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August 24, 2021

VIA ONLINE FILING ONLY:
California Labor & Workforce Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAfilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:
Royalty Ambulance Services, Inc.
Attn: Human Resources/ Legal Department
3535 North San Fernando Road, Building 6
Los Angeles, CA 90065

Royalty Ambulance Services, Inc.
Andranik Bableyan,
Agent for Service of Process
3535 North San Fernando Road, Building 6
Los Angeles, CA 90065

Royalty Ambulance Services, Inc.
Andranik Bableyan,
Agent for Service of Process
3235 North San Fernando Road, Building 6
Los Angeles, CA 90065

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To:	California Labor and Workforce Development Agency, Royalty Ambulance Services, Inc.
Date:	August 24, 2021
Subject:	*Deanna Kim adv. Royalty Ambulance Services, Inc.*

Introduction

This office represents Complainant, Deanna Kim (hereinafter "Complainant") in connection with her claims under the California Labor Code. Complainant was, at all relevant times herein mentioned, an employee of the above-named entities and individual managing agents of said entities (hereinafter to be collectively referred to as "Employer").

Employers may be contacted directly at the above addresses. Pursuant to California Labor Code sections 2699.3 and 2699.5, Complainant, on behalf of herself, and on behalf of similarly situated aggrieved current and former employees of Employers, hereby gives written notice ("Notice") of her claims against Employer. This Notice is being provided via online filing to the California Labor and Workforce Development Agency ("LWDA") and Employer via its Agent(s) for Service of Process. This Notice also serves to demonstrate Complainant's reasonable attempt at settlement with Employers. If Employer is interested in settling this matter before a lawsuit is filed, Employer may contact Crosner Legal, P.C. at the address listed at the close of this notice. This settlement attempt is in compliance with relevant California law. *Graham v. DaimlerChrysler Corp.* (2004) 24 Cal.4th 553, 561.

This letter is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This letter further reserves any and all rights by Complainant to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558, 558.1, and 1197.1—Complainant reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Employer is on notice that Complainant continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. If Employer intends to cure the alleged violations within the statutory time period set forth in §§ 2699 and 2699.3(a), the employer shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, employee will commence a civil action pursuant to section 2699.

Based on the following summary of the facts and theories upon which Complainant will base his claims, Complainant requests that the LWDA regard this Notice as written notice of his intent to seek civil penalties against Employer. The specific provisions of the California Labor Code that Employer has violated requiring this notice include but are not limited to California Labor Code sections 201-202, 204, 221-223, 226, 226.7, 226.8, 245-248.5, 432.5, 432.7, 510, 511, 512, 1024.5, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5 and all Applicable Wage Orders. These violations subject Employer to civil penalties as set forth in including but not limited to (1) the foregoing statutes, (2) Labor Code sections 203, 210, 225.5, 226.3, 256, 1174.5, 1194.2, 1197.1, and 2699, and (3) section 20 of all Applicable Wage Orders.

The Named Entities Are Joint Employers of Complainant and Aggrieved Employees

California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

Complainant believes and hereon asserts that Employers and unknown entities must be classified as joint employers of Complainant for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted Complainant to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of Complainant at all relevant times herein, so as to be considered the joint employers of Complainant. By reason of their status as joint employers of Complainant and aggrieved employees, they are each liable for civil penalties for violation of the California Labor Code as to Complainant and other aggrieved employees.

Individual Liability Under Labor Code Sections 558 and 558.1

California Labor Code section 558(a) provides "[a]ny 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 as follows: (1) For any initial violation, fifty dollars ($50.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee." Labor code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

In passing AB 588, the California legislature added Labor Code section 558.1. Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. Employer, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Complainant and other Aggrieved Employees rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute. (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802 as further described in detail below.

Complainant intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. Complainant will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. Complainant asks and demands that Employer to put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, Complainant also offers to Employer to place those individuals on notice if Employer voluntarily provides their contact information.

General Information

Royalty Ambulance Services, Inc. is an ambulance services provider serving Southern California. At all times mentioned herein, Royalty Ambulance Services, Inc. was licensed to do business in the State of California and conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, Royalty Ambulance Services, Inc. was and is an employer covered by the California Labor Code and the applicable California Industrial Welfare Commission ("IWC") Wage Order.

