfer fees when the Companies, individually and/or collectively, wired him his final paycheck. The Companies, individually and/or collectively, paid Claimant \$20 less for his final paycheck because the fees were deducted from his pay.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Solaray, LLC, Solaray Sunglasses, LLC, and/or SRP Companies, Inc. are liable for the PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations alleged herein. (See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 [“if there is evidence and a finding that a party other than the employer ‘violates, or causes of be violated’ the overtime laws (§ 558(a)), or ‘pays or causes to be paid to an employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”]; see also *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 [holding the same].)

Due to the foregoing Labor Code violations, the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Route Service Employees certain rights afforded to them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Companies, individually and/or collectively, on behalf of himself and all other Route Service Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Route Service Employees. The facts, claims and/or legal theories contained in this written notice are based on information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or legal theories discovered after the sending of this letter on behalf of himself and other current and former Route Service Employees against the Companies, individually and/or collectively, and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Companies, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Companies, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Companies. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to his civil complaint.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS
AND/OR PAY PREMIUM WAGES FOR NON-COMPLIANT MEAL PERIODS**

(Labor Code §§ 204, 226.7, 512, and 558, and the "Meal Periods" section of IWC Wage Order No. 7-2001)

Labor Code § 512(a) provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 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 worked 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.

In pertinent part, the "Meal Periods" section of IWC Wage Order No. 7-2001 states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal

period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to.

(B) An employer may not employ an 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 worked 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....

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at 1040.)

Pursuant to Labor Code § 226.7(c),

[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

Labor Code § 558 provides that "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" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial

violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to provide Claimant and, on information and belief, other Route Service Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth (6th) hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other Route Service Employees were entitled to receive, and did not receive, one-hour of premium wages for each day a compliant meal period was not provided on the payday designated by the Companies. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS
AND/OR PAY PREMIUM WAGES FOR NON-COMPLIANT REST PERIODS**
(Labor Code §§ 204, 226.7, and the “Rest Periods” section of IWC Wage Order No. 7-2001)

The “Rest Periods” section of IWC Wage Order No. 7-2001 provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, 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.

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,

or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to authorize and permit Claimant and, on information and belief, other Route Service Employees to take an off-duty, uninterrupted 10-minute rest period for every four hours worked or major fraction thereof. Therefore, Claimant and other Route Service Employees were entitled to receive, and did not receive, one-hour of premium wages on the designated payday for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, OVERTIME
AND/OR DOUBLE TIME WAGES**

(Labor Code §§ 204, 210, 510, 558, and the "Hours and Days of Work"
sections of IWC Wage Order No. 7-2001)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime and double time wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an

employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”).)

The “Minimum Wages” section of IWC Wage Order No. 7-2001 further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 510(a), which codifies an employee’s right to overtime and double time compensation, provides:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The “Hours and Days of Work” and “Minimum Wages” sections of IWC Wage Order No. 7-2001 mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code § 558 provides that "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" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to timely pay all minimum, regular, overtime, and/or double time wages owed to Claimant and, on information and belief, other Route Service Employees. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226(a), 226(e), 1174, and 1174.5, and the "Records" section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) mandates, in pertinent part:

The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Labor Code § 1174(c) requires every employer to "keep a recording showing the names and addresses of all employees employed...." Labor Code § 1174(d) further requires:

Every person employing labor in this state shall...[k]eep, 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...employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

The “Records” section of IWC Wage Order No. 7-2001 provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

As set forth above, the Companies, individually and/or collectively, violated their record keeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the meal periods whatsoever, as well as failing to accurately record the total hours worked at the appropriate rate of pay during the pay period, and the actual wages earned and paid. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

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FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 226.3, and the “Records” section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) states in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and... (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

The “Records” section of IWC Wage Order No. 7-2001 further provides, in pertinent part:

Every employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee and the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys’ fees.

Labor Code § 226(h) states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.”

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Companies, individually and/or collectively, failed to furnish Claimant and other Route Service Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include all applicable hourly rates in effect during the pay period, including the proper overtime and/or double time rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON
SEPARATION OF EMPLOYMENT**
(Labor Code §§ 201, 202, 203 and 210)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides, in pertinent part,

[i]f 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.

