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Assigned for All Purposes

Judge Randall J. Sherman

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

Lorena Sandoval and Ofelia Camacho,
individually and on behalf of all others
similarly situated,

PLAINTIFFS,

v.

AYRES GROUP, a California Corporation,
and DOES 1 to 100, inclusive,

DEFENDANTS.

CASE NO: 30-2021-01218470-CU-OE-CXC

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Penalties Pursuant to Labor Code § 2699,
et seq. for violations of Labor Code §§ and Labor
Code § 226, 226.1, 510, 512, 201, 203 and 204;

Plaintiffs Lorena Sandoval and Ofelia Camacho, (“Plaintiffs”), on behalf of the people
of the State of California and as “Aggrieved Employees” acting as a private attorney general
under the California Labor Code Private Attorneys General Act of 2004, § 2698, *et*
seq., (“PAGA”) complains of Defendant AYRES GROUP (“Defendant”) as follows:

OVERVIEW OF CLAIMS

1. Plaintiffs bring this action on behalf of the people of the State of California and as
“aggrieved employees” acting as a private attorney general pursuant to Labor Code § 2699, *et seq.*,
against Defendant Ayres Group and DOES 1 to 100 (“Defendant”) for their (1) failure to provide
timely wages; (2) failure to provide accurate, itemized wage statements within the one year prior
to the filing of this Complaint; (3) failure to provide timely and duty-free meal periods and/or pay

1 meal period premiums for missed meal periods; (4) failure to provide compliant rest periods and/or
2 pay rest period premiums; (5) failure to provide wages upon termination. As a result of the
3 foregoing, Defendant has violated California statutory laws as described below.

4 2. The "PAGA Period" is designated as the period from one year prior to the sending
5 of the PAGA letter to the LWDA (*i.e.*, on or around June 22, 2020) through the present and on-
6 going. Defendant's violations of California's wage and hour laws and unfair competition laws, as
7 described more fully below, have been ongoing throughout the PAGA Period.

8 **VENUE**

9 3. Venue is proper in this county under section 395.5 of the California Code of Civil
10 Procedure. Many, if not all, of the Aggrieved Employees were employed and/or performed work
11 during the PAGA Period by Defendant in Orange County. Many of the acts alleged herein
12 including Defendant's failure to provide timely and duty-free meal periods and pay meal period
13 premiums, failure to provide compliant rest periods and pay rest period premiums, failure to
14 provide accurate itemized wage statements, and failure to pay wages upon termination occurred in
15 Orange County. Venue is therefore proper in Orange County.

16 **JURISDICTION**

17 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
18 dollars of business by operation a large hospitality business throughout the State of California,
19 including in the County of Orange. Thus, Defendant has obtained the benefits of the laws of the
20 State of California. In addition, Plaintiffs assert no claims arising under federal law. Rather,
21 Plaintiffs bring causes of action based solely on, and arising from, California law. Defendant is a
22 California resident corporation so there is no federal diversity jurisdiction under CAFA or
23 otherwise. The claims of the aggrieved employees are also based solely on California law
24 described herein. The total amount sought by Plaintiffs, including attorneys' fees, is less than
25 \$5,000,000.

26 **THE PARTIES**

1 **A. The Plaintiffs**

2 5. Plaintiffs are California residents and were employees of Defendant in California
3 during the relevant time period. From at one year from the submission of Plaintiffs' PAGA Notice
4 through the present, and on-going, Defendant's employees, including Plaintiffs during their
5 employment, did not receive all wages timely, were not provided accurate and/or complete wage
6 statements, were not provided timely and duty-free meal periods and/or provided meal period
7 premiums, were not provided compliant rest periods and/or provided rest period premiums, and
8 were not paid for all their wages upon their discharge of their duties.

9 6. Plaintiffs represent the state of California and a group of aggrieved employees
10 defined as:

11 All individuals who or were employed by Ayres Group in the State of California as non-
12 exempt employees during the PAGA Period (hereinafter referred to as "Aggrieved
13 Employees").