Complainant was employed by Royalty Ambulance Services, Inc. as an emergency medical technician (EMT) from approximately February 2019 to August 2021, and was a full-time, non-exempt employee earning $15 an hour. For most of her employment, Complainant typically worked ten to twelve-hour shifts four (4) days per week, however, during the last six (6) months of her employment, Complainant's usual schedule was two twenty-four hour shifts per week. At all times, Royalty Ambulance Services, Inc. employed Complainant as an hourly, non-exempt employee.

Royalty Ambulance Services, Inc. failed to pay minimum wage, failed to provide rest and meal periods, failed to provide accurate itemized wage statements, failed to pay minimum and overtime wages, failed to indemnify employees for expenses incurred, failed to pay all wages due at termination, failed to provide paid sick leave, and failed to maintain required records as follows:

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code § 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage Order 4-2001 (and all applicable IWC Orders), § 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, Employer has failed, and continues to fail, to keep the required time and pay records. Employer has also failed/fails to keep accurate and complete records showing total hours worked by each employee at the proper pay rate. Moreover, upon information and belief, Employer failed to keep accurate and complete records of the start and stop times of all owed meal periods.

Employer's failure to keep "accurate and complete" payroll records for Complainant and other aggrieved employees violates Labor Code §§ 1174, 1198, 1199, and Wage Order 4-2001 (and all applicable IWC Orders), § 7. These violations subject Employer to civil penalties under Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.[1]

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code § 512; IWC Wage Order 4-2001 (and all applicable wage orders), § 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Id*. Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Id*.

[1] See Lab. Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Employer required Complainant and other aggrieved employees to always be on duty by mandating they always monitor their radios to tend to incoming emergency calls. Moreover, Complainant and other aggrieved employees would receive other work-related communications from dispatch when attempting to take a meal period. As a result, Complainant and other aggrieved employees were unable to take timely, duty-free meal periods. Furthermore, Employer failed to provide Complainant and other aggrieved employees with a second duty-free meal period when working shifts over ten (10) hours. Employer did not pay to Complainant one additional hour of pay at her regular rate of compensation for each workday that one or more statutory meal period was not properly provided. Liability for a class of aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable wage orders requirements. The fact that employees may legally waive meal breaks does not affect this result. (Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004).

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and IWC Wage Order 4-2001 (and all applicable wage orders), § 11(A) and (C). These violations subject Employer to civil penalties under Labor Code §§ 558 and 2699, and Wage Order 4-2001 (and all applicable wage orders), § 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.[2] Employer's failure to provide valid meal periods, results in further violations, such as violation of Labor Code § 1174 discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code § 226.7. The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.,* (2016) 5 Cal.5th 257, 269.

Employer did not maintain a company rest period policy and/or practice compliant with California law, and Employer did not properly authorize and provide Complainant and other aggrieved employees with appropriate rest periods in compliance with the law. Per Employer's illegal rest break policy/practice, Complainant and other aggrieved employees were not adequately

[2] Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 4-2001 (and all applicable wage orders), § 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty…for each underpaid employee for each pay period during which the employee was underpaid") (emphasis added).

informed, authorized, instructed about, nor permitted an opportunity to take, proper rest breaks, for among other reasons, they were never relieved of their duties for purposes of taking a rest period as they were required to always remain tethered to their work communication devices. Despite never providing a proper rest break during the relevant time period, Employer failed to pay Complainant and other aggrieved employees with an additional hour of pay at Complainant's and other aggrieved employees' regular rates of pay for each missed or improper rest period. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and IWC Wage Order 4-2001, §12. These violations subject Employer to civil penalties under Labor Code §§ 558 and 2699, and Wage Order 4-2001, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.[3] Employer's failure to provide valid rest periods ultimately resulted/results in further violations, such as violation of Labor Code section 1174 discussed above, and other violations discussed below.

