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VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.tfaforms.net/308)

Subject: *Richard Rodriguez v. BELFOR USA Group, Inc., et al.*

Dear PAGA Administrator:

This office represents Richard Rodriguez in connection with his claims under the California Labor Code. Mr. Rodriguez was an employee of BELFOR USA GROUP, INC.; BELFOR ENVIRONMENTAL, INC.; OAKWOOD CONSTRUCTION AND RESTORATION SERVICES, INC.; and/or 1 800 WATER DAMAGE NORTH AMERICA, LLC. For the purpose of this letter, Mr. Rodriguez collectively refers to these entities as "BELFOR."

The employers may be contacted directly at the addresses below:

BELFOR USA GROUP, INC.
185 OAKLAND AVE, STE 150,
BIRMINGHAM MI 48009

BELFOR ENVIRONMENTAL, INC.
185 OAKLAND AVE, STE 150
BIRMINGHAM MI 48009

OAKWOOD CONSTRUCTION AND RESTORATION SERVICES, INC.
185 OAKLAND AVENUE, SUITE 150
BIRMINGHAM MI 48009

1 800 WATER DAMAGE NORTH AMERICA, LLC
185 OAKLAND AVE. STE. 150
BIRMINGHAM MI 48009

Mr. Rodriguez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Rodriguez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by BELFOR as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

BELFOR employed Mr. Rodriguez as an hourly paid, non-exempt Water Damage Specialist - Laborer from approximately March 2020 to December 2021. During his employment, Mr. Rodriguez typically worked eight (8) or more hours per day and five (5) or more days per week. At the time Mr. Rodriguez's employment with BELFOR ended, he earned $15.00 per hour. His job duties included, without limitation, assessing property damage, setting up drying equipment, and performing demolition and restoration tasks at various jobsites in the northern California area.

BELFOR committed one or more of the following Labor Code violations against Mr. Rodriguez, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c): [1]

BELFOR's Company-Wide and Uniform Payroll and HR Practices

BELFOR USA GROUP, INC. and BELFOR ENVIRONMENTAL, INC. are Colorado corporations, while OAKWOOD CONSTRUCTION AND RESTORATION SERVICES, INC. and 1 800 WATER DAMAGE NORTH AMERICA, LLC are a California corporation and Delaware limited liability company, respectively. BELFOR provides property recovery and restoration services, for the purpose of restoring structures damaged as a result of fires, floods, and natural disasters. Upon information and belief, BELFOR maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Birmingham, Michigan, for all non-exempt, hourly paid employees working for BELFOR in California, including Mr. Rodriguez and other aggrieved employees. At all relevant times, BELFOR issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Rodriguez and other aggrieved employees, regardless of its location or position.

Upon information and belief, BELFOR maintains a centralized Payroll department at its corporate headquarters in Birmingham, Michigan, which processes payroll for all non-exempt, hourly paid employees working for BELFOR in California, including Mr. Rodriguez and other aggrieved employees. Further, BELFOR issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Rodriguez and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, BELFOR utilized the same methods and formulas when calculating wages due to Mr. Rodriguez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration

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[1] These facts, theories, and claims are based on Mr. Rodriguez's experience and counsel's review of those records currently available relating to Mr. Rodriguez's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Rodriguez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

BELFOR willfully failed to pay all overtime wages owed to Mr. Rodriguez and other aggrieved employees. During the relevant time period, Mr. Rodriguez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, BELFOR had a company-wide rotating "on-call" policy, whereby it scheduled Mr. Rodriguez and other aggrieved employees to work an "on-call" week once a month. During an "on-call" week, Mr. Rodriguez and other aggrieved employees had to be available 24 hours per day and seven (7) days per week, and report to work upon receiving a call from BELFOR notifying them that they were needed. While "on-call," Mr. Rodriguez and other aggrieved employees would be required to respond to service requests from clients and customers that had come through BELFOR's 24-Hour Emergency Hotline. BELFOR issued company cellular phones to Mr. Rodriguez and other aggrieved employees, which they were required to keep on their persons and respond to immediately while working an "on-call" week. When scheduled to be "on-call," Mr. Rodriguez and other aggrieved employees were, in essence, on controlled standby for BELFOR because they could not use that time freely for their own purposes and were forced to put their lives on hold. For example, Mr. Rodriguez refrained from making plans altogether while "on-call" because he knew that he had to drop whatever he was doing at a moment's notice if he received a call from BELFOR to report to work. However, BELFOR failed to pay Mr. Rodriguez and other aggrieved employees for the time during which they were waiting to receive a call from BELFOR and unable to use their time for their own purposes.

