



MATERN LAW GROUP, PC

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January 12, 2024

Via Online Submission

California Labor & Workforce
Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Via Certified U.S. Mail – Return

Receipt Requested

Kiva Manufacturing, Inc.
445 Lesser Street
Oakland, CA 94601

Via Certified U.S. Mail – Return

Receipt Requested

Kiva Manufacturing, Inc.
Agent for Service of Process
2710 Gateway Oaks Drive,
Sacramento, CA

Via Certified U.S. Mail – Return

Receipt Requested

Kiva Manufacturing, Inc.
2300 North Loop Road
Alameda, CA 94502

Re: Notice Pursuant to California Labor Code § 2699.3

Employee: Pedro Torres

Employers: Kiva Manufacturing, Inc.

To Whom It May Concern:

This office represents Pedro Torres (“Mr. Torres”), who was previously employed by Kiva Manufacturing, Inc. (“Kiva”). Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 1-2001, which Mr. Torres alleges Kiva has violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Kiva in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Kiva.

This letter also serves as notice of Mr. Torres’s demand for preservation and non-spoliation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents that are related to Mr. Torres’s employment and potential claims must be preserved, even without a court order.

Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including “adverse inference” jury instructions. Furthermore, intentional

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spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

We are investigating a potential class and representative action on behalf of Kiva's current and former non-exempt employees in the State of California regarding, among other things, the following violations: violation of the Families First Coronavirus Response Act ("FFCRA"); failure to provide meal and rest periods to employees in violation of Labor Code §§ 226.7 and 512 and Wage Order 1-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee's regular rate of compensation for each workday that a meal or rest period is not provided in violation of Labor Code § 226.7 and Wage Order 1-2001, §§ 11(D) and 12(B); failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 558.1, 1194, 1197 and 1197.1 and Wage Order No. 1-2001, § 4; failure to pay employees overtime wages in violation of Labor Code §§ 510, 558.1 and 1194 and Wage Order No. 1-2001, § 3; failure to timely pay employees all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226 and 558.1; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5 and Wage Order No. 1-2001, § 7; unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 223 and 224; and failure to indemnify for reasonable business expenses in violation of Labor Code § 2802.

The allegations made by Mr. Torres on behalf of himself and all other similarly-situated current and former non-exempt employees of Kiva in the State of California during the four years preceding the date of this notice are based on the following facts and theories: meal periods were less than thirty minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after ten hours of work), or interrupted; rest periods were less than ten minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay for each workday a meal period was not provided; employees were not provided one hour of pay for each workday a rest break was not authorized and permitted; employees were not paid for the time they spent to get tested for COVID-19, employees were not provided with additional paid time off pursuant to the FFCRA, and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.¹ Given the overtime, meal period and rest period violations and Kiva's failure to compensate their employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California law. In short, Kiva's unlawful employment practices and policies have deprived their employees of earned wages and other compensation.

Failure to Provide Meal Periods

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 1-2001, § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any

¹ "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

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employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided.

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

Mr. Torres and other similarly-aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 1-2001, § 11. Kiva failed to provide its employees timely and uninterrupted thirty-minute meal breaks. In fact, Mr. Torres’s and other similarly-aggrieved employees’ meal periods were short (less than thirty minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed. Kiva consistently failed to provide Mr. Torres and other similarly-aggrieved employees meal breaks because Mr. Torres and other similarly-aggrieved employees were interrupted during their meal breaks and/or were given late meal breaks. Mr. Torres was often expected to stay on the premises during his breaks to await shipments and to meet the high demands of the job, including quotas for the day.

Kiva further violated Labor Code § 226.7 and Wage Order No. 1-2001 by failing to compensate Mr. Torres and other similarly-aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee’s regular rate of compensation for each workday a meal period was not provided.

Labor Code § 558.1 imposes liability for violating or causing to violate, any provision regulating minimum wages or hours and days of work in any order for the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

Failure to Authorize and Permit Rest Periods

Pursuant to Labor Code § 226.7 and Wage Order No. 1-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a ten (10) minute rest period for every four (4) hours worked or major action thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each workday a rest period is not authorized and permitted.