Labor Code § 203(a) further states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

As discussed herein, the Companies, individually and/or collectively, violated these Labor Code sections by not timely paying to Claimant and other former Route Service Employees all minimum,

regular, overtime and/or double time wages, as well as meal and/or rest period premium wages, within the required time upon separation of their employment. The Companies, individually and/or collectively, also did not pay Claimant and, on information and belief, other former Route Service Employees the required waiting time penalties for the late payment of wages. Thus, the Companies, individually and/or collectively, violated California law. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of California law on behalf of himself and all former Route Service Employees to the extent allowed by law.

UNLAWFUL DEDUCTION AND UNDERPAYMENT OF WAGES

(Labor Code §§ 212, 221, 223, 224, 225.5.)

Labor Code § 212 requires employers to ensure that paychecks maybe cashed without delay and without a fee or discount. Labor Code § 221 states, “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code § 223 provides “where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or contract. Labor Code § 224 disallows employers from making deductions from wages without authorization from the employee, with limited exceptions.

Labor Code § 225.5 provides the following penalties for violations of Labor Code §§ 212, 216, 221, 222 or 223: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As set forth above, the Companies, individually and/or collectively, did not provide Claimant, and on information and belief other Route Service Employees with their final wages without a fee or discount, because the Companies, individually and/or collectively, required Claimant to pay the wiring fees on his final paycheck and thus deducted the fee from Claimant’s final wages. On information and belief, Claimant asserts the Companies, individually and/or collectively, similarly illegally deducted wages from other Route Service Employees. Claimant will pursue all available remedies for the Companies’, individual and/or collective, violations on behalf of himself and other Route Service Employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND APPLICABLE IWC WAGE ORDER

(Labor Code §§ 210, 225.5, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in section 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

Labor Code § 225.5 provides the following penalties for violations of Labor Code §§ 212, 216, 221, 222 or 223: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects an employer or any person acting on behalf of an employer who violates Labor Code Labor Code §§ 500-558, or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation. Labor Code § 558.1(a) states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (c) and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is

intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 223, 224, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, and 1198 and relevant IWC Wage Orders.

As set forth above, the Companies, individually and/or collectively, violated the Labor Code and IWC Wage Order No. 7-2001 by failing to timely pay Claimant and all Route Service Employees all meal and/or rest period premium wages; failing to pay all minimum, regular, overtime, and/or double time wages for all time actually worked; failing to furnish accurate itemized wage statements; failing to pay all waiting time penalties owed; failing to maintain accurate employee records; and making illegal deductions from wages, as required under the Labor Code and the applicable sections of IWC Wage Order No. 7-2001. As a result, the Companies, individually and/or collectively, are liable for civil penalties under the Labor Code and Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Companies', individual and/or collective, violations on behalf of himself and all Route Service Employees to the extent allowed by law.

ATTORNEYS' FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 1197.1, 2698 *et seq.*, and 2802)

Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 1197.1, 225.5, 2802 and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorneys' fees and costs.

Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Companies, individually and/or collectively, are liable for these items. Claimant has already incurred actual damages, costs and attorney's fees, and he will continue to incur such costs as a result of the Companies', individual and/or collective, unlawful actions. Claimant will pursue all available remedies against the Companies, individually and/or collectively, including those provided under the PAGA, on behalf of himself and other Route Service Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

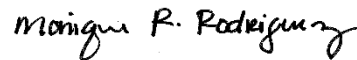
///

CONCLUSION

Based on the foregoing, the Companies, individually and/or collectively, have violated, and will continue to violate, the Labor Code and IWC Wage Order No. 7-2001, thereby depriving Claimant and other Route Service Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Route Service Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the California agency declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Route Service Employees, as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez

EXHIBIT 2

April 28, 2021

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Monique R. Rodriguez
mrodriguez@grahamhollis.com
619.546.4373 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Solaray, LLC
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
620 S. Linden Street
Sapulpa, OK 74066

Solaray, LLC
620 S. Linden Street
Sapulpa, OK 74066

SRP Companies, Inc.
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
c/o C T Corporation System
818 West Seventh Street, Ste. 930
Los Angeles, CA 90017