Second, during the relevant time period, BELFOR required Mr. Rodriguez and other aggrieved employees to travel to distant jobsites and assignments, but did not compensate them for their time spent traveling to and from these locations. Although Mr. Rodriguez and other aggrieved employees typically met at BELFOR's warehouse(s) or office(s) to ride in company-provided vehicles or transportation to client locations, BELFOR would also require Mr. Rodriguez and other aggrieved employees to drive their personal vehicles to jobsites for certain clients or when there was an insufficient number of company vehicles available to transport employees. For example, BELFOR sometimes required Mr. Rodriguez to drive for approximately 40 minutes or more from his home in Fresno, California, to various jobsites, including those in Auberry, California. However, Mr. Rodriguez and other aggrieved employees were not allowed to clock in until arriving at the assigned jobsite for the start of their scheduled shifts, and thus were not paid for any time spent traveling to or from the distant jobsite. Thus, Mr. Rodriguez and other aggrieved employees were not compensated for this travel time, despite being under the direction and control of BELFOR.

Third, during the relevant time period, BELFOR had a company-wide policy and/or practice of requiring Mr. Rodriguez and other aggrieved employees to complete work-related duties while off-the-clock, such as responding to communications on their personal mobile devices, including cellular phones. For example, at least once per week, Mr. Rodriguez was required to respond to phone communications from BELFOR's management regarding work-related duties, such as obtaining instructions for his daily assignments, before arriving at BELFOR's facility and before he was permitted to clock in for his scheduled shift. Additionally, about once per week, BELFOR's management would call Mr. Rodriguez after he had clocked out at the end of his scheduled shift, to discuss the status of various restoration projects. BELFOR knew or should have known that Mr.

Rodriguez and other aggrieved employees were being made to respond to management while off-the-clock in order to meet BELFOR's expectations, but failed to compensate them for this time worked.

Fourth, BELFOR had, and continues to have, a company-wide policy of understaffing, such that there were too few employees on duty to handle the heavy workload, meet insurance inspection deadlines, and provide uninterrupted meal period coverage to permit employees to take compliant meal periods. Because BELFOR understaffed its jobsites, there was no one available to relieve employees needing meal period coverage, and Mr. Rodriguez and other aggrieved employees were not always afforded uninterrupted thirty (30) minute meal periods during shifts when they were entitled to receive a meal period. Moreover, BELFOR had a practice of failing to schedule meal periods and/or adhere to a schedule for meal periods, which further caused Mr. Rodriguez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, approximately once per month, Mr. Rodriguez was required to work through his meal periods, in order to complete his assigned tasks. In conjunction with understaffing its jobsites, BELFOR had a company-wide practice or policy of requiring that Mr. Rodriguez and other aggrieved employees carry and respond to their company-issued cellular phones at all times, including during meal periods. For example, approximately three (3) times per week, Mr. Rodriguez would have his meal periods interrupted and/or shortened to discuss work-related tasks with BELFOR's managers on his company-issued cellular phone or in-person. BELFOR knew or should have known that Mr. Rodriguez and other aggrieved employees were performing work while off-the-clock, during their meal periods, but failed to compensate them for this time.

Furthermore, on information and belief, because BELFOR frowned upon employees accruing meal period penalties, BELFOR's management pressured Mr. Rodriguez and other aggrieved employees to clock out for meal periods regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by BELFOR. For example, Mr. Rodriguez was pressured by BELFOR's managers, including General Manager Gerry Randrup, Project Manager Alex Laparra, and his supervisor Don Cable, to clock out and record compliant meal periods on shifts when he had not, in fact, received a compliant meal period. Thus, BELFOR did not record all hours worked during meal periods, and Mr. Rodriguez and other aggrieved employees performed work during meal periods for which they were not paid.

BELFOR knew or should have known that as a result of these company-wide practices and/or policies, Mr. Rodriguez and other aggrieved employees were performing their assigned duties off-the-clock and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Rodriguez and other aggrieved employees worked shifts of eight (8) hours or more a day or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Rodriguez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, BELFOR did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, BELFOR paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, BELFOR failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, BELFOR failed to pay all overtime wages by paying a lower overtime rate than required.

BELFOR's failure to pay Mr. Rodriguez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510, and 1198. Mr. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 16-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11160(2)(J) (defining "Hours Worked").

