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Attorneys for Plaintiffs

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 27 2022

Sophia A. Smith

COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

TAVARUS NESBITT and SANDRA LASSEN, individually, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act ("PAGA"); Plaintiffs, v. MUSCOLINO INVENTORY SERVICE, INC. D/B/A PICO, ENTERPRISES, INC., a California Corporation; and DOES 1 through 100, inclusive; Defendants.	Case No.: CIVSB 2208409 **COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF LABOR CODE § 2698 *et seq.* (PRIVATE ATTORNEYS GENERAL ACT OF 2004)** FAXED

Plaintiffs Tavarus Nesbitt and Sandra Lassen ("Plaintiffs") hereby submit their Complaint against Defendants Muscolino Inventory Service, Inc. d/b/a Pico, Enterprises, Inc.; and DOES 1 through 100, inclusive; (collectively, "Defendants"), on behalf of themselves and other current and former aggrieved employees of Defendants for penalties as follows:

INTRODUCTION

1. This representative action is brought pursuant to Labor Code § 2698 *et seq.* (the Private Attorneys General Act of 2004 ("PAGA")) for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

2. This Complaint challenges Defendants' systemic illegal employment practices resulting in violations of the stated provisions of the Labor Code against the identified group of employees.

3. Plaintiffs are informed and believe and thereon allege Defendants jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees in (1) failing to pay all meal period wages and rest break wages, (2) failing to properly calculate and pay all minimum and overtime wages, (3) failing to provide accurate wage statements, (4) failing to pay all wages due and owing during employment and upon termination of employment, and (5) failing to reimburse all necessary business expenses.

JURISDICTION AND VENUE

4. This action is brought pursuant to PAGA. The civil penalties sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

5. This Court has jurisdiction over this action pursuant to California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

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6. This Court has jurisdiction over the violations of PAGA and Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

7. This Court has jurisdiction over all Defendants because, upon information and belief, each party has sufficient minimum contacts in California, or otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

8. Venue is proper in this Court because, upon information and belief, the named Defendants transact business and/or have offices in this county, and the acts and omissions alleged herein took place in this county. Moreover, this action is brought on behalf of the State of California as a private attorney general and has jurisdiction in this venue.

PARTIES

9. Plaintiff Tavarus Nesbitt is an individual residing in the State of California. Plaintiff Tavarus Nesbitt was employed by within the statutory time period.

10. Plaintiff Sandra Lassen is an individual residing in the State of California. Plaintiff Sandra Lassen was employed by Defendants within the statutory time period.

11. Plaintiffs are informed and believe and thereon allege that Defendants are licensed to do business and actually doing business in the State of California, including the County of San Bernardino.

12. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this complaint when the true names and capacities are known. Plaintiffs are informed and believe and thereon allege that each of Defendants designated as a DOE was responsible in some way for the matters alleged herein and proximately caused Plaintiffs and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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13. At all times herein mentioned, Defendants, and each of them, were agents, partners, joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly committed with ratification, knowledge, permission, encouragement, authorization and consent of each Defendant designated herein.

14. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to PAGA and Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

CAUSE OF ACTION

VIOLATION OF PAGA

(AGAINST ALL DEFENDANTS BY PLAINTIFFS)

15. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 13 as though fully set forth herein.

16. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

17. On February 18, 2022, Plaintiffs provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code they contend were violated, and the theories supporting their contentions. Plaintiffs believe that on or about April 25, 2022, the sixty-five (65) days' notice period expired, and the LWDA did not take any action to investigate or prosecute this matter. Attached hereto as **Exhibit 1** and incorporated by reference is a copy of the written notices to the LWDA. Therefore, Plaintiffs exhausted the statutory time period to bring this action.

18. Plaintiffs and the other hourly-paid or non-exempt employees are "aggrieved employees" as defined by California Labor Code § 2699(c) in that they are all current or former employees (whether hired directly or through staffing agencies) of Defendants who worked for Defendants at any time during the period from November 2, 2019 to the present, and one or more of the alleged violations was committed against them.

Failure to Pay Minimum and Overtime Wages

19. At all times relevant herein, Defendants were required to compensate their non-exempt employees minimum wages for all hours worked and overtime wages for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the mandate of Labor Code §§ 510, 1194, 1197, and 1198.

20. As a policy and practice, Defendants failed to compensate Plaintiffs and other aggrieved current and former employees for all hours worked, resulting in a failure to pay all minimum wages and overtime wages, where applicable.