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. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

Complainant and other aggrieved employees were not paid the required minimum wages and proper regular time wages. Regardless of whether off-duty, thirty-minute meal periods were provided, Employer required Complainant and other aggrieved employees to clock out thirty minutes per shift/deducted thirty minutes per shift from Complainant and other aggrieved employees' time worked resulting in Complainant and other aggrieved employees not being compensated for all time worked, in violation of California minimum wage laws. Moreover, based on information and belief, Employer maintained and continues to maintain a policy and practice of time-shaving/ time-rounding requiring Complainant and other aggrieved employees to "round" the start and stop times of their hours worked and/ or only input their scheduled start and stop times, rather than the actual hours worked. Employer's time-shaving/ time-rounding policy and practice as applied worked to detrimentally shave and round time off from Complainant and other aggrieved employees' workdays. Upon information and belief, through the operation of

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[3] See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 4-2001, §20 (establishing that "<u>[i]n addition to any other civil penalties provided by law</u>, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty…for each underpaid employee for each pay period during which the employee was underpaid").

Employer's time-shaving/ time-rounding system which resulted in understating actual compensable time worked, Complainant and other aggrieved employees would systematically be deprived of compensable time.

These violations subject employer to civil penalties under Labor Code sections 1197.1 and Wage Order 4-2001 (and all applicable wage orders), § 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.[4]

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code § 510; IWC Wage Order 4-2001, § 3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid*.

Employer's failure to pay for all "hours worked" (i.e., off the clock work duties, the 30-minutes deducted for shortened/on-duty meal periods) resulted in Complainant and all aggrieved employees working more than eight hours per day or more than 40 hours per workweek. Moreover, Employer failed to compensate Complainant and other aggrieved employees overtime wages when working shifts over 8 hours by commencing overtime rate at hours worked over ten (10) hours. Moreover, when Complainant and other aggrieved employees worked 24-hour shifts, Employer's practice was to pay overtime premiums only on a weekly basis after 40 hours worked and not on a daily basis whatsoever. Such practices enacted by Employer would systematically deprive Complainant and other aggrieved employees of compensable time.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 4-2001, § 12(A). These violations subject employer to civil penalties under Labor Code § § 558, 558.1, 218.5, and 2699, and Wage Order 4-2001, § 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.[5]

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[4] Labor Code § 1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 4-2001 (and All Applicable Wage Orders), § 20 (establishing that "<u>[i]n addition to any other civil penalties provided by law</u>, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty…for each underpaid employee for each pay period during which the employee was underpaid") (Emphasis added).

[5] See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 4-2001, § 20 (establishing that "<u>[i]n addition to any other civil penalties provided by law</u>, any employer or any other person acting on behalf of the employer who violates, or

Statutory Wage Violations: California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages. As described above, Employer willfully and systematically denied Complainant and other aggrieved employees minimum wage compensation for all hours worked and proper overtime pay which resulted in the payment of less than statutorily required wages to them. Employer acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law. Thus, Employer paid Complainant and other aggrieved employees lower wages than those they were entitled to while purporting that Complainant and other aggrieved employees were properly paid. Complainant and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due. Employer violated/violates this section by failing to pay aggrieved employees for all hours worked at the proper wage rate and by failing to pay aggrieved employees an additional hour of pay for each meal/rest period not provided/that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject Employer to civil penalties under Labor Code § 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.[6]

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2801(a) and Wage Order 4-2001, § 9. Complainant and other aggrieved employees were improperly required to wear uniforms that are supposed to be the responsibility of the employer. Among other things, under California law, when uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color. IWC Wage Order No. 4-2001, § 9 (b). At all relevant times hereto, Employer shifted its costs of doing business onto its employees by requiring Complainant and other aggrieved employees to pay for maintenance of uniforms, requiring employees to send unforms to cleaners at employees' expense.

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causes to be violated, the provisions of this order, shall be subject to the civil penalty…for each underpaid employee for each pay period during which the employee was underpaid").

[6] Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty…for each failure to pay each employee") (emphasis added).