Mr. Torres and other similarly-aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and 558.1 and Wage Order No. 1-2001. Kiva failed to authorize and permit their employees to take required rest periods. Specifically, Kiva maintained a policy or practice of not authorizing and permitting Mr. Torres and other similarly aggrieved employees to take one 10-minute rest break for shifts 3.5-6.0 hours, a second rest break for shifts greater than 6 hours and less than or equal to 10 hours, and a third rest break for shifts in excess of 10 hours. Kiva consistently failed to authorize and permit Mr. Torres and other similarly-aggrieved individuals to take rest breaks because Mr. Torres and other similarly-

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situated individuals were given too much work to perform to take rest breaks. When Mr. Torres and other similarly-aggrieved employees were able to take rest breaks, Kiva failed to authorize and permit Mr. Torres and other similarly-aggrieved employees to take their rest breaks in the middle of each work period insofar as practicable.

Kiva further violated Labor Code § 226.7 and Wage Order No. 1-2001, § 12 by failing to pay Mr. Torres and other similarly-aggrieved employees one additional hour of pay at each employee's regular rate of compensation for each workday a rest period was not authorized and permitted.

Labor Code § 558.1 imposes liability for violating or causing to violate, any provision regulating minimum wages or hours and days of work in any order for the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

Failure to Pay Minimum Wages

Pursuant to Labor Code §§ 558.1, 1194 and 1197 and Wage Order No. 1-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Mr. Torres and other similarly-aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 558.1, 1194 and 1197 and Wage Order No. 1-2001, § 4. Kiva failed to pay Mr. Torres and other similarly-aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Mr. Torres and other similarly-situated individuals to work off-the-clock; requiring, suffering, or permitting Mr. Torres and other similarly-situated individuals to work through their meal and rest breaks but not compensating them for this time; requiring Mr. Torres and other similarly aggrieved employees to get COVID-19 tests but not compensating them for this time; illegally and inaccurately recording time worked by Mr. Torres and other similarly-aggrieved employees; failing to properly maintain Mr. Torres's and other similarly-aggrieved employees' records; failing to provide accurate itemized wage statements to Mr. Torres and other similarly-aggrieved employees for each pay period; and other methods to be discovered.

Labor Code § 558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226.7, 1193.6, 1194, or 2802.

Kiva's conduct violates Labor Code §§ 558.1, 1194 and 1197 and Wage Order No. 1-2001, § 4.

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Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 1-2001, § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Mr. Torres and other similarly-aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510, 558.1 and 1194 and Wage Order No. 1-2001. Kiva failed to compensate Mr. Torres and other similarly-aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No. 1-2001, § 3; requiring, suffering or permitting Mr. Torres and other similarly-aggrieved employees to work off-the-clock; requiring, suffering or permitting Mr. Torres and other similarly-aggrieved employees to work through meal periods and/or rest breaks but not compensating them for this time; requiring Mr. Torres and other similarly-aggrieved employees to get COVID-19 tests but not compensating them for this time; illegally and inaccurately recording time worked by Mr. Torres and other similarly-aggrieved employees; failing to properly maintain Mr. Torres's and other similarly-aggrieved employees' records through falsifying hours worked; failing to provide accurate itemized statements to Mr. Torres and other similarly-aggrieved employees for each pay period; and other methods to be discovered.

In violation of California law, Kiva has refused to perform its obligations to compensate Mr. Torres and other similarly-aggrieved employees for all wages earned and all hours worked. Kiva's conduct violates Labor Code §§ 510, 558.1 and 1194 and Wage Order No. 1-2001, § 3.

Labor Code § 558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226. 226.7, 1193.6, 1194, or 2802.

Failure to Timely Pay All Wages Earned

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

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Kiva failed to pay Mr. Torres and other similarly-aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, Kiva required Mr. Torres and other similarly-aggrieved employees to work off-the-clock without compensation, required Mr. Torres and other similarly-aggrieved employees to get COVID-19 tests without compensation, and required Mr. Torres and other similarly-aggrieved employees to work through required meal breaks without compensation. Additionally, Kiva failed to pay Mr. Torres and other similarly-aggrieved employees premium wages owed for each workday a meal period was not provided and each workday a rest period was not authorized and permitted.

Kiva also failed to pay Mr. Torres and other similarly-aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Kiva knew it was required to pay overtime wages, yet on many occasions failed to pay Mr. Torres and other similarly-aggrieved employees overtime wages on any payday.

Failure to Pay All Wages Due Upon Separation

Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 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.

Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

Kiva willfully failed to pay accrued wages and other compensation to Mr. Torres and other similarly-aggrieved employees in accordance with Labor Code §§ 201 and 202. Because Kiva required Mr. Torres and other similarly-aggrieved employees to work off-the-clock without compensation, required them to get COVID-19 tests without compensation for the time spent, through required meal breaks without compensation, and failed to pay Mr. Torres and other similarly-aggrieved employees the premium wages for all meal periods which were not provided and all rest periods which were not authorized or permitted, Kiva failed and continues to fail to pay the full earned and unpaid wages due to Mr. Torres and other similarly-aggrieved employees upon separation.