14 **B. The Defendant**

15 7. Defendant Ayres Group is a California corporation headquartered in Costa Mesa,
16 California. Defendant provides hospitality services, functioning as a major hotel in the city of
17 Costa Mesa, California. To operate its practice, Defendant employs at least 500 employees, such
18 as the Plaintiffs and the Aggrieved Employees.

19 8. The true names and capacities, whether individual, corporate, associate, or
20 otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to
21 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
22 § 474. Plaintiffs are informed and believe, and based thereon alleges, that each of the Defendants
23 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
24 to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
25 capacities of the Defendants designated hereinafter as DOES when such identities become known.

26 9. Plaintiffs are informed and believe, and based thereon alleges, that each Defendant
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1 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
2 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
3 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
4 employer and/or joint employer of Plaintiffs and the Aggrieved Employees.

5 10. Defendant was and is the employer of Plaintiffs and the Aggrieved Employees for
6 all relevant time periods. During the PAGA Period, the total number of Aggrieved Employees is
7 estimated to be over 500.

8 **FACTUAL ALLEGATIONS**

9 11. Defendant operates and, at all times during the PAGA Period, has done and does
10 business in California providing hospitality services in California. Defendant, in the course of
11 operating its business in California during the PAGA Period, employed Plaintiffs and the
12 Aggrieved Employees.

13 12. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
14 any employment are due and payable twice during each calendar month, on days designated in
15 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these
16 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
17 payroll if the wages are paid not more than seven calendar days following the close of the payroll
18 period.

19 13. Due to Defendant’s failure to pay Plaintiffs, the Class, and the other Aggrieved
20 Employees all minimum wages and overtime wages owed and meal and rest break period
21 premiums owed, Defendant violated Labor Code § 204 by failing to pay all wages due within
22 seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson*
23 *v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D.
24 Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support
25 claims under Labor Code §§ 203 and 204).

26 14. Labor Code § 210 provides that “in addition to, an entirely independent and apart
27
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1 from, any other penalty provided in this article, every person who fails to pay the wages of each
2 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
3 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
4 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
5 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
6 faulty compensation policies and practices described in detail above, Plaintiff and the other
7 Aggrieved Employees are entitled to recover penalties under Labor Code § 210.

8 15. Labor Code § 226 obligates employers, semi-monthly or at the time of each
9 payment to furnish an itemized wage statement in writing showing:

- 10 (1) gross wages earned;
- 11 (2) total hours worked by the employee;
- 12 (3) the number of piece-rate units earned and any applicable piece rate if the employee
13 is paid on a piece rate;
- 14 (4) all deductions, provided that all deductions made on written orders of the employee
15 may be aggregated and shown as one item;
- 16 (5) net wages earned;
- 17 (6) the inclusive dates of the period for which the employee is paid;
- 18 (7) the name of the employee and only the last four digits of his or her social security
19 number or an employee identification number other than a social security number;
- 20 (8) the name and address of the legal entity that is the employer...; and,
- 21 (9) all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee...

23 16. Here, Defendant failed to provide Plaintiff and the Aggrieved Employees with
24 twice monthly wage statements that included all commissions due, thus violating Labor Code §
25 226(a). Specifically, the wage statements issued by Defendant to Plaintiff and the other aggrieved
26 employees did not and do not include the correct gross and net wages in violation of Labor Code
27 § 226(a), since they did not include all commissions earned on a twice monthly basis.

28 17. Defendant issued wage statements to Plaintiff and the Aggrieved Employees which
did not include Defendant’s name, Defendant’s address, or the start date of each pay period
in violation of Labor Code section 226(a)(6) and (8) (see **Exhibit “A”**). Furthermore,
Defendant cannot argue that separate, detachable documents, apart from the wage statements,
were available to Plaintiff and Aggrieved Employees that contained the required information.

1 *See Noori v. Countrywide Payroll & HR Solutions, Inc.*, 2019 Cal. App. LEXIS 1299 (3rd
2 District Court of Appeal, December 26, 2019), which noted: "... This conclusion [that section
3 226(a)(8) was violated] is not altered by the fact that the full name [of the employer] appears
4 on the checks. Indeed, in its appellate brief, Countrywide notes that "Countrywide Staffing
5 Solutions Group" appears on checks attached to wage statements, arguing that even if the
6 statute requires a "complete" name, "the checks physically attached to the wage statements,
7 and *thus part of them*, stated the 'complete name' and thus complied." (Italics added.) **But**
8 **Countrywide's argument is based on an erroneous premise. The paycheck is not "part of"**
9 **the wage statement.** Section 226, subdivision (a) directs employers to furnish "*as a detachable*
10 *part of the check* ... an accurate itemized statement in writing showing [the statutorily required
11 information]." (§ 226, subd. (a) italics and emphasis added). Thus, the employer's address
12 cannot appear on the detachable paycheck itself – or any other detachable document -- in
13 lieu of its appearing on the wage statement; it must appear on the wage statement itself which,
14 here, it did not. Federal courts in California are in agreement with the logic of *Noori*. *See e.g.*,
15 *Willner v. Manpower Inc.* (N.D. Cal. 2014) 35 F.Supp.3d 1116, 1129 (rejecting the employer's
16 argument that its address appearing on a detachable check attached to wage statements satisfied
17 the statute).

18 18. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial
19 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
20 not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods
21 in which the employer fails to provide accurate itemized statements to the employee causing the
22 employee to suffer injury.

23 19. Aggrieved Employees need not show "injury" or a "knowing and intentional" as
24 ordinarily required by Labor Code section 226(e) to establish a violation sufficient to trigger
25 PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Associates, LLC*, 15 Cal. App.
26 773, 788 (Cal. App. 2017) ("Consistent with the PAGA statutory framework and the plain
27

1 language and legislative history of section 226(e), we hold a plaintiff seeking civil penalties under
2 PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and
3 intentional” requirements of section 226(e)(1)”); *Willner v. Manpower Inc.* 35 F. Supp. 3d 1116,
4 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is
5 a violation of section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp.*
6 *Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering
7 PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a
8 Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D.
9 Cal. July 3, 2013) (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover
10 penalties under § 2699(f) of PAGA.”).

11 20. Further and in addition to the penalties outlined above, Labor Code § 226.3
12 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a
13 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an
14 initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
15 citation, for which the employer fails to provide the employee a wage deduction statement or fails
16 to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant
17 failed to provide Plaintiff and the other Wage Statement Aggrieved Employees with accurate
18 itemized wage statements. Accordingly, Defendant is additionally liable for Labor Code § 226.3
19 penalties for their violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal.
20 Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority
21 counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v.*
22 *PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012)
23 (“Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may
24 trigger civil penalties.”).¹

25
26 ¹ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D. Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326,
27 *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis*
28 *v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

1 21. Labor Code § 512 requires employers to provide employees with a thirty (30)
2 minute uninterrupted and duty-free meal period within the first five (5) hours of an employee's
3 shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a
4 second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512,
5 an employer may not employ an employee for a work period of more than ten (10) hours, without
6 providing the employee with a second meal period of not less than thirty (30) minutes. The second
7 meal period may not be waived if the total hours worked is more than twelve (12) hours.

8 22. Under Labor Code § 512, if an employer maintains a uniform policy that does not
9 authorize and permit the amount of meal time called for under the law (as specified in the
10 applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained
11 in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

12 An employer is required to authorize and permit the amount of rest break time called for
13 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
14 policy authorizing and permitting only one rest break for employees working a seven-hour
15 shift when two are required—***it has violated the wage order and is liable.***

16 (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

17 23. Following *Brinker*, the Courts of Appeal have confirmed that liability for meal
18 period violations arises when an employer adopts a uniform policy that fails to provide a duty-free
19 meal period as required by Labor Code section 512.²

20 24. Here, the Plaintiffs and the other managers and team leads who are the aggrieved
21 employees for this claim are not relieved of all duties during their meal periods several times per
22 week because they were required to remain on the premises for lunch. As a result, the meal periods
23 taken by Plaintiffs and the Aggrieved Employees are all on-duty.