As a pattern and practice, Employer regularly failed to reimburse and indemnify Complainant and other aggrieved employees for business expenses. For example, Complainant and other aggrieved employees would send their uniforms to cleaners. These expenses were necessary expenditures incurred by Complainant and other aggrieved employees in performing their job duties. Despite being aware of these business expenses, Employer failed to reimburse Complainant and other aggrieved employees for such business expenses in violation of California Labor Code § 2802, which requires employers to "indemnify his or her employee for all necessary expenditures and losses incurred by employees." In turn, there constitutes a PAGA violation based on a violation of California Labor Code § 2802.

Sick Pay Law Violations: Throughout the relevant time period, Employer either failed to provide any sick leave pay whatsoever to Complainant and other aggrieved employees or failed to properly accrue paid sick leave due to Employer's failure to account for actual hours worked (by virtue of the auto- deduction and other off-the-clock work practices described herein). Employer further failed to give Complainant and aggrieved employees notice of their paid sick leave rights. In addition, Employer failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the employees, which affected employees' intelligent exercise of their paid sick leave.

These practices violated California's sick leave laws, Labor Code section 245, et seq. In violation of Labor Code § 247.5, Employer failed to maintain records documenting the hours worked and paid sick days accrued and used by Complainant and aggrieved employees, permitting the presumption that Complainant and other aggrieved employees were entitled to the maximum number of hours accruable at the time of their respective terminations. Employer further failed to comply with Labor Code section 246 by failing to provide its employees with wage statements or separate documents showing the amount of paid sick leave available, or paid time off leave in lieu of sick leave.

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his, her, or its employees with an accurate itemized wage statement in writing that contains the following: (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 basis; (4) all deductions; (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; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

Employers failed to provide an accurate and itemized statement containing, among other things, earned gross and net wages during the time period, total actual hours worked, and the proper applicable pay rate(s) for all hours worked. As a result of Employers' violations of various Labor Code and Wage Order provisions, as discussed herein, Employers failed to provide accurate wage statements with respect to multiple categories set forth in Labor Code section 226, and therefore Employer violated section 226. These violations subject Employer to civil penalties under Labor Code § 226.3. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.[7]

<u>Standard Conditions of Labor Violations</u>: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, Employer's violations with respect to meal periods, rest periods, recordkeeping provisions, and minimum/overtime wages result in separate violations of sections 1198 and 1199, which subject Employer to civil penalties under Labor Code sections 1197.1 and 2699.

<u>Final Pay Violations</u>: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Labor Code section 202 requires employers pay all wages earned and unpaid within seventy-two hours of an employee's resignation. Employer still has not paid all aggrieved employees all wages earned and unpaid at the time of discharge/within seventy-two hours of resignation, in that Employer has not paid for: (1) all owed minimum wages (2) all owed overtime wages and (3) all owed sick pay. These violations subject Employers to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.[8]

Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code section 256. *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365.

<u>Background Check Violations</u>: The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code Section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Labor Code Section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in convic-

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[7] Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

[8] Labor Code § 210 (establishing that "<u>[i]n addition to, and entirely independent and apart from, any other penalty provided in this article,</u> every person who fails to pay the wages of each employee as provided in sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty…for each failure to pay each employee").

tion(s) and even then, certain limitations apply. Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code §1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. § 1681, et seq.) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, as well as proper notice of adverse actions taken, among other statutory requirements.

Upon information and belief, Employer required Complainant and other aggrieved employees to submit to an unlawful criminal and/or financial background check as a condition of obtaining and/or holding employment in violation of Labor Code Section 1024.5. Labor Code Section 432.7. Employer also required Complainant and other aggrieved employees to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code §1786, et seq. and 15 U.S.C. § 1681, et seq., and thus was an unlawful background check. By having Complainant and other aggrieved employees sign off on the illegal background checks, Employer also violated Labor Code Section 432.5 (stating that "no employer…shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer…to be prohibited by law.")

Conclusion

Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in question and file an online claim to the Labor Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code sections 2699, 2699.3(a), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, Complainant will seek these penalties in a civil action, on behalf of herself and all other California-based non-exempt aggrieved employees of Employer within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this notice to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner

Crosner Legal, PC
9440 Santa Monica Blvd. Suite 301
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Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC