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Case Management Conference
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STK-CV-UOE-2022-0003439

Attorneys for Plaintiff SILVESTRE GONZALEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

SILVESTRE GONZALEZ, an individual, on
behalf of himself and other similarly aggrieved
employees and the State of California,

Unlimited Jurisdiction

Case No.:

Plaintiff,

vs.

FLETCHLINE INC., a Tennessee
corporation; **HYDE GROUP LLC**, a Nevada
limited liability company; and **DOES 1-50**,

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Defendants.

1 Plaintiff Silvestre Gomez (“Plaintiff”), on behalf of himself and all other similarly
2 aggrieved employees and the State of California, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff, as a proxy for the State of California, brings a representative law
5 enforcement action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code
6 Section 2698 et seq., to recover civil penalties against Defendant Fletchline, Inc. and Defendant
7 Hyde Group LLC. On behalf of himself, other aggrieved employees and the State, Plaintiff seeks
8 to recover civil penalties (75% payable to the Labor Workforce Development Agency and 25%
9 payable to aggrieved employees) owed by Defendants under, Labor Code Section 2699 for failure
10 to provide adequate meal periods, failure to provide adequate rest periods, failure to reimburse
11 business expenses, failure to provide accurate wage statements, failure to timely pay all wages
12 during employment, failure to keep legally compliant payroll records, and failure to timely pay all
13 wages upon cessation of employment.

14 **JURISDICTION AND VENUE**

15 2. Venue is proper in the County of San Joaquin because work was performed by
16 aggrieved employees for Defendants in the County of San Joaquin, including in the city of
17 Stockton, California, and the legal obligations of Defendants to Plaintiff and other aggrieved
18 employees were breached throughout California, including in San Joaquin County.

19 3. The California Superior Court has jurisdiction in this matter because Defendants
20 are qualified to do business in California and Defendants regularly conduct business in California.
21 Further, there is no federal question at issue as the claims herein are based solely on California
22 law.

23 **THE PARTIES**

24 **A. Plaintiff**

25 4. Plaintiff is over the age of eighteen, and at times mentioned in this complaint, was
26 employed by Defendants Fletchline, Inc. and Hyde Group LLC in California. During the one-year
27 period preceding the notification of his claims under the PAGA to Defendants and the Labor
28

1 Workforce and Development Agency (the “LWDA”), Plaintiff was employed by Defendant
2 Fletchline, Inc. and Defendant Hyde Group LLC as an hourly paid non-exempt employee
3 installing, servicing and repairing conveyor and racking systems for Defendants’ clients
4 throughout California, including in San Joaquin, Riverside and Sacramento Counties, among
5 others. Plaintiff was employed by Defendant Hyde Group LLC, a labor contractor, to perform
6 services for Defendant Fletchline, Inc. Plaintiff was employed by Defendant Fletchline Inc. and
7 Defendant Hyde Group LLC from approximately July 2018 through September 2, 2021.

8 5. Accordingly, Plaintiff seeks to represent the following two groups of aggrieved
9 employees for the following violations of the California Labor Code:

10 a. All current and former non-exempt hourly paid employees who worked for
11 Fletchline Inc. in the state of California from February 28, 2021 through the
12 present for violations of Labor Code Sections 201-203; 204; 226; 226.7; 512;
13 1174; 1174.5 and 2802; and

14 b. All current and former non-exempt hourly paid employees who worked for
15 Fletchline Inc. in the state of California through a labor contractor, including
16 Hyde Group LLC, from February 28, 2021 through the present for violations of
17 Labor Code Sections 201-203; 204; 226; 226.7; 512; 1174; 1174.5; and 2802.

18 6. As such, Plaintiff appears in this action on behalf of himself and on behalf of all
19 other similarly situated aggrieved employees and the State of California.

20 **B. Defendants**

21 7. Defendant Fletchline, Inc. is a Tennessee Corporation and Defendant Hyde Group
22 LLC is a Nevada limited liability company.