SRP Companies, Inc.
215 N. 1800 W Street
Lindon, UT 84042

Solaray Sunglasses, LLC
P.O. Box 1168
Sapulpa, OK 74067

SRP Companies, Inc.
401 S. Wilcox Street
Castle Rock, CO 80104

Re: Amendment to Tom Hefner's Notice of PAGA Claims Against Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Dear California Labor and Workforce Development Agency, Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.:

Please be advised that this letter shall serve as Tom Hefner's ("Claimant") amended written notice to the California Labor and Workforce Development Agency ("LWDA") and Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc. (collectively, the "Companies") of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Companies, individually and/or collectively, committed against him and all other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar position during the relevant statutory period. Claimant provides this amended notice which includes the facts and theories to support the Labor Code violations Claimant contends the Companies, individually

and/or collectively, violated in accordance with the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this amended notice, Claimant intends to represent himself and other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar position during the relevant time period (“Route Service Employees”). All Route Service Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant contends that he and all other Route Service Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Claimant’s initial written notice, dated April 12, 2021, is attached hereto as **Exhibit 1** (“Initial Notice”) and incorporated herein by reference. The Initial Notice was submitted to the LWDA via online upload on April 12, 2021 and sent to Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc. via certified mail on the same date.

Since the submission of the Initial Notice, Claimant has become aware of new information and amends the Initial Notice to add the following additional claims and/or factual allegations. The claims in the Initial Notice, as well as this amended written notice, are asserted on behalf of Claimant and all other Route Service Employees.

Claimant contends that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to provide employment and personnel records to Route Service Employees upon request in the time frame proscribed by California law. For example, Claimant sent a written request to Solaray, LLC on February 10, 2021 and to SRP Companies on April 6, 2021 to obtain and/or inspect his personnel file and employment records. Despite sending the written requests, the Companies, individually and/or collectively, failed to provide the requested information on or before the time designated by statute. Additionally, the Companies, individually and/or collectively, did not provide Claimant’s time and payroll records and instead directed Claimant to download the documents from a website – paycom.com. Notably, Claimant no longer had access to the paycom website due to his termination. After obtaining access to the website and resetting his credentials, Claimant was unable to locate, view and/or download his time records on the paycom website. To date, Claimant has not received or been able to access his time records. Based on Claimant’s experience, it is his understanding and belief that the Companies, individually and/or collectively, do not provide employment and personnel records to Route Service Employees upon request.

Claimant contends that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to maintain employment and personnel records, such as time records, for a period of at least three years. For instance, Claimant requested to obtain and/or inspect his personnel file and employment records, such as this time records. Despite being directed to download his time records from the paycom website, upon accessing and

searching the site, it is evident that the website does not contain Claimant's time records. To date, Claimant has not received his time records. Based on the foregoing, it is Claimant's understanding and belief that the Companies, individually and/or collectively, do not maintain personnel and employment records for a period of at least three years for all Route Service Employees as required by California law.

Due to the foregoing Labor Code violations, as well as those outlined in the Initial Notice, the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Route Service Employees certain rights afforded to them under the Labor Code and the applicable IWC Wage Order. Claimant makes all claims included in this amended notice and the Initial Notice against the Companies, individually and/or collectively, on behalf of himself and all other Route Service Employees.

All facts, claims and/or legal theories contained in this amended notice, as well as the Initial Notice, are alleged and/or asserted on behalf of Claimant and all other Route Service Employees. The facts, claims, and/or legal theories contained in the Initial Notice and this amended notice are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories discovered after the sending of this amended notice on behalf of himself and all other current and former Route Service Employees against the Companies, individually and/or collectively, and/or other persons that may be discovered after the sending of this amended written notice. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Companies, individually and collectively, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Companies, individually and collectively, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained in the Initial Notice and this amended written notice, and those who were acting within the authority and/or scope of the Companies, individually and collectively. Claimant reserves the right to modify the facts and/or add any new claims by amending this amended notice and/or by adding facts and/or claims to any civil complaint.