Failure to Pay Sick Pay

21. At all times relevant herein, Defendants were required to provide their employees with paid sick leave of not less than one hour per every thirty (30) hours worked, pursuant to the mandate of Labor Code § 246.

22. In accordance with the mandates of Labor Code § 246(l), Defendants were required to pay non-exempt employees' paid sick leave at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior ninety (90) days of employment.

23. As a policy and a practice, Defendants failed to pay Plaintiffs and other aggrieved current and former non-exempt employees' paid sick leave at their regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior ninety (90) days of employment.

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Failure to Provide Meal Periods and Rest Breaks

24. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants were required to authorize and permit their non-exempt employees to take a 10-minute rest break for every four (4) hours worked or major fraction thereof, and were further required to provide their non-exempt employees with a 30-minute meal period for every five (5) hours worked.

25. As a policy and practice, Defendants failed to provide Plaintiffs and other aggrieved current and former employees with legally-mandated meal periods and rest breaks and failed to pay proper compensation for this failure.

Failure to Timely Pay Wages During Employment

26. At all times relevant herein, Defendants were required to pay their employees within a specified time period pursuant to the mandate of Labor Code § 204.

27. As a policy and practice, Defendants failed to pay Plaintiffs and other aggrieved current and former employees all wages due and owing them within the required time period.

Failure to Timely Pay Wages Upon Termination

28. At all times relevant herein, Defendants were required to pay their employees all wages owed in a timely fashion at the end of employment pursuant to California Labor Code §§ 201 to 204.

29. As a result of Defendants' Labor Code violations alleged above, Defendants failed to pay Plaintiffs and the other aggrieved former employees their final wages pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code § 203.

Failure to Provide Complete and Accurate Wage Statements

30. At all times relevant herein, Defendants were required to keep *accurate* records regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

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31. As a result of Defendants' various Labor Code violations, Defendants failed to keep accurate records regarding Plaintiffs and other aggrieved current and former employees. For example, Defendants failed in their affirmative obligation to keep accurate records regarding Plaintiffs and other aggrieved current and former employees' gross wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates and the number of hours worked at each hourly rate.

Failure to Reimburse Business Expenses

32. At all times relevant herein, Defendants were required to reimburse its employees for any and all necessary expenditures or losses incurred by the employees in direct consequences of the discharge or his or her duties pursuant to the mandate of Labor Code §§ 2800 and 2802.

33. As a policy and practice, Defendants failed to pay Plaintiffs and other aggrieved current and former employees all business expenses incurred and owing them within the required time period.

Penalties

34. Pursuant to California Labor Code § 2699, Plaintiffs, individually, and on behalf of other current and former aggrieved employees, request and are entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, including but not limited to:

35. Penalties under California Labor Code § 2699 in the amount of a hundred dollars ($100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation;

36. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars ($50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars ($100) for each aggrieved employee per pay period for each subsequent violation;

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37. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars ($100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation;

38. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars ($100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars ($250) for each aggrieved employee per pay period for each subsequent violation;

39. Any and all additional penalties as provided by the Labor Code and/or other statutes; and

40. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and any other applicable statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and as representatives of other current and former aggrieved employees pursuant to PAGA, pray for judgment as follows:

1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code § 2698 *et seq*., for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.
2. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code §§ 210, 218.5, 1194, and 2699, and any other applicable statute; and
3. For such other and further relief the court may deem just and proper.

Dated: April 27, 2022

JUSTICE LAW CORPORATION

By: ______________________

Douglas Han
Shunt Tatavos-Gharajeh
Chancellor Nobles
Attorneys for Plaintiffs

EXHIBIT 1

JUSTICE
LAW
CORPORATION

751 N. Fair Oaks Ave., Ste. 101, Pasadena, CA 91103 T: (818) 230-7502 F: (818) 230-7259 www.JusticeLawCorp.com

February 18, 2022

BY U.S. EMAIL/ELECTRONIC SUBMISSION
PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: MUSCOLINO INVENTORY SERVICE, INC. and PICO ENTERPRISES, INC.

Dear Representative:

We have been retained to represent Tavarus Nesbitt against Muscolino Inventory Service, Inc. and PICO Enterprises, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20[1] for violations of California wage-and-hour laws (hereinafter collectively referred to as "MUSCOLINO").

Mr. Nesbitt is pursuing his California Labor Code section 2698, *et seq*., the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Nesbitt may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Muscolino Inventory Service, Inc. is a California corporation located at 4150 Grange Hall Rd., Holly, Michigan 48442. PICO Enterprises, Inc. is a Nevada corporation located at 4150 Grange Hall Rd., Holly, Michigan 48442.