23 8. Plaintiff is informed and believes, and thereon alleges, that Defendant Fletchline
24 Inc. employs persons through Hyde Group LLC and other labor contractors to install and service
25 various industrial equipment, including mechanical conveyors and rack systems for their clients
26 throughout California. At all times relevant to this action, Fletchline has been in the business of
27 contracting with clients to supply those services throughout California.

1 9. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
2 participation in the conduct herein alleged, of the Defendants sued herein as DOES, but is informed
3 and believes and thereon alleges that said Defendants are legally responsible for the wrongful
4 conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will
5 amend this complaint to allege the true names and capacities of the DOE Defendants when
6 ascertained. Defendant Fletchline, Inc., Defendant Hyde Group LLC and the DOE Defendants are
7 collectively referred to herein as “Defendants.”

8 10. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
9 all respects pertinent to this action as the agent of one or more of the other Defendants, carried out
10 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
11 Defendant are legally attributable to one or more of the other Defendants.

12 **FACTS RELEVANT TO PLAINTIFF’S CLAIMS**

13 ***Failure to Provide Adequate Meal Periods***

14 11. Throughout Plaintiff’s employment with Defendants, including the one year prior
15 to the date of Plaintiff’s letter notifying Defendants and the LDWA of the alleged violations,
16 Defendants regularly failed to provide and/or permit Plaintiff and other similarly aggrieved
17 employees meal periods that complied with California law.

18 12. At all relevant times, Plaintiff and other similarly aggrieved employees were
19 employed subject to Labor Code Sections 226.7 and 512. Under Labor Code Sections 226.7 and
20 512, and the applicable Industrial Welfare Commission (“IWC”) Wage Orders, Including Wage
21 Order 1-2001(11), Plaintiff and other similarly aggrieved employees were entitled to a meal period
22 of at least 30 minutes for each workday they worked more than 5 hours in any workday and a
23 second meal period of at least 30 minutes for each workday they worked more than 10 hours.
24 Additionally, they were entitled to one hour of pay for every day that a timely meal period was not
25 provided. Defendants’ violation of the applicable IWC wage Orders, including Wage Order 1-
26 2001, constitutes a violation of Labor Code Section 558, which imposes civil penalties upon an
27 employer for a violation relating to any provision regulating hour and days of work in any order

1 of the IWC. Labor Code Section 558(a)(1) and (2).

2 13. Defendants did not provide Plaintiff and other similarly aggrieved employees with
3 a timely meal period. Plaintiff was regularly scheduled to work 10 to 13-hour shifts. However,
4 Defendants did not direct Plaintiff to take a meal period until after the fifth hour of work. Notably,
5 Defendants required Plaintiff and other similarly aggrieved employees to sign in at the start of
6 their shift and to sign out at the end of their shift. Defendants' sign in sheets for Plaintiff do not
7 include a record of when Plaintiff received a meal break. In the concurring opinion in *Brinker*
8 *Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, 1053, Justice Wedegar stated:

9 If an employer's records show no meal period for a given shift over five hours, a
10 rebuttable presumption arises that the employee was not relieved of duty and no
11 meal period was provided. This is consistent with the policy underlying the meal
period recording requirement which was inserted in the IWC's various wage orders
to permit enforcement.

12 14. Based on the payroll data for Plaintiff, at no point during the liability period did
13 Defendants pay Plaintiff an additional hour of premium pay for Defendants' failure to provide a
14 timely meal period.

15 15. As alleged above, Defendants employed Plaintiff and other similarly aggrieved
16 employees subject to Labor Code Section 226.7(c) and 512 and the applicable Wage Orders,
17 including Wage Order 1-2001(11). Wage Order 1-2001 (11)(B) provides that, "An employer may
18 not employ an employee for no more than ten (10) hours per day without providing the
19 employee with a second meal period of not less than 30 minutes, except that if the total hours
20 worked is **no more than 12 hours**, the second meal period may be waived by mutual consent of
21 the employer and the employee only if the first meal period was not waived.

22 16. Plaintiff and other similarly aggrieved employees were typically scheduled to work
23 between 10 to 13-hour shifts. For shifts which lasted longer than 10 hours, Plaintiff and other
24 similarly aggrieved employees were entitled to a second meal period. However, Defendants did
25 not provide a second meal period.