FAILURE TO PROVIDE EMPLOYMENT AND PERSONNEL RECORDS UPON REQUEST
(Labor Code §§ 226(b), 226(c), 226(f), 1198.5 and 1198.5(k))

Labor Code § 226(b) mandates that employers, "shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." Labor Code § 226(c) further provides,

[a]n employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.

Labor Code § 226(f) imposes a civil penalty on employers for violations of Labor Code § 226(c). Labor Code § 226(f) states that “[a] failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

Labor Code § 1198.5 grants every current and former employee the right to receive a copy of the personnel records that the employer maintains. Labor Code § 1198.5 mandates that the contents of the personnel records be available for inspection within, but no later than, 30 days from the date the employer receives the written request. An employer who fails to provide a copy of the records requested is subject to a penalty of \$750 as outlined in Labor Code § 1198.5(k), which states,

[i]f an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

As set forth above, the Companies, individually and/or collectively, violated these requirements by failing to provide Claimant with a copy of his personnel and/or employment records, despite Claimant requesting a copy of these records in writing as permitted by California law. Thus, the Companies, individually and/or collectively, have violated Labor Code §§ 226(b) and (c) and Labor Code § 1198.5 by failing to provide Claimant with a copy of his personnel and/or employment records, such as his time records, within the prescribed time frame. Claimant will pursue all available remedies for the Companies’, individual and/or collective, violations on behalf of himself and other Route Service Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226(a), 226(e), 1174, and 1174.5, and the “Records” section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) mandates, in pertinent part:

The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Labor Code § 1174(c) requires every employer to “keep a recording showing the names and addresses of all employees employed....” Labor Code § 1174(d) further requires:

Every person employing labor in this state shall...[k]eep, 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...employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

The “Records” section of IWC Wage Order No. 7-2001 provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

As set forth above, the Companies, individually and/or collectively, violated their recordkeeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the meal periods, as well as failing to accurately record the total hours worked at the appropriate rate of pay during the pay period, and the actual wages earned and paid. The Companies, individually and/or collectively, failed to maintain the time records for Route Service Employees, such as Claimant for a period of at least three years. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

CONCLUSION

Based on this amended notice and the Initial Notice, the Companies, individually and/or collectively, have violated the Labor Code and IWC Wage Order 7-2001, thereby depriving Claimant and other Route Service Employees of the rights and protections afforded to them. Claimant has satisfied the

California Labor and Workforce Development Agency
Solaray, LLC
Solaray Sunglasses, LLC
SRP Companies, Inc.
April 28, 2021
Page 6



prerequisites of the PAGA to serve as a representative of all Route Service Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate a separate civil action and/or amend a current civil action, on behalf of himself and all other Route Service Employees, as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink that reads "Monique R. Rodriguez". The signature is written in a cursive, flowing style.

Monique R. Rodriguez

Enclosure: Exhibit 1 – April 12, 2021 Initial Notice

EXHIBIT 1

April 12, 2021

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Monique R. Rodriguez
mrodriguez@grahamhollis.com
619.546.4373 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Solaray, LLC
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
620 S. Linden Street
Sapulpa, OK 74066

Solaray, LLC
620 S. Linden Street
Sapulpa, OK 74066

SRP Companies, Inc.
P.O. Box 1168
Sapulpa, OK 74067

Solaray Sunglasses, LLC
c/o C T Corporation System
818 West Seventh Street, Ste. 930
Los Angeles, CA 90017

SRP Companies, Inc.
215 N. 1800 W Street
Lindon, UT 84042

Solaray Sunglasses, LLC
P.O. Box 1168
Sapulpa, OK 74067

SRP Companies, Inc.
401 S. Wilcox Street
Castle Rock, CO 80104

Re: Tom Hefner's PAGA Claims Against Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Dear California Labor and Workforce Development Agency, Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc.:

Please be advised that Tom Hefner ("Claimant") has retained our firm, Graham**Hollis** APC, to represent him for various claims against Solaray, LLC, Solaray Sunglasses, LLC and SRP Companies, Inc. (together, the "Companies").