As set forth above, BELFOR systematically, and on a company-wide basis, required Mr. Rodriguez and other aggrieved employees to work "on-call" shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Rodriguez and other aggrieved employees were subject to BELFOR's control during an "on-call" shift, BELFOR did not pay Mr. Rodriguez and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work.

In addition, as stated, BELFOR systematically failed to pay Mr. Rodriguez and other aggrieved employees for actual hours worked before and after scheduled shifts, including time spent traveling to and from distant jobsites and time spent responding to work-related calls on their personal mobile devices. Further, as also stated above, due to BELFOR's uniform practices of understaffing while assigning heavy workloads/deadlines and requirement that employees carry and respond to their company-issued cellular phones during unpaid meal periods, Mr. Rodriguez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, BELFOR's management pressured employees to clock out for meal periods even when meal periods were missed, short, and/or interrupted. Thus, BELFOR systematically failed to pay Mr. Rodriguez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Furthermore, BELFOR maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, BELFOR was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, BELFOR gave other aggrieved employees strict instructions to obtain drug testing and a physical examination, and other aggrieved employees underwent the testing and examination for the sole benefit of BELFOR. Other aggrieved employees followed BELFOR's instructions, spent time traveling to and from BELFOR's designated medical facilities, and spent additional time waiting at the medical facilities and undergoing the requisite drug testing and physical examination. However, BELFOR did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, BELFOR did not pay at least minimum wages for all hours worked by Mr. Rodriguez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, BELFOR did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, BELFOR regularly failed to pay at least minimum wages to Mr. Rodriguez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Mr. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

During the relevant time period, as stated, BELFOR had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads and insurance inspection deadlines, which created a lack of adequate meal period coverage and prevented Mr. Rodriguez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its jobsites, BELFOR had a company-wide practice or policy of failing to schedule meal periods and/or adhere to a schedule for meal periods, which exacerbated the lack of meal period coverage. As a result of BELFOR's understaffing and resultant lack of meal period coverage, Mr. Rodriguez and other aggrieved employees worked through meal periods, took meal periods late, and/or had their meal periods interrupted or shortened. For example, about once per month, Mr. Rodriguez took his meal periods well into the seventh hour of work due to understaffing, the heavy workload, and pressure to meet inspection deadlines. As a further example, as stated, approximately once per month, Mr. Rodriguez was required to work through his meal periods, due to the heavy workload, in order to complete his assigned tasks and meet BELFOR's expectations.

Moreover, as stated, BELFOR had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Rodriguez and other aggrieved employees carry a company-issued cellular phone to respond to requests at all times, including during meal periods. BELFOR's management contacted Mr. Rodriguez and other aggrieved employees on their company-issued cellular phones during unpaid meal periods to discuss work-related matters. For example, approximately three (3) times per week, Mr. Rodriguez had his meal periods interrupted and/or shortened to discuss work-related tasks with BELFOR's managers either in-person or on his company-issued cellular phone.

Furthermore, BELFOR did not provide Mr. Rodriguez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Rodriguez worked shifts in excess of ten (10) or more hours per day, but was never provided a second 30-minute meal period. Mr. Rodriguez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, BELFOR knew or should have known that, as a result of these policies, Mr. Rodriguez and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. BELFOR further knew or should have known that it did not pay Mr. Rodriguez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed. As set forth above, on information and belief, because BELFOR frowned upon employees accruing meal period penalties, BELFOR's management pressured Mr. Rodriguez and other aggrieved employees to clock out for meal periods regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by BELFOR.

Moreover, BELFOR engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Rodriguez and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that BELFOR did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, BELFOR did not pay other aggrieved employees at the correct rate of pay for premiums because BELFOR systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, BELFOR failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Rodriguez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc*., 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, BELFOR regularly failed to authorize and permit Mr. Rodriguez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, BELFOR's company-wide practices, including understaffing and assigning heavy workloads and deadlines, prevented Mr. Rodriguez and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, BELFOR also failed to adhere to a schedule for rest periods, which, coupled with BELFOR's failure to provide adequate rest period coverage, further led to Mr. Rodriguez and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, as stated, Mr. Rodriguez and other aggrieved employees were required to carry their company-provided cellular phones to respond to communications from management at all times, including during rest periods.

Furthermore, BELFOR maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Rodriguez and other aggrieved employees remain on the premises during their rest periods. Because Mr. Rodriguez and other aggrieved employees were restricted from leaving BELFOR's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, BELFOR effectively maintained control over Mr. Rodriguez and other aggrieved employees during rest periods.