1 ***Failure to Provide Adequate Rest Periods***

2 17. During Plaintiff's employment with Defendants, including the one year prior to the
3 date of Plaintiff's letter notifying Defendants and the LDWA of the alleged violations, Defendants
4 regularly failed to provide, authorize, and/or permit Plaintiff and other similarly aggrieved
5 employees rest periods that complied with California law.

6 18. California Law requires employers to authorize and permit non-exempt employees
7 to take a rest period that must, insofar as practicable, be taken in the middle of each work period.
8 Wage Order 1-2001(12)(A). The rest period is based on the total hours worked daily and must be
9 at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major
10 fraction thereof. In *Brinker*, the California Supreme Court held that employees are entitled to a 10-
11 minute paid rest period for shifts from 3 1/2 to 6 hours in length, two 10-minute rest periods for
12 shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than
13 10 hours up to 14 hours. *Id* at 1029.

14 19. On shifts that were more than 10 hours, Defendants never provided Plaintiff the
15 opportunity to take a third ten-minute rest break. Accordingly, Plaintiff was deprived of at least
16 one or more of his mandated rest breaks and was not paid the additional hour of premium pay as
17 required by Labor Code Section 226.7 and Wage Order 1-2001(12)(B). Defendants' violations of
18 Wage Order 1-2001(12) constitute a violation of Labor Code Section 1198, which prohibits
19 employment under conditions of labor that violate the IWC Wage Orders.

20 ***Failure to Reimburse Business Expenses.***

21 20. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved
22 employees subject to Labor Code Section 2802. Labor Code Section 2802 requires employers to
23 indemnify its employees for all necessary expenditures or losses that employees incur as a direct
24 consequence of discharging their duties or of obeying employer directions.

25 21. During Plaintiff's employment, including the one-year period preceding the date of
26 Plaintiff's letter notifying Defendants and the LWDA, Plaintiff was paid a per diem of \$70 (and
27 sometime in July 2021, Defendants began to pay a per diem of \$80) per day when he was assigned

1 to work in California and was required to be away from his home state of Texas. The per diem was
2 intended to cover the expenses of remote work, including meals and lodging. (On information and
3 belief, the per diem policy applied to all similarly aggrieved employees.) However, the \$70 (and,
4 later on, the \$80) per diem was insufficient to cover the cost of a motel room for one night, let
5 alone any of his meals.

6 22. Furthermore, Plaintiff was required to use his own tools when installing, servicing,
7 and repairing conveyors and other machinery for Defendants' customers. Defendants did not
8 reimburse Plaintiff and other similarly aggrieved employees for the expenses that Plaintiff and
9 other similarly aggrieved employees incurred for the purchase of the required tools that were used
10 for the benefit of Defendants' business-related activities.

11 ***Failure to Provide Accurate Wage Statements***

12 23. At all relevant times, Defendants employed Plaintiff and other aggrieved
13 employees subject to Labor Code Section 226. Labor Code Section 226(a) requires employers
14 furnish accurate itemized statements in writing that show, inter alia, "(1) gross wages earned..."
15 Plaintiff and other similarly aggrieved employees of Defendants received wage statements that did
16 not list all wages earned, including the premium wages discussed above. As the above infractions
17 explain, Plaintiff and similarly aggrieved employees were entitled to premium wages that were not
18 paid, and therefore, are entitled to penalty payments pursuant to Labor Code Section 226.

19 ***Failure to Timely Pay All Wages During Employment***

20 24. At relevant times, Defendants employed Plaintiff and other similarly aggrieved
21 employees subject to Labor Code Section 204. Labor Code Section 204 states that all wages earned
22 by an employee are due and payable twice during each calendar month on days designated in
23 advance by employer.

24 25. Plaintiff and other similarly aggrieved employees were not compensated by
25 Defendants for all wages earned. Defendants did not pay Plaintiff and other similarly aggrieved
26 employees the meal and rest premiums owed for meal and rest break violations (as alleged herein).
27 Defendants willfully failed to timely pay Plaintiff and other similarly aggrieved employees all
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1 wages due, and this failure continued though the time in which they were employed by Defendants.