24 25. Labor Code § 226.7 provides "an employer shall not require an employee to work

25 ² For example, in *Faulkinbury*, the Court applied *Brinker*: "In *Faulkinbury I*, we concluded that even if [defendant]'s
26 on-duty meal break policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
27 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a determination that
28 [defendant]'s uniform on-duty meal break policy was unlawful." *Faulkinbury*, 216 Cal.App.4th at p. 235.) The Court
went on: "the employer's liability arises by adopting a uniform policy that violates the wage and hour laws. Whether
or not the employee was able to take the required break goes to damages" (*Ibid.* [citations omitted]; see also
Benton v. Telecom Network Specialists, Inc. (2013) 220 Cal. App. 4th 701, 728.)

1 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
2 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
3 Order Nos. 7-2001 and 9-2001, an employer must authorize and permit all employees to take ten
4 (10) minute duty free rest periods for every major fraction of four hours worked. *See Augustus v.*
5 *ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods
6 employers must relieve employees of all duties and relinquish control over how employees spend
7 their time.”).

8 26. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 4-2001, Defendants
9 failed to provide Plaintiffs and all Aggrieved Employees in management and team lead positions
10 with duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4)
11 hours worked. Instead, Defendants regularly and consistently required Plaintiffs and the other
12 Aggrieved Employees to remain on the premises for rest breaks. This constitutes a failure to
13 provide duty-free rest periods and triggers rest period premiums and PAGA penalties.

14 27. The administrative prerequisites of PAGA will be satisfied after 65 days have
15 elapsed from June 22, 2021 (i.e. 65 days since Plaintiffs’ mailing of the PAGA notice with no
16 further communication from the LWDA to Plaintiffs’ counsel). Plaintiff has paid the \$75.00 fee
17 and has otherwise satisfied the administrative prerequisites of PAGA, as amended. **(Exhibit “ A”)**

18 28. Plaintiffs by this action seeks to recover, on behalf of themselves and all other
19 current and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
20 specified in Labor Code § 2699(f). Plaintiffs seek to recover the PAGA civil penalties through a
21 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*
22 *Court*, 46 Cal. 4th 969 (2009). Class certification of the PAGA claims is not required.

23
24 **FIRST CAUSE OF ACTION**
25 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
26 **PAGA PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 204, 210, 226, 226.3,**
27 **226.7, 512, AND 2802**
28 **(Labor Code §§ 2698-2699.5)**
On Behalf of Plaintiffs and the Aggrieved Employees Against Defendant

1 29. Plaintiffs, on behalf of herself and all aggrieved employees, reallege and
2 incorporate by reference all previous paragraphs.

3 30. Based on the above allegations incorporated by reference, Defendant violated
4 Labor Code §§ 204, 210, 226(a), 226.3, 226.7, 512, and 2802, as well as IWC Wage Order 4-2001.

5 31. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiffs and
6 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial
7 subject to the following formula:

8 \$100 for the initial violation per employee per pay period; and

9 \$200 for each subsequent violation per employee per pay period.

10 These penalties will be allocated 75% to the Labor Workforce Development Agency and
11 25% to the affected employees.

12 32. In addition, as set forth above, Defendant failed to provide Plaintiffs and all
13 aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
14 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section
15 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
16 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
17 each violation in a subsequent citation, for which the employer fails to provide the employee a
18 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

19 33. Further, Plaintiffs, as an Aggrieved Employee, need not demonstrate or prove that
20 Defendant’s conduct in refusing to provide accurate and itemized wage statements was knowing,
21 intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower*
22 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all
23 [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed
24 above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that
25 “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a),
26 and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist.

LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

34. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code § 2699, et seq. because of Defendant’s violation of Labor Code §§ Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, and 2802, as well as IWC Wage Order 5-2001.

PRAYER FOR RELIEF

Wherefore, Plaintiff pray for the following relief:

a. A civil penalty against Defendant in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and the Aggrieved Employees during all of the pay periods in the PAGA Period and on-going until the violations are corrected;

b. An award of reasonable attorney’s fees against Defendant as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

c. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with Plaintiff’s and Aggrieved Employees’ PAGA claim against Defendant, as provided for in Labor Code § 2699(g)(1).

d. All other relief as this Court deems proper.

Dated: August 28, 2021

Respectfully,

LAW OFFICES OF FARRAH MIRABEL
EMPLOYMENT RIGHTS LAW GROUP, APC

By: /s/ Farrah Mirabel,

Farrah Mirabel, Esq.
Amir Seyedfarshi, Esq.
*Counsel for Plaintiff and the Aggrieved
Employees*

EXHIBIT “A”

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June 21, 2021

Via Online Filing with the LWDA & Certified Mail to Defendant

AYRES GROUP

355 Bristol Street, Ste A
Costa Mesa CA 92626

AYRES GROUP

C/O Donald B Ayres Jr, Agent For Service Of Process
355 Bristol Street, Ste A
Costa Mesa CA 92626

Re: NOTICE OF INTENT TO FILE SUIT (Labor Code § 2699.3)

LORENA SANDOVAL and OFELIA CAMACHO v. AYRES GROUP

Dear PAGA Administrator:

This letter is the written notice required by the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Section 2698 *et seq.*, including without limitation California Labor Code Sections 2699.33 (a)(1), 2699.3(b)(1), and/or 2699.3(c)(1), and any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online filing to the California Labor and Workforce Development Agency. This letter is an important formal legal notice which may lead to action against you and your company in a court of law and in administrative proceedings, or both and the imposition of substantial penalties and other order and remedies against you and your company.

Our firm represents the interests of **LORENA SANDOVAL and OFELIA CAMACHO** (Plaintiffs), former employees of **AYRES GROUP** and its co-employers, successors in interest, and/or merged entities (referred to hereinafter as the “Defendant”). Plaintiffs were employed by Defendant as laborers (housekeepers). Lorena Sandoval worked for the period of August 2007 to September, 2020 for \$14/hour. Ofelia Camacho worked from January 2008 to January 1, 2021, also for \$14/hour.

PAGA NOTICE Re LORENA SANDOVAL and OFELIA CAMACHO v. AYRES GROUP

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The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiffs and all other Defendant's employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

- (1) failure to provide timely, duty free rest periods for every four hours of work or major fraction thereof in violation of Labor Code § 226.7 and Section 12 of the applicable IWC Wage Order;
- (2) failure to provide timely meal periods within the first five (5) hours and to provide lawful second meal periods for shifts worked in excess of ten (10) hours and/or pay meal period premiums for late meal breaks in violation of Labor Code §§ 226.7 and 512 and Section 11 of the applicable IWC Wage Order;
- (3) failure to pay daily and weekly overtime wages in violation of Labor Code § 510 and Section 3 of IWC Wage Order No. 4;
- (4) failure to pay employees all wages and premiums due on a bi-monthly basis when other wages were paid as required by Labor Code sections 204 and 210; and,
- (5) failure to provide accurate itemized wage statements in violation of Labor Code § 226 based upon Defendants' failure to include meal and rest break premiums in stating the total gross and net wages earned;
- (6) Violation of Labor Code § 201-203 (Failure to Pay Wages Upon Separation)
- (7) Violation of Labor Code Sections 1197.5, 1199.5 (paying Latino employees from South America, less than other employees);
- (8) unfair competition in violation of Bus. & Prof. Code § 17200 based upon the foregoing unpaid wage and premium claims;

Defendant's Wage Statement Violations

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;