Please be advised that this letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Companies of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Companies, individually and/or collectively, committed against him and all other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar

position during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support his Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, “PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent himself and all other current and former non-exempt employees of the Companies, individually and/or collectively, who performed work in California as a Route Service Representative and/or similar position during the relevant time period (referred to herein as the “Route Service Employees”). All Route Service Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant contends that he and all other Route Service Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Solaray, LLC is a limited liability company that is organized in the state of California. Solaray, LLC is a wholesale supplier of sunglasses and other apparel. Solaray LLC is managed by SRP Companies.

Solaray Sunglasses, LLC is a limited liability company that is organized in the state of Delaware. Solaray Sunglasses, LLC is a wholesale supplier of sunglasses and other apparel. Solaray Sunglasses, LLC is managed by SRP Companies.

SRP Companies, Inc. is a private retail company that manages numerous brands and whose services include delivering merchandise throughout the state of California. Its primary place of business is believed to be in Castle Rock, Colorado.

Claimant was employed by the Companies from approximately June 22, 2020 through January 11, 2021 as a Route Service Representative. Claimant was initially assigned to a route within the Bakersfield Territory, which encompassed the area from San Luis Obispo to Ventura. Approximately two months after his employment began, the Companies restructured their routes to require Claimant to drive in an area between San Jose and North Los Angeles. The Companies provided Claimant and other Route Service Representatives with a company vehicle, a company cell phone, and a storage unit in connection with his employment. The Companies also provided a portable printer and scanner so that he could complete any administrative work within the vehicle. As a Route Service Representative, Claimant’s job duties included, but were not limited to, loading and/unloading a company vehicle with the Companies’ merchandise, driving a company vehicle in and around routes to deliver the Companies’ merchandise to customers, communicating with customers, and keeping supervisors abreast of deliveries of merchandise. Generally, Claimant worked approximately 14-16 hours per day and/or 60-68 hours per week, and his distant routes often required him to stay overnight in motels. He earned \$15.25 per hour, plus bonuses. At all relevant times, Claimant was classified by the Companies as a non-exempt employee, earned an hourly wage, and was to be paid on a biweekly basis.

Claimant contends that at all relevant times, the Companies, individually and/or collectively employed, and continue to employ, Route Service Employees in various non-exempt positions. Claimant also contends that all policies, practices, procedures, and/or guidelines of the Companies, individually and/or collectively, applicable to Claimant were also applicable to all other Route Service Employees throughout the relevant time period. Claimant further contends that he and all other Route Service Employees suffered, and current Route Service Employees will continue to suffer, the same and/or similar violations of law described herein.

Claimant alleges that the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Route Service Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Companies, individually and/or collectively, failed, and continue to fail, to provide Claimant and other Route Service Employees with legally compliant meal and/or rest periods and/or pay them premium wages for non-compliant meal and/or rest periods; failed, and continue to fail, to pay Route Service Employees all minimum, regular, overtime and/or double time wages for all hours worked; failed, and continue to fail, to maintain accurate employment records; failed, and continue to fail, to furnish all Route Service Employees, including Claimant, with accurate itemized wage statements; failed to timely pay former Route Service Employees, including Claimant, all wages due and owing upon separation of employment and/or pay the required waiting time penalties; and unlawfully deducted earned wages when the Companies, individually and/or collectively, made former Route Service Employees, such as Claimant, pay a fee in connection with receipt of their final payment via wire transfer.

Claimant contends that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure and/or guideline of not providing Route Service Employees, including Claimant, with the opportunity to take timely 30-minute, off-duty, uninterrupted meal periods that are free from the employer’s control when they work more than six (6) hours in a day. Claimant also alleges that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to provide Claimant and other Route Service Employees with the opportunity to take a timely second 30-minute, off-duty, uninterrupted meal period that is free from the employer’s control when they work more than ten (10) hours in a day. Instead, the Companies, individually and/or collectively, provided such a heavy workload that taking meal periods was impossible if Route Service Employees were to complete their assignments in the allotted time frame. The Companies, individually and/or collectively, expressed disapproval of employees to work in excess of 12 hours per day, and the Companies expected them to complete their work while working a maximum 10 hours per day. The Companies planned for Claimant and, on information and belief, other Route Service Employees to make deliveries within 10 minutes, which is an impossibly short amount of time to complete the deliveries, particularly because the Companies wanted the deliveries made between the hours of 7:00 a.m. and 4:00 p.m. The Companies, individually and/or collectively, made no efforts to allocate time for Claimant and, on information and belief, other Route Service Employees to have off-duty meal periods. As a result, Claimant and, on information and belief, other Route Service Employees could only eat while driving. Further, the Companies, individually and/or collectively, did not provide any system for recording meal periods. The Companies, individually and/or collectively, did not pay premium wages to Route Service

Employees, such as Claimant, for non-compliant meal periods despite depriving employees the ability to take meal periods.