2 ***Failure to Keep Legally Compliant Payroll Records***

3 26. At all relevant times, Defendants were subject to Labor Code Section 1174 and
4 therefore obligated to comply with its terms. Labor Code Section 1174 states, “[e]very person
5 employing labor in this state shall... (d) [k]eep at a central location in the state or at the plants or
6 establishment at which employees are employed, payroll records showing the hours worked daily
7 and the wages paid to, ..., employees employed ay the respective plants or establishments.” The
8 “Records” section of the applicable IWC Wage Order states that every employer shall keep
9 accurate information with respect to each one of its employees, including time records showing
10 when the employee begins and ends each work period and meal period, total hours worked in the
11 payroll period and applicable rates of pay, and total wages paid each payroll period.

12 27. Defendant failed to keep accurate information with respect to Plaintiff and other
13 similarly aggrieved employees, including time records showing when the employee begins and
14 ends each meal period, for each pay period as required by the “Records” section of the applicable
15 IWC Wage Order. Defendant therefore knowingly and intentionally failed to maintain accurate
16 records as required by Labor Code Section 1174.

17 ***Failure to Timely Pay All Wages Upon Cessation of Employment***

18 28. At all relevant times, Plaintiff and other similarly aggrieved employees were
19 covered by Labor Code Section 201-203. Pursuant to Labor Code Sections 201 and 202,
20 Defendants are required to immediately pay all wages owed in the case of a discharge or
21 resignation when the resigning employee provided at least three days’ notice of resignation or
22 within 72 hours for those employees who resign and provide less than 3 days’ notice.

23 29. Plaintiff and other similarly aggrieved employees have ceased their employment
24 with Defendants. Upon cessation of that employment relationship (as prescribed by statute), they
25 did not receive all wages owed. Namely, said former employees (including Plaintiff) did not
26 receive all of their premium wages. Plaintiff, and similarly aggrieved employees, upon
27 termination, did not receive all wages owed on the date of termination. Therefore, Defendants have

1 violated and continue to violate Labor Code Sections 201 and 202, because even if they pay
2 employees timey, they have not paid the aforementioned wage penalties. Likewise, Defendants
3 have violated Labor Code Section 203 by not paying the waiting time penalties for failure to
4 comply with Sections 201 and 202.

5 **FIRST CAUSE OF ACTION**

6 **CIVIL PENALTIES UNDER PAGA**

7 **(By Plaintiff, Aggrieved Employees and the State of California against Defendants)**

8 30. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
9 though set forth herein.

10 31. At all times relevant to this action, Plaintiff and other aggrieved employees were
11 “aggrieved employees” within the meaning of Labor Code Section 2699.

12 32. Defendants’ conduct as described herein, arising from Defendants’ failure to
13 provide adequate meal periods, failure to provide adequate rest periods, failure to reimburse
14 business expenses, failure to provide accurate wage statements, failure to timely pay all wages
15 during employment, failure to keep legally compliant payroll records, and failure to timely pay all
16 wages upon cessation of employment, constitute violations of Labor Code Sections 201, 202, 203,
17 204, 226, 226.7, 512, 1174, 1174.5, 2802, and the IWC Wage Orders, including Wage Order 1-
18 2001.

19 33. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf
20 of himself and other current or former employees, to bring a civil action to recover civil penalties
21 pursuant to the procedures specified in Labor Code Section 2699.3.

22 34. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
23 Section 2699.3. By letter dated February 28, 2022, Plaintiff gave written notice to the Labor and
24 Workforce Development Agency (“LWDA”) via its online filing system and by certified mail to
25 Defendant Fletchline, Inc. and Defendant Hyde Group LLC of the specific provisions of the Labor
26 Code alleged to have been violated, including the facts and theories to support the alleged
27 violations. A true and correct copy of the February 28, 2022, letter is attached hereto as **Exhibit**

1 1. To date, more than 65 days after the February 28, 2022 submission date, the LWDA has not
2 advised Plaintiff that it intends to investigate Plaintiff's allegations.