As a result of BELFOR's practices and policies, Mr. Rodriguez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Rodriguez had to forego his rest periods approximately seven (7) times per week, due to BELFOR's policy of assigning heavy workloads and deadlines and failing to provide sufficient rest period coverage.

BELFOR also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Rodriguez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that BELFOR did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, BELFOR did not pay other aggrieved employees at the correct rate of pay for premiums because BELFOR failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, BELFOR failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Rodriguez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

<u>Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records</u>

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. BELFOR has not provided Mr. Rodriguez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, BELFOR has knowingly and intentionally provided Mr. Rodriguez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BELFOR issued uniform wage statements to Mr. Rodriguez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, BELFOR violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, during the relevant time period, BELFOR issued wage statements to Mr. Rodriguez and other aggrieved employees that fail to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in compliance with section 226(a)(9). For example, BELFOR paid Mr. Rodriguez and other aggrieved employees prevailing wages when they worked on public projects. On information and belief, these wages were listed on Mr. Rodriguez's and other aggrieved employees' wage statements as "Cash Fringe." However, BELFOR listed prevailing wages earned in lump sum amounts and did not list any applicable pay rates or corresponding hours worked, in violation of section 226(a)(9). In addition to being unlawful, this practice makes it extremely difficult for employees to determine whether they are being paid correctly or not.

Second, because BELFOR did not record the time Mr. Rodriguez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), BELFOR did not list the correct amount of gross wages and net wages earned by Mr. Rodriguez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BELFOR failed to accurately list the total number of hours worked by Mr. Rodriguez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

Third, because BELFOR did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, BELFOR did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, BELFOR also failed to list the correct amount of net wages in violation of section 226(a)(5). BELFOR also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[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, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d), BELFOR willfully failed to maintain accurate payroll records for Mr. Rodriguez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, BELFOR engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Mr. Rodriguez and other aggrieved employees, in violation of section 1198. Furthermore, in light of BELFOR's failure to provide Mr. Rodriguez and other aggrieved employees with second 30-minute meal periods to which they were entitled, BELFOR kept no records of meal start and end times for second meal periods.

Because BELFOR failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Rodriguez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Rodriguez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

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. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, BELFOR willfully failed to pay Mr. Rodriguez and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Mr. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy two (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.

BELFOR willfully failed to pay Mr. Rodriguez and other aggrieved employees who are no longer employed by BELFOR all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving BELFOR's employ.

Mr. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, BELFOR implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, BELFOR had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, BELFOR was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, BELFOR did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. BELFOR's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 450 – Compelling Patronization

Labor Code section 450 provides that an employer may not "compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value." An employer violates section 450 by forcing an employee to patronize the employer's business in the purchase of a company-provided good.

As stated, BELFOR had a company-wide policy of requiring employees to purchase mobile devices directly from the company. During his employment, Mr. Rodriguez was required to purchase, from BELFOR, an iPhone 11 cellular phone to be utilized for work-related purposes for $250, which was deducted from his paychecks.

BELFOR's conduct of compelling and/or coercing Mr. Rodriguez and other aggrieved employees to purchase goods from them is in violation of California Labor Code section 450. Mr. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, BELFOR scheduled Mr. Rodriguez and other aggrieved employees to work six (6) or more hours per day and seven (7) consecutive days in a workweek. Because Mr. Rodriguez and other aggrieved employees worked over 30 hours per week and over six (6) hours per day in any one day in a workweek, they were not exempt from the day-of-rest requirement. For example, Mr. Rodriguez worked 12 consecutive days, from Monday, July 12 to Friday, July 23, 2021. To the extent that Mr. Rodriguez and other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, BELFOR caused Mr. Rodriguez and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11160 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11160(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, BELFOR violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11160(5)(A), because BELFOR failed to pay Mr. Rodriguez and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regularly scheduled day's work.

As stated, BELFOR had a company-wide "on-call" policy, whereby it scheduled Mr. Rodriguez and other aggrieved employees to work "on-call," or on standby. When scheduled for a "on-call" or standby shift, Mr. Rodriguez and other aggrieved employees regularly presented themselves as ready for work by waiting for supervisors to call them regarding emergency service requests. When this occurred, BELFOR did not pay Mr. Rodriguez and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay when they were subject to BELFOR's "on-call" policy and were ultimately not called.