PAGA NOTICE Re LORENA SANDOVAL and OFELIA CAMACHO v. AYRES GROUP

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- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (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 other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Defendant's paystubs issued to Plaintiffs and the Aggrieved Employees failed to provide the name and address of the employer. Notably, for PAGA penalty claims predicated on an underlying Labor Code section 226(a) violation, a plaintiff need not show "injury" or a "knowing and intentional" as ordinarily required by Labor Code section 226(e) to establish a violation sufficient to trigger PAGA penalties. *See Lopez v. Friant & Associates, LLC*, 15 Cal. App. 773, 788 (Cal. App. 2017) ("Consistent with the PAGA statutory framework and the plain language and legislative history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and intentional" requirements of section 226(e)(1)");

Nevertheless, Defendant's failure to furnish accurate itemized wage statements has caused Plaintiffs and the other Aggrieved Employees to incur economic injuries in that they were not aware of the specific inclusive dates for which their wages were being paid, so that that needed to resort to other documents and to make various calculations to understand their wage and pay history and to assess its accuracy. This violates Section 226 of the Labor Code. *See e.g., Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met");

Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

As explained in detail above, Defendants failed to provide Plaintiffs and the other Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a).

DEFENDANT’S REST PERIOD VIOLATIONS

Under Labor Code § 226.7 and Section 12 of the applicable IWC Wage Order, if an employer maintains a uniform policy that does not authorize and permit duty-free 10 minute rest breaks for each 4 hours of work or major fraction thereof. If the amount of rest time or the proper timing for rest breaks called for under the law (as specified in the applicable Wage Order) is not complied with, “it [the employer] has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added]. Here, Plaintiffs and the Rest and the Aggrieved Employees were not offered the possibility of taking their 10 minute rest breaks on a timely basis. Plaintiffs and the Aggrieved Employees had to drive around and they did not have the option to stop and take their ten minute rest breaks on the schedule authorized by California law. Plaintiffs and the Rest and Meal Break Aggrieved Employees were under pressure to finish their work-related tasks on time and make the deliveries in a timely fashion, which was often break-preclusive.

DEFENDANTS’ MEAL PERIOD VIOLATIONS

Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of an employee’s shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of duty-free mealtime called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” As described above, the *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy.

Here, Defendants violated and continue to violate Labor Code § 512 and IWC Wage Order 4-2002 § 11 by, among other things, failing to provide duty-free meal breaks to the Meal Break Aggrieved Employees by failing to advise all other Meal Break Aggrieved Employees of their meal break rights, failing to provide Aggrieved Employees with thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failing

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to pay meal break premiums for on-premises and/or late meal breaks. As a result of Defendants' failure to authorize or permit lawful meal periods, Plaintiff and the other Class members and Meal Break Aggrieved Employees frequently did not receive compliant duty-free meal periods within the first five (5) hours of their work.

DEFENDANT'S FAILURE TO PAY WAGES ON A TIMELY BASIS

Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code § 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

Due to Defendants' failure to pay Plaintiff and the other Aggrieved Employees for all hours worked and all meal period premiums owed, Defendants violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

Here, Plaintiff and Aggrieved employees received their paychecks corresponding to each pay period **eight days after each period**. This is a clear violation of the Labor Code section 204, requiring that the paycheck must be issued and wages paid within seven days after each pay period where, as here, workers are paid on a weekly basis. Labor Code § 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) 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." As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the other Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

DEFENDANTS' MINIMUM WAGE VIOLATIONS

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage."

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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.”

During the relevant time period, Plaintiff and the Aggrieved Employees were paid on an hourly basis by the Defendants in the state of California.

Despite the fact that Defendants failed to provide Aggrieved Employees with timely meal periods of at least thirty (30) minutes in length, Defendant had a policy and practice of automatically deducting thirty (30) minutes from each shift worked in excess of six (6) hours, regardless of whether or not the employee received a meal period and/or the amount of time spent on the meal period, if any. Therefore, during those regular instances where Aggrieved Employees did not receive a full thirty-minute meal period (or did not receive a duty-free meal period at all), they were deprived of minimum wages for all hours worked during that shift.

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

Plaintiff and the other Minimum Wage Aggrieved Employees suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants’ unlawful acts and Labor Code violations.