Claimant asserts that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to authorize and permit Route Service Employees to take at least a 10-minute duty free rest period for every four hours worked or major fraction thereof. Claimant asserts that due to the same workload and time constraints imposed by the Companies, individually and/or collectively, the Companies, individually and/or collectively, deprived Claimant and, on information and belief, other Route Service Employees of the ability to take legally compliant rest periods. The Companies, individually and/or collectively, made no effort to allocate time for rest periods. The Companies, individually and/or collectively, did not pay premium wages for non-compliant rest periods despite knowing their assignments were too substantial to allow two or more 10-minute rest periods per day.

Claimant asserts that the Companies, individually and/or collective, had, and continue to have, a policy, practice, procedure, and/or guideline of not timely paying Claimant and, on information and belief, other Route Service Employees all minimum, regular, overtime and/or double time wages for all time worked. For instance, the Companies, individually and/or collectively, provided Claimant and other Route Service Employees work assignments without specific schedules (although the Companies wanted Route Service Employees to visit customers and/or deliver product between 7:00 a.m. and 4:00 p.m.), though it disfavored work in excess of 12 hours per day. Often, Claimant and, on information and belief, Route Service Employees had to work in excess of 8 hours, and often in excess of 12 hours per day to complete their assignments, due to the workload and traffic delays. When Route Service Employees worked in excess of 8 hours per day, the Companies, individually and/or collectively, did not pay the appropriate overtime compensation. Additionally, when Route Service Employees worked in excess of 12 hours, the Companies, individually and/or collectively, did not pay double time and instead only paid the hours at their respective overtime rates. In fact, after Claimant complained about not being paid double time wages several months into his employment, the Companies, individually and/or collectively, purported to pay all double time wages he earned. However, the Companies, individually and/or collectively, did not provide Claimant with any information by which to assess whether the Companies, individually and/or collectively, paid all double time wages owed. Even after this "correction," the Companies, individually and/or collectively, continued their failure to pay Claimant the double time rate for any subsequent wages even though Claimant continued to work in excess of 12 hours per day. On that basis, Claimant believes the Companies regularly did not pay Route Service Employees all minimum, regular, overtime and/or double time wages owed for all time actually worked or spent under the control of the Companies, individually and/or collectively.

Claimant attests that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure and/or guideline of not maintaining accurate employment records. As described above, the Companies, individually and/or collectively, did not even provide Claimant and, on information and belief, other Route Service Employees with a method by which to record meal periods. Therefore, the Companies, individually and/or collectively, did not maintain the required meal period records whatsoever, let alone maintain accurate records.

Claimant contends that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of furnishing Route Service Employees, including Claimant, with wage statements that do not comply with California law. The wage statements the Companies, individually and/or collectively, furnished to Route Service Employees did not accurately reflect meal and/or rest period premiums owed, and/or did not reflect the minimum, regular, overtime and/or double time wages owed. As a result, the wage statements did not accurately reflect the accurate minimum, regular, overtime and/or double time rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. The wage statements also did not identify the name and address of the legal entity that is the employer.

Claimant asserts that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of not timely paying former Route Service Employees all wages due and owing upon separation of employment and/or the required waiting time penalties for the late payment of wages. As described above, the Companies, individually and/or collectively, routinely denied Claimant and, on information and belief, other Route Service Employees all premium wages for non-compliant meal and/or rest periods and all minimum, regular, overtime and/or double time wages for all time actually worked or spent under the control of the Companies. Due to the late payment of all wages due and owing upon separation of employment, the Companies must also pay waiting time penalties to all former Route Service Employees.