Accordingly, Mr. Rodriguez and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11160(5)(A). Mr. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2350 – Failure to Provide Sufficient Toilet Facilities in the Workplace

California Labor Code section 2350 provides that all employers must provide "a sufficient number of toilet facilities for the use of the employees." During the relevant time period, BELFOR failed to provide Mr. Rodriguez and other aggrieved employees with sufficient toilet facilities. In fact, there was no restroom facility at several jobsites where Mr. Rodriguez and other aggrieved employees worked. Because BELFOR did not provide employees with toilet facilities at its locations or jobsites, Mr. Rodriguez and other aggrieved employees were forced to relieve themselves outdoors.

BELFOR's failure to provide Mr. Rodriguez and other aggrieved employees a toilet facility to use at the workplace is in violation of Labor Code section 2350 and the standards adopted by the Occupational Safety and Health Standards Board. Mr. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc*., 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 16-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, Mr. Rodriguez and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but BELFOR failed to reimburse them for the costs of their work-related mobile device expenses. For example, BELFOR's management required Mr. Rodriguez to use his personal cellular phone and personal mobile data to create mobile WiFi hotspots so that he and other coworkers could connect and utilize company-owned tablet devices for work-related duties, such as sketching restoration plans and inputting notes for insurance companies' use. BELFOR's company-provided cellular phones did not have this capability, even though the WiFi hotspots were necessary for Mr. Rodriguez and other aggrieved employees to complete their assigned tasks. Additionally, BELFOR's management would call Mr. Rodriguez on his personal cellular phone in order to discuss work-related matters. Although BELFOR required Mr. Rodriguez and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, BELFOR failed to reimburse them for these costs.

Second, during the relevant time period, BELFOR had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles or alternate transportation to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. BELFOR maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, BELFOR was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. BELFOR gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing for the sole benefit of BELFOR. Although BELFOR required other aggrieved employees to undergo drug testing and/or physical examinations, BELFOR failed to reimburse them for their travel expenses.

Third, during the relevant time period, BELFOR, on a company-wide basis, required Mr. Rodriguez and other aggrieved employees to wear uniform items, including collared shirts with BELFOR's branding or logo. Due to the nature of construction and demolition work, Mr. Rodriguez's uniform shirts would get dirty, soiled, or acquire unpleasant odor. As a result, Mr. Rodriguez was forced to wash his uniform shirts separately from his other clothing items, thus incurring additional utility and laundry expenses. Thus, BELFOR failed to maintain the uniform items it required Mr. Rodriguez and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Fourth, during the relevant time period, BELFOR, on a company-wide basis, required Mr. Rodriguez and other aggrieved employees to purchase their own supplies and tools, such as screwdrivers and staple guns, which were necessary for the completion of their work-related duties. For example, Mr. Rodriguez spent approximately $50 out-of-pocket to purchase a set of screwdrivers and a staple gun in order to perform his work duties, but was not reimbursed for his costs. Separately, as stated, Mr. Rodriguez and other aggrieved employees were also required to purchase mobile devices directly from BELFOR to carry out their job duties, but were not reimbursed for their expenses. Specifically, BELFOR required Mr. Rodriguez to purchase a company iPhone 11 cellular phone for work-related purposes, which cost approximately $250. Thus, BELFOR failed to provide tools and equipment to Mr. Rodriguez and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Rodriguez and other aggrieved employees for these costs.

BELFOR could have provided Mr. Rodriguez and other aggrieved employees with the actual tools for use on the job, such as company mobile devices, company vehicles, supplies and tools, and access to laundering services. Or, BELFOR could have reimbursed employees for their mobile device usage, mileage, travel expenses, tool and supply expenses, and laundering expenses or provided a uniform maintenance allowance. Instead, BELFOR passed these operating costs off onto Mr. Rodriguez and other aggrieved employees.

Thus, BELFOR had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

BELFOR failed to provide Mr. Rodriguez and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). BELFOR's failure to provide Mr. Rodriguez and other aggrieved employees with written notice of basic information regarding their employment with BELFOR is in violation of Labor Code section 2810.5.

Mr. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." BELFOR, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Rodriguez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Rodriguez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Rodriguez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties, all other aggrieved employees, and the State of California against BELFOR for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 450, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2350, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Rodriguez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Anthony Castillo

Copy: BELFOR USA GROUP, INC. (via U.S. Certified Mail); BELFOR ENVIRONMENTAL, INC. (via U.S. Certified Mail); OAKWOOD CONSTRUCTION AND RESTORATION SERVICES, INC. (via U.S. Certified Mail); 1 800 WATER DAMAGE NORTH AMERICA, LLC (via U.S. Certified Mail)

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