3 35. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other aggrieved
4 employees are entitled to civil penalties for Defendants' violations of the Labor Code and the
5 applicable Wage Orders of the Industrial Welfare Commission, including Wage Order 1, in the
6 amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
7 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
8 subsequent violation. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties recovered
9 shall be distributed to the LWDA, and 25% shall be distributed to the aggrieved employees.

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

14 37. Defendants' failure to maintain accurate and complete records constitutes an injury
15 as defined under Labor Code Section 1174. Therefore, Plaintiff and other similarly aggrieved
16 employees have suffered an injury for the purposes of Labor Code Section 1174.5 and 2699 and
17 are entitled to recover the greater of all actual damages or the amount specified in Sections 1174.5
18 and 2699 per violation.

19 38. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of
20 reasonable attorney's fees and costs in connection with his claims for civil penalties.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff on behalf of himself and all others similarly aggrieved employees,
23 prays for relief and judgment against Defendants as follows:

- 24 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
25 25% payable to aggrieved employees);
- 26 2. Costs;
- 27 3. Reasonable attorney's fees; and

1 4. Such other and further relief as this Court may deem just and proper.

2 Dated: May 5, 2022

MOSS BOLLINGER, LLP

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By: 

Jeremy F. Bollinger

Ari E. Moss

Jorge A. Flores

Attorneys for Plaintiff, SILVESTRE GONZALEZ

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EXHIBIT 1

to

Complaint

Gonzalez v. Fletchline, Inc. et al.



Moss Bollinger
LLP

JEREMY F. BOLLINGER
310.982.2984/fax: 818.963.5954
jeremy@mossbollinger.com

February 28, 2022

VIA PAGA ONLINE FILING

Secretary Natalie Palugyai
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Fletchline, Inc.
c/o First Corporate Solutions Inc.
914 S Street
Sacramento, CA 95811

Hyde Group LLC
c/o First Corporate Solutions Inc.
321 W Winnie LN, Ste 104
Carson City, NV 89703

Re: Notice pursuant to Labor Code Section 2699.3
Labor Code Private Attorneys General Act ("PAGA")

Employers: Fletchline, Inc. and Hyde Group LLC

Employee: Silvestre Gonzalez, on behalf of himself and on behalf of all current and former similarly employed employees of Fletchline, Inc. and Hyde Group LLC.

Dear Secretary Palugyai:

Pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee Silvestre Gonzalez ("Plaintiff"), on behalf of himself and all other similarly situated current and former non-exempt employees of Defendant Fletchline Inc. and Defendant Hyde Group LLC (collectively, "Defendants") alleges that Defendants

violated the California Labor Code throughout Plaintiff's employment and within the one year prior to the mailing of this letter.

General Facts

During the relevant one year period before the date Plaintiff submitted this letter to the Labor & Workforce Development Agency ("LWDA"), Plaintiff worked for Defendant Hyde Group LLC as a non-exempt employee installing, servicing and repairing conveyor and racking systems for Defendant Fletchline Inc.'s clients. Hyde Group LLC is a Nevada limited liability corporation. Defendant Fletchline Inc. is a Tennessee corporation.

Defendant Fletchline Inc. employs persons through Hyde Group LLC and other labor contractors to install and service various industrial equipment, including mechanical conveyors and rack systems for their clients throughout California, including in Sacramento, San Joaquin and Riverside Counties, among others. Defendants employed Plaintiff from approximately July 2018 through September 2, 2021.

Accordingly, Plaintiff seeks to represent the following two groups of aggrieved employees for the following violations of the California Labor Code:

- 1) All current and former non-exempt hourly paid employees who worked for Fletchline Inc., in the state of California within one year preceding the date of this letter through the present for violations of Labor Code Sections 201-203; 204; 226; 226.7; 512; 1174; 1174.5; and 2802.
- 2) All current and former non-exempt hourly paid employees who worked for Fletchline Inc. in the state of California, through a labor contractor, including Hyde Group LLC, within one year preceding the date of this letter through the present for violations of Labor Code Sections 201-203; 204; 226; 226.7; 512; 1174; 1174.5; and 2802.