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[1] Mr. Nesbitt does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Nesbitt will amend this notice when the true names and capacities are known. Mr. Nesbitt is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Nesbitt and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

MUSCOLINO employed Mr. Nesbitt as an hourly-paid non-exempt Inventory Associate within one year of the data of this letter (until in or around 2021[2]) in the State of California. MUSCOLINO directly controlled the wages, hours and/or working conditions of Mr. Nesbitt and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Mr. Nesbitt may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of MUSCOLINO within the State of California.

MUSCOLINO failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Nesbitt has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at MUSCOLINO, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

MUSCOLINO has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

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[2] Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Mr. Nesbitt's PAGA cause of action is tolled.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Nesbitt and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. MUSCOLINO failed to compensate Mr. Nesbitt and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, waiting in line to clock-in, donning and doffing uniforms, loading and unloading equipment from vehicles, setting up equipment, travelling to/from jobsites, and during meal breaks. MUSCOLINO also failed to include non-discretionary bonuses and incentives in Mr. Nesbitt and other aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Mr. Nesbitt and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, MUSCOLINO failed to pay Mr. Nesbitt and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, MUSCOLINO routinely required Mr. Nesbitt and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with MUSCOLINO's policies and expectations. MUSCOLINO failed to provide coverage to Mr. Nesbitt and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Additionally, MUSCOLINO assigned Mr. Nesbitt and other aggrieved employees to service routes with a high volume of stops within strict time windows, forcing them to forego legally mandated meal and rest breaks to ensure timely deliveries. Lastly, MUSCOLINO also failed to authorize and permit Mr. Nesbitt and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, MUSCOLINO failed to compensate Mr. Nesbitt and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Mr. Nesbitt and other aggrieved employees' regular rate of pay.

California Labor Code section 551 states "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Section 552 further states "[n]o employer of labor shall cause his employees to work more than six days in seven." MUSCOLINO required aggrieved employees to work seven days in a row or more without one day's rest.

California Labor Code section 432.5 states "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." MUSCOLINO required Mr. Nesbitt and other aggrieved employees to execute arbitration agreements as a condition of employment despite knowing that such agreements are prohibited under Labor Code section 432.6.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, MUSCOLINO failed to pay Mr. Nesbitt and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, MUSCOLINO failed to pay Mr. Nesbitt and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, MUSCOLINO did not provide Mr. Nesbitt and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from MUSCOLINO were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Nesbitt and other aggrieved employees, (2) total hours worked by Mr. Nesbitt and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Nesbitt and other aggrieved employees (4) all deductions for Mr. Nesbitt and other aggrieved employees, (5) net wages earned by Mr. Nesbitt and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Nesbitt and other aggrieved employees are paid, (7) the name of the aggrieved 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 by Mr. Nesbitt and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) 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) 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. Mr. Nesbitt and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, 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, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, MUSCOLINO failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Nesbitt and other aggrieved employees.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, MUSCOLINO did not provide Mr. Nesbitt and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, waiting in line to clock-in, donning and doffing uniforms, loading and unloading equipment from vehicles, setting up equipment, travelling to/from jobsites, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Nesbitt and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by MUSCOLINO, including for purchasing tools and equipment they needed to use and wear to perform their job tasks, using their personal cellular phones to communicate with management, to make deliveries, and obtain information regarding stores they are servicing, receiving delivery instructions and work assignments, and using their personal vehicles to travel to/from jobsites.

We believe that Mr. Nesbitt and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California 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 California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Nesbitt will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of MUSCOLINO within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Bruce Hemmingway
c/o Muscolino Inventory Service, Inc.
907 S. Magnolia
Monrovia, California 91016
Agent for Service of Process for Muscolino Inventory Service, Inc.

Madalyn Newcombe
c/o PICO Enterprises, Inc.
907 S. Magnolia
Monrovia, California 91016
Agent for Service of Process for PICO Enterprises, Inc.

JUSTICE
LAW
CORPORATION

751 N. Fair Oaks Ave., Ste. 101, Pasadena, CA 91103 T: (818) 230-7502 F: (818) 230-7259 www.JusticeLawCorp.com

February 18, 2022

BY U.S. EMAIL/ELECTRONIC SUBMISSION
PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: MUSCOLINO INVENTORY SERVICE, INC. and PICO ENTERPRISES, INC.

Dear Representative:

We have been retained to represent Sandra Lassen against Muscolino Inventory Service, Inc. and PICO Enterprises, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20[1] for violations of California wage-and-hour laws (hereinafter collectively referred to as "MUSCOLINO").