DEFENDANT’S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendant’s faulty policies described above, including its failure to pay wages for all hours worked and for meal period premiums, Defendant violated Labor Code § 203, for those employees whose employment ended within the last one year and ongoing (i.e., the Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due upon the termination of their employment.

DEFENDANT’S OVERTIME VIOLATIONS

Labor Code § 510 provides that any work in excess of eight hours on any day, as well as all hours worked on the seventh consecutive day of a workweek, shall be compensated at the rate of no less than 1.5 times the regular rate of pay. See also Section 3(A) of IWC Wage Order No. 4.

Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order No. 4, Defendant did not pay Plaintiff and the Overtime Aggrieved Employees any overtime wages corresponding to the accurate calculation of one and a half times the regular rate of

PAGA NOTICE Re LORENA SANDOVAL and OFELIA CAMACHO v. AYRES GROUP

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pay of Plaintiff and the Overtime Aggrieved Employees for all hours over 8 in a day and 40 in a week. Defendant violated Labor Code § 510 by failing to pay Plaintiff and Aggrieved Employees the accurate overtime wages, including daily overtime and night shifts' overtime.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendant seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiffs individually and on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees. If Defendant is interested in attempting to resolve this matter, including the PAGA claims, please have counsel contact us by July 16, 2021 so that we may discuss an informal discovery plan and the possibility of early mediation.

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel
Farrah Mirabel, Esq.

Law Offices of Farrah Mirabel

#1110E - OFELIA CAMACHO ZAMORANO - XXX-
H-YORBA LIND

Voucher # (130625)

Pay Date: 12/22/2020
Pay Period: 12/01/2020-12/15/2020

Earnings

	Rate	Hours	Current	YTD
CA Sick				443.00
Holiday W				671.87
Non Disc C			250.00	300.00
Overtime				20.46
Regular	14.00	46.49	650.86	12,139.96
Vacation				1,101.84
Gross Pay			900.86	14,662.13

Deductions

	Goal	Current	YTD
401K LOAN	3,366.68		1,142.14
401K		50.00	200.00
Dental PT			247.92
Medical PT			1,924.00
Total		50.00	3,514.06

Taxes Withheld

	Taxable	Taxable YTD	Current	YTD
FIT	850.86	12,290.21	74.67	980.22
FICA	920.86	12,490.21	55.85	774.39
MEDI	920.86	12,490.21	13.06	181.12
SIT:CA	850.86	12,290.21	10.52	118.98
SDI:CA	920.86	12,490.21	9.01	124.89
Total			163.11	2,179.60

Net Pay

	687.55	8,968.47
Check	0.00	2,503.40
Non Cash Fringe Benefit	250.00	300.00
Checking (0015)	437.55	827.34
Checking (0015)	0.00	5,339.73

Company Paid Benefits

	Current	YTD
Dental PT		51.72
Medical PT		1,666.50
PUTA		43.99
FICA	55.85	774.39
MEDI	13.06	181.12
SUTA, SC:CA		7.00
SUTA:CA		167.38
Total	68.91	2,890.70

Accruals

CA Sick	Bal.
	Hrs: 0.00

1 Reduces your Federal & State Withholding Taxable Wage

2 Reduces your Federal Withholding, OASDI & Medicare Taxable Wage

3 For information purposes only. No effect on your net pay.

Ayres Group 355 Bristol Street, Suite A, Costa Mesa, CA 92626

1 of 1

Ayres Group

355 Bristol Street

Suite A

Costa Mesa, CA 92626

In Service To:

Pay Date: 12/22/2020

Voucher #: (130625)

Deposited To The Account(s) Of	Deposit #	Account Type	Account #	Transit ABA	Deposit
OFELIA CAMACHO ZAMORANO	1	Checking	XXXXXX8015	122000247	437.55

H-YORBA LIND 1110E 12/22/2020 (130625)