Meal Period Violations

- 1) Failure to Provide Legally Complaint Meal Periods

During Plaintiff's employment, Defendants regularly failed to provide, authorize, and/or permit to Plaintiff and other similarly aggrieved employees meal periods that complied with California law.

Under Labor Code Sections 226.7 and 512, and the applicable Industrial Welfare Commission ("IWC") Wage Orders, including Wage Order 1-2001(11), Plaintiff and other similarly aggrieved employees were entitled to a meal period of at least 30 minutes for each workday they worked more than 5 hours in any workday and a second meal period of at least 30 minutes for each workday they worked more than 10 hours. Additionally, they were entitled to one additional

hour of pay for every day that a timely meal period was not provided. Defendants' violation of the applicable IWC Wage Orders, including Wage Order 1-2001, constitutes a violation of Labor Code Section 558, which imposes civil penalties upon an employer for a violation relating to any provision regulating hour and days of work in any order of the IWC. Labor Code Section 558(a)(1) and (2).

Defendants did not provide Plaintiff and other similarly aggrieved employees with a timely meal period. Plaintiff was regularly scheduled to work from 4:45 am to 3:30pm. However, Defendants did not direct Plaintiff to take a meal period until sometime after the fifth hour of work. Notably, Defendants required Plaintiff and other similarly aggrieved employees to sign in at the start of their shift and to sign out at the end of their shifts. Defendants' sign in sheets for Plaintiff do not include a record of when Plaintiff received a meal break. In the concurring opinion in *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, 1053, Justice Werdegar stated:

If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided. This is consistent with the policy underlying the meal period recording requirement, which was inserted in the IWC's various wage orders to permit enforcement.

In addition, based on Defendants' payroll date for Plaintiff, at no time during the liability period did Defendants pay Plaintiff an additional hour of premium pay for Defendants' failure to provide a timely meal period.

2) Failure to Provide Second Meal Periods

As alleged above, Defendants employed Plaintiff and other similarly aggrieved employees subject to Labor Code Sections 226.7(c) and 512 and the applicable IWC Wage Orders, including Wage Order 1-2001(11). Wage Order 14-2001(11)(B) provides that, "An employer may not employ an employee for more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is **no more than 12 hours** the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Plaintiff and other similarly aggrieved employees were typically scheduled to work between 10 to 13 hour shifts. For shifts which lasted longer than 10 hours, Plaintiff and other similarly aggrieved employees were entitled to a second meal period. However, Defendants did provide Plaintiff with a second meal period.

As Defendants failed to provide meal periods in compliance with California law and did not pay the required break premiums when such violations occurred, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period

for each additional violation. Defendants' violations of Wage Order 1-2001(11) constitute a violation of Labor Code Section 1198, which prohibits employment under conditions of labor that violate the IWC Wage Orders.

Rest Period Violations

During Plaintiff's employment, Defendants regularly failed to provide, authorize, and/or permit to Plaintiff and other similarly situated employees rest periods that complied with California law.

California law requires that employers must authorize and permit non-exempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. Wage Order 1-2001(12)(A). The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029.)

On shifts that were more than 10 hours, Defendants never provided Plaintiff the opportunity to take a third 10-minute rest break. Accordingly, Plaintiff was deprived of at least one or more of his mandated rest breaks and was not paid the additional hour of premium pay as required Labor Code Section 226.7 and Wage Order 1-2001(12)(B). Defendants' violations of Wage Order 1-2001(12) constitute a violation of Labor Code Section 1198, which prohibits employment under conditions of labor that violate the IWC Wage Orders.

As Defendants failed to provide rest breaks in compliance with California law and did not pay the required break premiums when such violations occurred, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Failure to Reimburse Business Expenses

Pursuant to California Labor Code Section 2802:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...

1) Per Diem Pay

During his employment and throughout the one-year period preceding the date of this letter, Plaintiff was paid a per diem of \$70 (and sometime in July, 2021 Defendants began to pay a per diem of \$80) per day when he was assigned to work in California and was required to be away from his home state of Texas. The per diem was intended to cover the expenses associated with the remote work, including meals and lodging. (On information and belief, the per diem policy applied to all other similarly aggrieved employees.) However, the \$70 (and, later on, the \$80) per diem was not enough to cover the cost of a motel room for one night, let alone any of his meals.