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Labor Code § 558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate 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 by the employee.

Kiva failed to provide Mr. Torres and other similarly-aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity or entities employing Mr. Torres and other similarly-aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and Wage Order No. 1-2001, § 7.

Specifically, Kiva had knowledge it was not providing its employees with proper meal and rest breaks; nevertheless, Kiva knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. Further, Kiva had knowledge it was not paying its employees for the time spent getting required COVID-19 tests. As a result, Mr. Torres and other similarly-aggrieved employees lost wages. In addition, Kiva had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Kiva knowingly failed to include this time worked in the wage statements. Kiva also did not properly calculate the regular rate of pay of Mr. Torres and other similarly-aggrieved employees. As a result, Mr. Torres's and other similarly-aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Labor Code § 558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

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Failure to Maintain Required Records

Kiva failed to maintain records as required under Labor Code §§ 226 and 1174 and Wage Order No. 1-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, Kiva had knowledge it was not providing its employees with proper meal and rest breaks; nevertheless, Kiva knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. Kiva had knowledge it was not providing its employees with compensation for the time spent to get required COVID-19 tests. Kiva had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Kiva knowingly failed to include this time worked in the regular rate of pay of aggrieved employees.

Labor Code §558.1 imposes liability for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

Labor Code § 2802(a) requires an employer to indemnify an 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. Kiva failed to indemnify Mr. Torres and other similarly-aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Kiva, including but not limited to travel-related expenses that employees incurred travelling to and from the clinic they were required to go to in order to get COVID-19 tests, and other employment-related expenses, in violation of Labor Code § 2802.

Unlawful Terms and Conditions

Kiva unlawfully required employees to sign agreements to arbitrate disputes, waive their right to trial by jury, and waive their right to bring and participate in representative and class actions, in violation of Labor Code §§ 432.5 and 432.6. Specifically, it is known to Kiva that Labor Code § 432.6(a) makes it unlawful and prohibited for an employer to:

as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the

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California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation.

It is further known to Kiva that an agreement to arbitrate disputes, waive a right to trial by jury, or waive a right to bring or participate in representative or class actions that require the employee to opt out of the agreement or waiver in order to preserve his or her rights is prohibited under Labor Code § 432.6(c).

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

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Kiva, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice shall further represent Mr. Torres's reasonable attempt to settle his dispute with Kiva prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise Kiva of Mr. Torres's aforementioned grievances and the proposed remedies as detailed below, while affording Kiva reasonable opportunity to meet Mr. Torres's demands.

Demand is hereby made that Kiva shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Kiva shall pay Mr. Torres and all other similarly-situated persons employed by Kiva at any time during the past 48 months back pay and compensation for the above-referenced violations.

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2. Kiva shall comply with all California labor laws and ensure that its non-exempt employees are paid proper overtime compensation and given required meal and rest periods.

3. Kiva shall conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of meal breaks which were not provided, the number of rest breaks which were not authorized and permitted, the amount of uncompensated time employees spent getting required COVID-19 tests, and the number of employees who were required to pay for cell phones, uniforms, travel-related expenses or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. Kiva shall pay each employee for all the time spent getting a required COVID-19 test. Kiva shall also provide additional paid time off to employees pursuant to the FFCRA. Kiva shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Kiva also shall pay each employee one hour of pay for each workday he or she was not provided one or more meal periods, as required by Labor Code § 226.7.

5. Kiva shall reimburse those employees who were forced to pay for any business expenses incurred for Kiva's benefit, including but not limited to cell phone, uniform, and travel-related expenses.

6. Kiva shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.

7. Kiva shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.

8. Kiva shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.*, including but not limited to penalties under Labor Code §§ 206.5, 210, 225.5, 226.3, 558, 1174.5, 1182.12, 1197.1, 1198, 1199 and 2699 and Wage Order No. 1-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to Matern Law Group, PC, 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266. Additionally, please advise us if the Agency or Kiva require additional information regarding Mr. Torres's complaints.

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Thank you for your prompt attention to this matter. Please feel free to contact me at JBoxer@maternlawgroup.com.

Very truly yours,

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A handwritten signature in blue ink, appearing to read "JBoxer", written in a cursive style.

Joshua D. Boxer, Esq.