OFELIA CAMACHO ZAMORANO

1173 N. MAYFAIR # D

Anaheim, CA 92801

NON-NEGOTIABLE - THIS IS NOT A CHECK

Ayres Group
355 Bristol Street
Suite A
Costa Mesa, CA 92626

H-YORBA LIND 1110E 12/22/2020 (130625)

OFELIA CAMACHO ZAMORANO
1173 N. MAYFAIR # D
Anaheim, CA 92801

PERSONAL & CONFIDENTIAL

#10954 - LORENA SANDOVAL - XXX-XX-3270
H-YORBA LIND

Voucher # (118996)

Pay Date: 07/07/2020
Pay Period: 06/16/2020-06/30/2020

Earnings				
	Rate	Hours	Current	YTD
Holiday Wor				405.94
Non Disc Cas				150.00
Overtime WA				16.50
Regular	14.00	34.05	476.70	8,184.19
Vacation				1,901.14
Gross Pay			476.70	10,652.77

Deductions				
	Goal	Current	YTD	
401K LOAN	4,218.00	37.88	993.80	
401k		100.00	1,200.00	
Medical PT		175.00	2,099.00	
Total		362.88	4,292.80	

Taxes Withheld				
	Taxable	Taxable YTD	Current	YTD
FIT	201.70	7,353.77		3.02
FICA	301.70	8,553.77	18.70	530.33
MEDI	301.70	8,553.77	4.37	124.03
SUTA CA	201.70	7,353.77		
SUTA CA	301.70	8,553.77	3.02	85.54
Total			26.09	742.92

Net Pay		87.73	5,617.05
Non Cash Fringe Benefit		0.00	150.00
Checking (0518)		87.73	5,467.05

Company Paid Benefits		
	Current	YTD
401k		280.50
Medical PT	181.50	1,648.00
FUTA		41.99
FICA	18.70	530.33
MEDI	4.37	124.03
SUTA SC CA		3.03
SUTA CA		168.00
Total	204.57	2,999.66

Accruals		
		Bal.
CA Sick		Hrs: 0.00
Vacation		Hrs: 11.96

- 1 Reduces your Federal & State Withholding Taxable Wage
- 2 Reduces your Federal Withholding, OASDI & Medicare Taxable Wage
- 3 For information purposes only. No effect on your net pay

Ayres Group 355 Bristol Street, Suite A, Costa Mesa, CA 92626

1 of 1

▼ REMOVE DOCUMENT ALONG THIS PERFORATION ▼

Ayres Group
355 Bristol Street
Suite A
Costa Mesa, CA 92626

In Service To:

Pay Date: 07/07/2020

Voucher #: (118996)

Deposited To The Account(s) Of	Deposit #	Account Type	Account #	Transit ABA	Deposit
LORENA SANDOVAL	1	Checking	XXXXXX0518	322271627	87.73

H-YORBA LIND 10954 07/07/2020 (118996)

LORENA SANDOVAL
18751 VINE ST. APT 10
Orange, CA 92869

DOCUMENT CONTAINS GREEN PANTOGRAPH & MICROPRINTING. BACK HAS THERMOCHROMIC INK & A WATERMARK. HOLD AT AN ANGLE TO VIEW. VOID IF NOT PRESENT.

NON-NEGOTIABLE - THIS IS NOT A CHECK

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Donald B. Ayres Jr.
Ayres Group
355 Bristol St. Ste A.
Costa Mesa, CA 92626



9590 9402 6286 0274 6937 91

2. Article Number (Transfer from service label)

7020 2450 0000 7183 7183

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X

☐ Agent☐ Addressee**B. Received by (Printed Name)****C. Date of Delivery**

6/27

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No**3. Service Type**

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

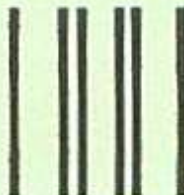
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

USPS TRACKING#



9590 9402 6286 0274 6937 91



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Law offices of Farrah Mirabel
1070 Stradella Rd.
Los Angeles, CA 90077

Re: Lorena Sandoval and Ofelia Camacho
v. Agres Group