Ms. Lassen is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Lassen may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Muscolino Inventory Service, Inc. is a California corporation located at 4150 Grange Hall Rd., Holly, Michigan 48442. PICO Enterprises, Inc. is a Nevada corporation located at 4150 Grange Hall Rd., Holly, Michigan 48442.

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[1] Ms. Lassen does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Lassen will amend this notice when the true names and capacities are known. Ms. Lassen is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Lassen and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

MUSCOLINO employed Ms. Lassen as an hourly-paid non-exempt Team Lead within one year of the data of this letter (until in or around September of 2021[2]) in the State of California. MUSCOLINO directly controlled the wages, hours and/or working conditions of Ms. Lassen and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Ms. Lassen may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of MUSCOLINO within the State of California.

MUSCOLINO failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to ***Huff v. Securitas Security Services***, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Lassen has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at MUSCOLINO, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

MUSCOLINO has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

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[2] Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Ms. Lassen's PAGA cause of action is tolled.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Lassen and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. MUSCOLINO failed to compensate Ms. Lassen and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, waiting in line to clock-in, donning and doffing uniforms, loading and unloading equipment from vehicles, setting up equipment, travelling to/from jobsites, and during meal breaks. MUSCOLINO also failed to include non-discretionary bonuses and incentives in Ms. Lassen and other aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Ms. Lassen and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, MUSCOLINO failed to pay Ms. Lassen and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, MUSCOLINO routinely required Ms. Lassen and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with MUSCOLINO's policies and expectations. MUSCOLINO failed to provide coverage to Ms. Lassen and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Additionally, MUSCOLINO assigned Ms. Lassen and other aggrieved employees to service routes with a high volume of stops within strict time windows, forcing them to forego legally mandated meal and rest breaks to ensure timely deliveries. Lastly, MUSCOLINO also failed to authorize and permit Ms. Lassen and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, MUSCOLINO failed to compensate Ms. Lassen and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Ms. Lassen and other aggrieved employees' regular rate of pay.

California Labor Code section 551 states "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Section 552 further states "[n]o employer of labor shall cause his employees to work more than six days in seven." MUSCOLINO required aggrieved employees to work seven days in a row or more without one day's rest.

California Labor Code section 432.5 states "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." MUSCOLINO required Ms. Lassen and other aggrieved employees to execute arbitration agreements as a condition of employment despite knowing that such agreements are prohibited under Labor Code section 432.6.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, MUSCOLINO failed to pay Ms. Lassen and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, MUSCOLINO failed to pay Ms. Lassen and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, MUSCOLINO did not provide Ms. Lassen and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from MUSCOLINO were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Lassen and other aggrieved employees, (2) total hours worked by Ms. Lassen and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Lassen and other aggrieved employees (4) all deductions for Ms. Lassen and other aggrieved employees, (5) net wages earned by Ms. Lassen and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Lassen and other aggrieved employees are paid, (7) the name of the aggrieved 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 by Ms. Lassen and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) 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) 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. Ms. Lassen and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, 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, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, MUSCOLINO failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Lassen and other aggrieved employees.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, MUSCOLINO did not provide Ms. Lassen and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, waiting in line to clock-in, donning and doffing uniforms, loading and unloading equipment from vehicles, setting up equipment, travelling to/from jobsites, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Ms. Lassen and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by MUSCOLINO, including for purchasing tools and equipment they needed to use and wear to perform their job tasks, using their personal cellular phones to communicate with management, to make deliveries, and obtain information regarding stores they are servicing, receiving delivery instructions and work assignments, and using their personal vehicles to travel to/from jobsites.

We believe that Ms. Lassen and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California 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 California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Lassen will seek these penalties on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of MUSCOLINO within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

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Monrovia, California 91016
Agent for Service of Process for Muscolino Inventory Service, Inc.

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Agent for Service of Process for PICO Enterprises, Inc.

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is pswanson@justicelawcorp.com

On June 9, 2022, I served the foregoing document described as

COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF LABOR CODE § 2698 *et seq.* (PRIVATE ATTORNEYS GENERAL ACT OF 2004)

for the following case:	**Nesbitt et al. v. Muscolino Inventory Service, Inc.**
LWDA/Court Case No.:	**LWDA Case No.: LWDA-CM-869044-22**
	Court Case No.: CIVSB2208409
	San Bernardino Superior Court

on interested parties in this action by electronically submitting as follows:
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION
Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 9, 2022, at Pasadena, California.

Bitty Minnis-Lemley

Bitty Minnis-Lemley