2) Reimbursement of Tools

During his employment and throughout the one-year period preceding the date of this letter, Plaintiff was required to use his own tools when installing, servicing and repairing conveyors and other machinery for Defendants' customers. Defendants did not reimburse Plaintiff and other similarly aggrieved employees for the expenses Plaintiff and other similarly aggrieved employees incurred for the purchase of the required tools that was used for the benefit of Defendants' business-related activities.

As Defendants failed to reimburse Plaintiff and other similarly aggrieved employees for business expenses they incurred in excess of the per diem and for purchase of work related tools in violation of Section 2802, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Inaccurate Wage Statements

Plaintiff and similarly aggrieved employees of Defendants received wage statements that did not list all wages earned, including premium wages discussed above. As the above infractions explain, Plaintiff and similarly aggrieved employees were entitled to premium wages that were not paid and, therefore, are entitled to penalty payments pursuant to Labor Code Section 226.

Violation of Labor Code § 204

California Labor Code § 204, subdivision (a), states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employers. Plaintiff and other similarly aggrieved employees were not compensated by Defendants for all wages earned. Defendants did not pay Plaintiff and other similarly aggrieved employees the meal and rest premiums owed for meal and rest break violations (as alleged herein). Defendants willfully failed to timely pay Plaintiff and other similarly aggrieved employees all wages due and this failure continued through the time in which they were employed by Defendants. As a result, Defendants violated California Labor Code § 204.

As Defendants failed to pay Plaintiff and other similarly aggrieved employees as required by California Labor Code § 204, when such violations occurred, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Violation of Labor Code § 1174(d), 1174.5 and IWC Wage Order 1-2001 Sections 7

Labor Code section 1174 states, “[e]very person employing labor in this state shall...(d) [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments.” The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period. Wage Order 1-2001(6).

Defendants failed to keep accurate information with respect to Plaintiff and other similarly aggrieved employees, including time records showing when the employee begins and ends each meal period each payroll period as required by the “Records” section of the applicable IWC Wage Order. Therefore, Defendants knowingly and intentionally failed to keep and maintain accurate records as required by Labor Code § 1174.

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

Defendants’ failure to maintain accurate and complete records constitutes an injury as defined under Labor Code § 1174. Therefore, Plaintiff and other similarly aggrieved employees have suffered an injury for purposes of Labor Code §§ 1174.5 and 2699 and are entitled to recover the greater of all actual damages or the amount specified in §§ 1174.5 and 2699 per violation.

As Defendants failed to maintain accurate records of Plaintiff’s and other similarly aggrieved employees as required by California Labor Code § 1174, when such violations occurred, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Unpaid Final Wages

Plaintiff (and others) have ceased their employment with Defendants. Upon the cessation of that employment relationship (and as prescribed by statute), they did not receive all wages owed. Namely, said former employees (including Plaintiff) did not receive all of their premium wages. Plaintiff and those similarly situated, upon termination, did not receive all owed wages on the date of termination. Therefore, Defendants have violated and continue to violate Labor Code Sections 201 and 202, because even if they pay employees timely, they have not paid the aforementioned wage penalties. Likewise, Defendants have violated Section 203 by not paying the waiting time penalties for failure to comply with Sections 201 and 202.

Civil Penalties

As a result of the foregoing, Defendants are liable for civil penalties as provided for by California law. Consequently, Plaintiff and all other similarly aggrieved employees of Defendants in California are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Defendants violated and continue to violate the obligation to make available legally compliant meal and rest breaks, to pay break premiums, to issue legally compliant wage statements, to pay all final wages, to reimburse all necessary expenditures, and to maintain accurate records. Plaintiff requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, if Defendants fail to cure those violations that are curable under Labor Code Section 2699.3 and the agency does not intend to investigate any of the alleged violations, Plaintiff requests that the agency inform him of its decision so that he may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,

MOSS BOLLINGER, LLP



Jeremy F. Bollinger