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AMBROSE ELIAS on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

LOS ANGELES COUNTY

AMBROSE ELIAS, an individual, on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiffs,

vs.

ENTERPRISE RENT-A-CAR COMPANY OF
LOS ANGELES, LLC a Delaware LLC,
and DOES 1-50, inclusive,

Defendants.

Case No.: 21STCV21278

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

Plaintiff AMBROSE ELIAS brings this PAGA representative action complaint on behalf
of himself, all aggrieved employees, and the State of California as a Private Attorneys General,
and alleges as follows:

NATURE OF THE ACTION

1
2 1. Plaintiff AMBROSE ELIAS worked for defendant ENTERPRISE RENT-A-CAR
3 COMPANY OF LOS ANGELES, LLC, and Does 1-50 (collectively “Defendants”) until May of
4 2019. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”),
5 Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former employees of
6 Defendants within one year of serving notice on the LWDA to the present are aggrieved
7 employees.

8 2. Defendants failed to comply with California Labor Code requirements due to erroneous,
9 willful, and intentional employment practices and policies. Plaintiff brings this representative
10 action on behalf of himself, all others similarly situated aggrieved employees, and the State of
11 California, based upon the claims articulated below. Plaintiff provided notice of her claims
12 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”), as
13 illustrated by the attached Exhibit. The LWDA has not provided any notice to Plaintiff following
14 the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now
15 brings this Complaint for civil penalties under the Private Attorneys General Act (“PAGA”), Labor
16 Code §2698 *et seq.*

17 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all hours
18 worked, including overtime hours worked; (2) meal period violations; (3) rest period violations;
19 (4) failing to reimburse for required business expenses; (5) failing to timely pay all wages owed;
20 and (6) failing to provide accurate wage statements and maintain accurate payroll records.
21 Defendants are therefore liable for civil penalties under the Cal. Labor Code, including the Private
22 Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

THE PARTIES

24 7. Plaintiff AMBROSE ELIAS is a resident of the State of California and was employed
25 as an hourly, nonexempt employee of Defendants until December 2, 2019.

26 8. Defendant ENTERPRISE RENT-A-CAR COMPANY OF LOS ANGELES, LLC is a
27 Delaware limited liability company doing business in California with the capacity to sue and to be
28 sued and doing business, in Los Angeles, State of California.

9. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names, Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees of the representative class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are legally attributable to the other Defendants.

JURISDICTION AND VENUE

11. Venue is proper in this judicial district because Defendants conduct business in this county, and each defendant has legal obligations to Plaintiff and many of the aggrieved employees in this case that arose in this county.

12. The statutory penalties sought by Plaintiff exceeds the minimum jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation, and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties, and attorney's fees, is more than twenty-five thousand dollars (\$25,000).

13. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California, and Defendants are incorporated in and/or qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

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1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 14. During the relevant period, Defendants committed various violations of the California
3 Labor Code as alleged below in more detail. Defendants enforce multiple policies that violate state
4 law, which is intended to increase profits to the detriment of aggrieved employees.

5 15. Defendant ENTERPRISE RENT-A-CAR COMPANY OF LOS ANGELES, LLC .
6 operates an auto rental business where Plaintiff worked until December of 2019. Defendants
7 employed Plaintiff and dozens of current and former aggrieved employees.

8 16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
9 to the present, Defendants engaged in unlawful employment practices that resulted in violations of
10 numerous Labor Code sections, as set forth more fully below.

11 17. Plaintiff and all current and former hourly, non-exempt employees in California within
12 one year of filing this action to the present are aggrieved employees within the meaning of Labor
13 Code 2699, *et seq.* (See Labor code §2699(c).)

14 18. Defendants, and each of them, have committed the following violations of the
15 California Labor Code:

16 **Failure to Pay for All Hours Worked, Including Overtime Hours Worked**

17 (Cal. Labor Code §§218, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*)

18 19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 20. Section 2(H) of Wage Order 9 defines “hours worked” as “the time during which an
21 employee is subject to the control of an employer, and including all the time the employee is
22 suffered or permitted to work, whether or not required to do so.”

23 21. Defendants have been engaged in many unlawful employment practices which resulted
24 in underpayment for hours worked each pay period, including penalty pay and overtime hours
25 worked, as more fully set forth below:

26 22. Work Performed During Unpaid Meal and Rest Periods. As more fully set forth
27 below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of
28 “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code

§§226.7 and 512. Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2698 et seq.

23. Failure to Pay Wages- Required Minimum Wage. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked as a result of Defendants' meal and rest break practices. Based on Defendants' unlawful conduct described above, and because Plaintiff and the aggrieved employees were paid at or near minimum wage, Defendants' failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 9-2001 4(B). Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

24. Failure to Pay Overtime Wages. Defendants have required, as a result of the practices alleged herein, Plaintiff and others to work hours in excess of eight hours in a day and forty in a week, but has not paid these employees overtime compensation at one and one-half times the regular rate of pay in violation of Labor Code §510. Further, Plaintiff and aggrieved employees have been required to work more than 12 hours in one day without being compensated at a rate of twice the regular rate of pay. §510. As a result, Plaintiff and aggrieved employees have been denied "the unpaid balance of the full amount of this... overtime compensation" as required by Cal. Labor Code. §1194. Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Provide Timely, Uninterrupted Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 1199, 2698 *et seq.*)

7. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

8. During Plaintiff's employment, Defendants failed to maintain a compliant meal period policy and practice. Defendants failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[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 . . ."

1 9. Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work
2 during any meal . . . period mandated by an applicable order of the Industrial Welfare
3 Commission.” Paragraph 11(A) of the Wage Order provides, in pertinent part, “[u]nless an
4 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
5 considered an ‘on duty’ meal period and counted as time worked.” Labor Code §1198 makes it
6 unlawful for an employer to employ an employee for longer hours than those fixed by the wage
7 order or under conditions of labor prohibited by the order.

8 10. Oftentimes Plaintiff and aggrieved employees had their meal breaks interrupted due
9 to press of work or were given no meal break at all during an 8 hour shift. Defendants failed to
10 permit Plaintiff and others to take timely, off-duty meal breaks of “not less than 30 minutes” for
11 each five consecutive hours of work in violation of Labor Code §§226.7, 512, and 1198. As a
12 derivative claim, Plaintiff alleges that pay statements were inaccurate, failing to include required
13 meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these
14 violations, Defendants are liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698
15 *et seq.*

16 **Failure to Provide Compliant Rest Breaks**

17 (Cal. Labor Code §§226, 226.7, 512, 1198, 2698 *et seq.*, 8 CCR 3202, Wage Order 9 ¶15.)

18 11. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 12. Defendants have failed to maintain a policy and practice that provides or permits its
21 employees to take off-duty rest periods as required by California law. Employees are entitled to
22 at least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab.
23 Code §§226.7, 512 and Wage Order 9.

24 13. Because the rest break area was located too far away from the work area, Plaintiff and
25 aggrieved employees could not get to the rest break area and back in time to take their rest
26 breaks. As a result, Plaintiff and aggrieved employees often did not receive their rest periods at
27 all. Employees completely ignored California rest break requirements and failed to provide or
28 allow Claimant or aggrieved employees to take rest breaks.

1 14. Defendants failed to pay Plaintiff and similarly situated employees all premium
2 compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest
3 periods) mandated by Labor Code §226.7(b) for these uncompliant rest periods. As a derivative
4 claim, Plaintiff alleges that pay statements were inaccurate, failing to include required rest period
5 penalties, thus failing the requirements of Labor Code §§226(a) and 1198. As a result of these
6 violations, Defendants are liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698
7 *et seq.*

8 **Failure to Reimburse For Required Business Expenses**

9 **(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)**

10 15. Labor Code §2802 requires employers to indemnify employees for necessary
11 expenditures or losses incurred by employees in direct consequence of the discharge of duties.

12 16. Defendant required Plaintiff and employees to utilize their personal cell phones for
13 work purposes but failed to reimburse Plaintiff and employees for this use as required by the Labor
14 Code. As a result of these practices, Defendants are liable for civil penalties under Cal. Lab. Code
15 §2698 *et eq.* Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code §§558 and
16 2699(g)(1).

17 **Failure to Timely Pay All Wages Owed**

18 **(Cal. Labor Code §§201, 202, 203, 558, and 2698 *et seq.*)**

19 17. Defendants knowingly and willfully failed to pay all compensation due and owing to
20 Plaintiff and aggrieved employees at the time employment terminated. Defendants willfully failed
21 to pay employees who are no longer employed by it all compensation due upon termination of
22 employment as required by Cal. Lab. Code §§201 and 202.

23 18. Plaintiff believes that other employees who separated from the company, whether
24 voluntary or involuntary, were also denied payment of wages in a timely manner as required by
25 §203. Plaintiff seeks civil penalties pursuant to §558 (a)(3) for each violation of §203 and civil
26 penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and
27 Development Agency (LWDA).

28 19. Pursuant to §203, Plaintiff and similarly situated individuals are now also entitled to
recover up to thirty (30) days of wages due to Defendants' "willful" failure to comply with the

1 statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Defendants
2 violated §§201, 202 and 203, Defendants are liable for civil penalties pursuant to Cal. Lab. Code
3 § 2698 *et. seq.*

4 20. Defendants were required to pay Plaintiff and employee all wages earned twice during
5 each calendar month pursuant to Labor Code §204(a). Defendants failed to pay all wages earned
6 to employees as a result of the unlawful employment policies and practices discussed herein. As a
7 result of these practices, aggrieved employees were underpaid for hours worked, including
8 overtime wages, and this underpayment resulted in a failure to pay all wages owed twice per
9 month.

10 **Civil Penalties For Failure to Furnish and Maintain Accurate Payroll Records**

11 (Civil Penalties under Labor Code §§ 226(a), 226.3, 1174, 1174.5, 2698 *et seq.*)

12 21. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
13 incorporate said paragraphs herein by reference.

14 22. California Labor Code § 226(a) provides that “[e]very employer shall, semimonthly or
15 at the time of each payment of wages, furnish each of his or her employees...an accurate itemized
16 statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of
17 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
18 (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the employee
19 is paid, (7) the name of the employee and his or her social security number..., (8) the name and
20 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
21 the pay period and the corresponding number of hours worked at each hourly rate by the
22 employee.”

23 23. Labor Code § 1174 provides that “[e]very employer employing labor in this state shall
24 ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages
25 of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at
26 which employees are employed, payroll records showing the hours worked daily by and the wages
27 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
28 employees employed at the respective plants or establishments. These records shall be kept in

1 accordance with rules established for this purpose by the commission, but in any case shall be kept
2 on file for not less than two years.”

3 24. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
4 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
5 and 1174. Derivative of the claims alleged above, the statements provided to Plaintiff and
6 aggrieved employees have not accurately reflected actual gross wages earned, including overtime,
7 phone reimbursement, and total hour worked. Such failures caused injury to Plaintiff and aggrieved
8 employees, by, among other things, impeding them from knowing the total hours worked and the
9 amount of wages to which they are and were entitled, nor the accurate rate of overtime pay they
10 were entitled to.

11 25. Labor Code § 226.3 provides, “[a]ny employer who violates subdivision (a) of Section
12 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
13 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
14 each violation in a subsequent citation, for which the employer fails to provide the employee a
15 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
16 The civil penalties provided for in this section are in addition to any other penalty provided by
17 law.”

18 26. Defendants are liable for civil penalties under §226.3 for violation of §226(a).

19 27. Plaintiff alleges on information and belief that Defendants knowingly and intentionally
20 failed to furnish aggrieved employees with accurate itemized statements for each pay period that
21 they worked and failed to maintain accurate payroll records of the aggrieved employees as
22 mandated by Labor Code §§ 226.

23 28. Defendants failed to timely furnish final wages upon separation as required under
24 Labor Code §201-202, resulting in waiting time penalties when final wages were ultimately paid.
25 As a result, Defendants issued inaccurate final wage statements to aggrieved employees.

26 29. Through this representative action, Plaintiff will advance the interests of hundreds of
27 current and former employees, such that joinder is impracticable. These current and former
28

employees can be readily be identified through a review of Defendants’ payroll records and the records of the company that handles payroll for Defendants.

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

FIRST CAUSE OF ACTION

Against All Defendants for Violation of the Private Attorneys General Act (“PAGA”) (California Labor Code §2698 *et seq.*)

31. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

32. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

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

34. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

- a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*)
- b. Failure to Provide Timely, Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512, 1199, 2698 *et seq.*);
- c. Failure to Provide Compliant Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 1198, 2698 *et seq.*, 8 CCR 3202, Wage Order 9 ¶15);
- d. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

1 e. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 203, 204(a),
2 2698 *et seq.*);

3 f. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate
4 Records (Cal. Labor Code §§ 226, 226.3, 1174, 1174.5, 2698 *et seq.*).

5 35. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
6 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
7 aggrieved employee for the first violation and one thousand dollars (\$1,000) per aggrieved
8 employee for each subsequent violation of Labor Code §226(a).

9 36. With respect to violations of Labor Code §510, Labor Code §558 imposes a civil
10 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
11 for each underpaid employee for each pay period for which the employee was underpaid, and one
12 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
13 for which the employee was underpaid. Plaintiff only seeks penalties under §558 and does not seek
14 underpaid wages under §558, which are not available in PAGA actions.

15 37. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
16 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
17 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
18 a civil penalty is not specifically provided.

19 38. Plaintiff and the other current and former employees of Defendants are aggrieved
20 employees. They were or are employed by Defendants, and each of them, and the violations alleged
21 herein were committed against them. Plaintiff brings this action on behalf of himself and all other
22 current and former aggrieved employees.

23 39. At the time of each violation, Defendants employed one or more employees.

24 40. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of
25 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
26 determined at trial, pre-judgment interest, costs, and attorneys' fees.

27 41. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
28 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and

1 Workforce Development Agency (“LWDA”) and served by certified mail upon Defendants,
2 Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code
3 provisions that Defendants have violated. The LWDA did not respond to Plaintiff’s Notice within
4 the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to
5 Labor Code §2699.3, Plaintiff may now pursue her PAGA claims in this action on behalf of
6 aggrieved employees and the State of California.

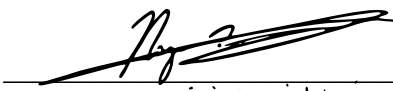
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
9 judgement against Defendants as follows:

- 10 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
11 determined at trial, but at least the jurisdictional amount of this Court;
- 12 2. An award of reasonable attorneys’ fees and costs pursuant to California Labor Code §2699(g)
13 and/or other applicable law;
- 14 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
15 law;
- 16 4. Pre-judgement and post-judgement interest as provided by law; and
- 17 5. Such other and further relief that the Court may deem just and proper.
- 18

19 DATED: June 7, 2021

KOUL LAW FIRM

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23 BY: Nazo Koulloukian, Esq.
24 Attorneys for Plaintiff AMBROSE ELIAS, and all
25 aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

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April 1, 2021

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Enterprise Rent-A-Car Company of Los Angeles, LLC
333 City Blvd West, Suite 1000
Orange, CA 92868

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Ambrose Elias
Employers: Enterprise Rent-A-Car Company of Los Angeles, LLC

Dear Sir or Madam:

Claimant Ambrose Elias has retained Nazo Koulloukian, Esq. and the KOUL LAW FIRM for wage and hour claims against his former employers Enterprise Rent-A-Car Company of Los Angeles, LLC (collectively “Enterprise” or “Employers”). Mr. Elias began working for Enterprise in April of 2019 and continued until December of 2019. Claimant and aggrieved employees worked delivery drivers to support Enterprise’s rental car business.

Enterprise is a Delaware Limited Liability Corporation, doing business in the State of California. They have violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay Wages, including Overtime Wages

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*,

Wage Order 9)

Section 2(H) of Wage Order 9 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and his coworkers earning wages at or near minimum wage do not receive payment for all hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period.

Work Performed During Unpaid Meal and Rest Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employees were not given timely breaks and often times worked through meal periods. Further, employees worked so far from the break room that rest periods were not taken.

When employees earning at or near minimum wage do not receive payment for all hours worked, including off-the-clock hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked, in violation of Labor Code §1197.

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 9)

Labor Code §512 provides, “[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...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of Wage Order 9 provides, in pertinent part, “[u]nless an 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.”

In this case, Claimant claims that although he frequently worked 8 hour shifts, he was not provided a full, uninterrupted 30 minute break. Due to the press of work, meal breaks were frequently late, short, and interrupted.

Section 11 of Wage Order 9 requires employers to authorize and permit employees to take an uninterrupted 30 minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Although meals were routinely shortened, Enterprise never paid penalty pay to Claimant, as indicated on his paystubs. As a derivative claim, Claimant alleges that his pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

During Claimant’s employment, Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 9-2001 12(A).

Claimant and his fellow employees did not receive rest breaks as a result of the time it took them to walk from the work area to the rest area. As a result of this distance, Claimant and employees had no choice but to frequently not take their allotted and required break time because it would be impossible to get to the break room area and back to the work area in time.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee’s regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. Because Employer violated Section 12(A) of Wage Order 9, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of

duties. Here, Employer required Claimant and employees to utilize their personal cellular telephones for work purposes, but failed to reimburse Claimants and employees for the full cost of this use as required by the Labor Code. Accordingly, Employer is liable for civil penalties under PAGA §2698 *et seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203 and 2698 *et seq.* Wage Order 9)

Failure to Pay Wages Due Upon Termination

As set forth above, due to Employer's unlawful employment practices, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant, including meal and rest period penalty wages, at the time employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203, Claimant and similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Claimant believes that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of wages in a timely manner as required by §203. Claimant will seek restitution pursuant to §558 (a)(3) for himself and other aggrieved employees for each violation of §203 and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employer if authorized to file a representative action on behalf of the State of California.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Paystub and Record Keeping Violations

(Cal. Lab. Code §§226, 1174, 2698 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

Here, Employer included all hours, including PTO, into the total hours worked listed on wage statements, resulting in inaccurate statement of total hours worked. Additionally, based on and as a result of the above-mentioned Labor Code violations, Employers maintained and issued inaccurate wage statements, failing to include required hours and overtime hours worked and misrepresenting actual regular hours worked on the final wage statement. Employer further failed to include meal and rest period penalties, thus failing the requirements of Labor Code §226(a). Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Claimant will seek penalties as permitted under Labor Code §226 for himself and other aggrieved employees for each violation. Further, claimant will seek recovery of civil penalties under Labor Code §226.3, and PAGA, Labor Code §2698, *et seq.*, on behalf of the LWDA against the Employers if authorized to file a representative action on behalf of the State of California for Employers' paystub violations.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court.

Respectfully Submitted,



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