Claimant asserts that the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of unlawfully deducting earned wages from former Route Service Employees. For instance, the Companies, individually and/or collectively, required Claimant and, on information and belief, other Route Service Employees to pay the wire transfer fees when the Companies, individually and/or collectively, wired him his final paycheck. The Companies, individually and/or collectively, paid Claimant \$20 less for his final paycheck because the fees were deducted from his pay.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Solaray, LLC, Solaray Sunglasses, LLC, and/or SRP Companies, Inc. are liable for the PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations alleged herein. (See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 [“if there is evidence and a finding that a party other than the employer ‘violates, or causes of be violated’ the overtime laws (§ 558(a)), or ‘pays or causes to be paid to an employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”]; see also *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 [holding the same].)

Due to the foregoing Labor Code violations, the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Route Service Employees certain rights afforded to them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Companies, individually and/or collectively, on behalf of himself and all other Route Service Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Route Service Employees. The facts, claims and/or legal theories contained in this written notice are based on information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or legal theories discovered after the sending of this letter on behalf of himself and other current and former Route Service Employees against the Companies, individually and/or collectively, and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Companies, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Companies, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Companies. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to his civil complaint.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS
AND/OR PAY PREMIUM WAGES FOR NON-COMPLIANT MEAL PERIODS**

(Labor Code §§ 204, 226.7, 512, and 558, and the "Meal Periods" section of IWC Wage Order No. 7-2001)

Labor Code § 512(a) provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 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 worked 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.

In pertinent part, the "Meal Periods" section of IWC Wage Order No. 7-2001 states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal

period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to.

(B) An employer may not employ an 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 worked 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....

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at 1040.)

Pursuant to Labor Code § 226.7(c),

[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

Labor Code § 558 provides that "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" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial

violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to provide Claimant and, on information and belief, other Route Service Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth (6th) hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other Route Service Employees were entitled to receive, and did not receive, one-hour of premium wages for each day a compliant meal period was not provided on the payday designated by the Companies. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS
AND/OR PAY PREMIUM WAGES FOR NON-COMPLIANT REST PERIODS**
(Labor Code §§ 204, 226.7, and the “Rest Periods” section of IWC Wage Order No. 7-2001)

The “Rest Periods” section of IWC Wage Order No. 7-2001 provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, 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.

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,

or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to authorize and permit Claimant and, on information and belief, other Route Service Employees to take an off-duty, uninterrupted 10-minute rest period for every four hours worked or major fraction thereof. Therefore, Claimant and other Route Service Employees were entitled to receive, and did not receive, one-hour of premium wages on the designated payday for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, OVERTIME
AND/OR DOUBLE TIME WAGES**

(Labor Code §§ 204, 210, 510, 558, and the "Hours and Days of Work"
sections of IWC Wage Order No. 7-2001)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime and double time wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an

employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”).)

The “Minimum Wages” section of IWC Wage Order No. 7-2001 further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 510(a), which codifies an employee’s right to overtime and double time compensation, provides:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The “Hours and Days of Work” and “Minimum Wages” sections of IWC Wage Order No. 7-2001 mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code § 558 provides that "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" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Companies, individually and/or collectively, had, and continue to have, a policy, practice, procedure, and/or guideline of failing to timely pay all minimum, regular, overtime, and/or double time wages owed to Claimant and, on information and belief, other Route Service Employees. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226(a), 226(e), 1174, and 1174.5, and the "Records" section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) mandates, in pertinent part:

The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Labor Code § 1174(c) requires every employer to "keep a recording showing the names and addresses of all employees employed...." Labor Code § 1174(d) further requires:

Every person employing labor in this state shall...[k]eep, 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...employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

The “Records” section of IWC Wage Order No. 7-2001 provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

As set forth above, the Companies, individually and/or collectively, violated their record keeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the meal periods whatsoever, as well as failing to accurately record the total hours worked at the appropriate rate of pay during the pay period, and the actual wages earned and paid. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

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FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 226.3, and the “Records” section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) states in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and... (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

The “Records” section of IWC Wage Order No. 7-2001 further provides, in pertinent part:

Every employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee and the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys’ fees.

Labor Code § 226(h) states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.”

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Companies, individually and/or collectively, failed to furnish Claimant and other Route Service Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include all applicable hourly rates in effect during the pay period, including the proper overtime and/or double time rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Route Service Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON
SEPARATION OF EMPLOYMENT**
(Labor Code §§ 201, 202, 203 and 210)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides, in pertinent part,

[i]f 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.

Labor Code § 203(a) further states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

As discussed herein, the Companies, individually and/or collectively, violated these Labor Code sections by not timely paying to Claimant and other former Route Service Employees all minimum,

regular, overtime and/or double time wages, as well as meal and/or rest period premium wages, within the required time upon separation of their employment. The Companies, individually and/or collectively, also did not pay Claimant and, on information and belief, other former Route Service Employees the required waiting time penalties for the late payment of wages. Thus, the Companies, individually and/or collectively, violated California law. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of California law on behalf of himself and all former Route Service Employees to the extent allowed by law.

UNLAWFUL DEDUCTION AND UNDERPAYMENT OF WAGES

(Labor Code §§ 212, 221, 223, 224, 225.5.)

Labor Code § 212 requires employers to ensure that paychecks maybe cashed without delay and without a fee or discount. Labor Code § 221 states, “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code § 223 provides “where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or contract. Labor Code § 224 disallows employers from making deductions from wages without authorization from the employee, with limited exceptions.

Labor Code § 225.5 provides the following penalties for violations of Labor Code §§ 212, 216, 221, 222 or 223: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As set forth above, the Companies, individually and/or collectively, did not provide Claimant, and on information and belief other Route Service Employees with their final wages without a fee or discount, because the Companies, individually and/or collectively, required Claimant to pay the wiring fees on his final paycheck and thus deducted the fee from Claimant’s final wages. On information and belief, Claimant asserts the Companies, individually and/or collectively, similarly illegally deducted wages from other Route Service Employees. Claimant will pursue all available remedies for the Companies’, individual and/or collective, violations on behalf of himself and other Route Service Employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND APPLICABLE IWC WAGE ORDER

(Labor Code §§ 210, 225.5, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in section 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

Labor Code § 225.5 provides the following penalties for violations of Labor Code §§ 212, 216, 221, 222 or 223: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects an employer or any person acting on behalf of an employer who violates Labor Code Labor Code §§ 500-558, or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation. Labor Code § 558.1(a) states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (c) and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is

intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 223, 224, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, and 1198 and relevant IWC Wage Orders.

As set forth above, the Companies, individually and/or collectively, violated the Labor Code and IWC Wage Order No. 7-2001 by failing to timely pay Claimant and all Route Service Employees all meal and/or rest period premium wages; failing to pay all minimum, regular, overtime, and/or double time wages for all time actually worked; failing to furnish accurate itemized wage statements; failing to pay all waiting time penalties owed; failing to maintain accurate employee records; and making illegal deductions from wages, as required under the Labor Code and the applicable sections of IWC Wage Order No. 7-2001. As a result, the Companies, individually and/or collectively, are liable for civil penalties under the Labor Code and Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Companies', individual and/or collective, violations on behalf of himself and all Route Service Employees to the extent allowed by law.

ATTORNEYS' FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 1197.1, 2698 *et seq.*, and 2802)

Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 1197.1, 225.5, 2802 and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorneys' fees and costs.

Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Companies, individually and/or collectively, are liable for these items. Claimant has already incurred actual damages, costs and attorney's fees, and he will continue to incur such costs as a result of the Companies', individual and/or collective, unlawful actions. Claimant will pursue all available remedies against the Companies, individually and/or collectively, including those provided under the PAGA, on behalf of himself and other Route Service Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

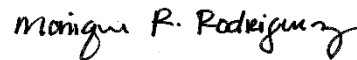
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CONCLUSION

Based on the foregoing, the Companies, individually and/or collectively, have violated, and will continue to violate, the Labor Code and IWC Wage Order No. 7-2001, thereby depriving Claimant and other Route Service Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Route Service Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the California agency declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Route Service Employees, as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez