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Attorneys for Plaintiff, JOSE ARMANDO MATA on behalf of himself and others similarly situated

**SUPERIOR COURT OF CALIFORNIA**

**FOR THE COUNTY OF RIVERSIDE**

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| JOSE ARMANDO MATA, on behalf of himself and all others similarly situated,<br><br>Plaintiff,<br><br>v.<br><br>ELDORADO NATIONAL CALIFORNIA, INC. a subsidiary of the REV GROUP, a California corporation; and DOES 1 to 10, inclusive,<br><br>Defendants. | **CASE NO. CVRI2303500**<br>Assigned to Hon. Harold W. Hopp, Dept. 1<br><br>**CLASS ACTION**<br><br>**DECLARATION OF MARCUS J. BRADLEY IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**<br><br>Complaint filed July 10, 2023<br>FAC filed October 9, 2023 |

# DECLARATION OF MARCUS J. BRADLEY

I, Marcus J. Bradley, declare as follows:

1. I am an attorney duly licensed to practice law before all courts of the State of California. I am the attorney of record for Jose Armando Mata ("Mata"), and Blackstone Law, APC is the attorney of record for Cristo Hernandez ("Hernandez") (collectively, "Plaintiffs"). Bradley/Grombacher, LLP and Blackstone Law, APC ("Class Counsel") are the attorneys of record for the putative class members and aggrieved PAGA employees, who are similarly situated employees of Defendant ElDorado National (California) Inc. ("Defendant"). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

2. All the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I have represented Plaintiffs and the putative class since the inception of this matter. I submit this declaration in support of the Motion for Preliminary Approval filed by Plaintiffs on behalf of themselves and other similarly situated employees of Defendants, and without opposition from Defendants, for preliminary approval of the Parties' Joint Stipulation of Class Action and PAGA Settlement ("Stipulation" or "Settlement").

## Qualifications and Adequacy of Class Counsel

3. My firm is well qualified because of our experience, knowledge, and resources to act as counsel and represent Plaintiffs, the putative class, and the PAGA Employees in this action.

4. I have been counsel for Plaintiff Mata, the putative class, and the PAGA Employees throughout this case. I am a partner at Bradley/Grombacher, LLP, which has extensive experience litigating wage and hour class and representative actions as well as complex consumer class actions. Details on the work, experience and accomplishments of the firm can be found at www.bradleygrombacher.com.

5. I have represented plaintiffs in consumer and employment class actions since I began practicing law in 1994. In 2000, I joined Mazursky, Schwartz & Angelo as an associate

and became a partner in January 2005 at which time the firm was renamed Schwartz, Daniels & Bradley. I remained as a partner handling wage and hour class actions until the dissolution of the firm effective December 31, 2008. In January 2009, I moved my existing practice transferring a number of wage and hour cases to become a partner with the law firm of Marlin & Saltzman, a long-established firm with whom I had been co-counsel on dozens of wage and hour class actions during my tenure at Schwartz, Daniels & Bradley. On September 1, 2016, I formed Bradley/Grombacher LLP with former associate at Marlin & Saltzman, Kiley Grombacher.

6. I have been responsible for all facets of class action employment and other complex litigation, from pre-filing investigation through trial and appeal. Since approximately May 2000, I have spent most of my time representing workers in wage and hour matters. I, along with my current and former partners, have litigated these issues in class actions to favorable settlements that have recouped over $800,000,000.00 in unpaid wages, including the following more notable cases:

a. Gutierrez v. State Farm Mutual, Los Angeles Superior Court (BC236552). Class action mis-classification case seeking overtime compensation for approximately 2,600 insurance claims adjusters employed by State Farm. The class was certified and summary adjudication was granted as to liability in favor of the class. The case settled for $135 million just prior to trial, with final approval granted with no objections filed.

b. Bednar v. Allstate Insurance Company, Los Angeles Superior Court (BC240813). Class action mis-classification case seeking overtime compensation for approximately 1,200 insurance claims adjusters employed by Allstate. The class was certified and summary adjudication was granted as to liability in favor of the class. The case settled for $120 million just prior to trial, with final approval granted with no objections filed.

c. Roberts v. Coast National Insurance, Orange County Superior Court (01CC08478).

Class action mis-classification case seeking overtime compensation for insurance claims adjusters employed by Coast National Insurance. Certification granted, and then the matter was tried before a binding arbitrator. The case settled during the arbitration for an excess of $18 million.

d. CNA Class Action Litigation, Los Angeles Superior Court Class (JCCP 4230). Class action mis-classification case seeking overtime compensation for insurance claims adjusters employed by Defendant. Case settled for $33 million, with final approval granted with no objections filed.

e. Dotson v. Royal SunAlliance, Orange County Superior Court (02CC01787). Class action mis-classification case seeking overtime compensation for insurance claims adjusters employed by Royal SunAlliance. Case settled for $12.3 million, with final approval granted with no objections filed.

f. Parris v. Lowe's Home Improvement, Los Angeles County Superior Court (BC260702). Class action seeking payment of "off-the-clock" hours worked by all hourly employees of Lowe's Home Improvement stores in the State of California. The class was certified by the Court of Appeal and remanded to the trial court for further proceedings. Shortly thereafter, a $29.5 million settlement was reached and approved without objection.

g. Pardo v. Toyota Motor Sales, et al. Los Angeles County Superior Court (BC372781). Class action mis-classification of workers with claims for overtime and missed meal and rest breaks. The case settled for $7.75 million and was approved with no objections.

h. Smith/Ballard v. Wal-Mart Stores, Inc. United States District Court for the Northern District of California (Case No. 4:06-cv-05411-SBA). Wage and hour class action seeking unpaid vacation and personal time, unpaid wages, and related penalties on behalf of over 245,000 employees. The action was certified and settled for $86 million while Defendant's appeal of the certification was pending in the Ninth

Circuit Court of Appeals.

i. Hoyng v. AON, Los Angeles County Superior Court (BC377184). Wage and hour class action seeking overtime and related compensation for mis-classification on behalf of Relationship and Account Specialists. The case settled for $10.5 million which was approved with no objections filed.

j. In RE Bank of America Wage and Hour Employment Practices Litigation, MDL 2138, United States District Court for the District of Kansas. California state and FLSA wage and hour litigation for various violations including unpaid overtime and "off-the-clock" work. Settled for $73 million.

k. Lemus v. H & R Block Litigation, United States District Court for the Northern District of California (Case No. 3:09-cv-03179-SI) Class certified, and settlement reached prior to trial. Total settlement of $35 million.

l. Harris v. Vector Marketing Corporation, United States District Court for the Northern District of California (Case No. 3:08-cv-05198-EMC). Class action case on behalf of approximately 70,000 employees misclassified as "trainees."

m. Bickley v. Schneider National Trucking, United States District Court for the Northern District of California (Case No. 4:08-cv-05806-JSW). Wage and hour class action on behalf of approximately 6,000 truck drivers. Settled for $29.5million.

n. Roberts v. TJX, United States District Court for the Northern District of California (Case No. 13-CV-04731-MEJ). Wage and hour violations on behalf of approximately 82,000 employees. Settled for $8.5 million.

o. Oprychal v. New York Life Insurance, United States District Court for the Central District of California (Case No. 2:07-cv-00518-VBF). Class action for the failure to pay commissions pursuant to a compensation plan. Settled for $10 million.

p. Neuvenheim v. Gamestop Corp., United States District Court for the Central District of California (Case No. 2:09-cv-06799-ODW). Class action on behalf of nonexempt employees for wage and hour violations.

q. Hightower v. JP Morgan Chase, United States District Court for the Central District of California (Case No. 2:11-cv-01802-PSG). Class action on behalf of nonexempt employees for wage and hour violations. Settled for $12 million.

7. On many of the above cases, I was either lead or co-lead counsel including cases in multi-district litigation or coordinated proceedings where I worked collaboratively and cooperatively with co-counsel to bring about an efficient and beneficial resolution for all class members as the above results demonstrate.

8. I have argued cases in trial courts as well as before courts of appeal. My writings on legal topics pertaining to litigating wage and hour class and representative actions have appeared in professional publications, and I have been called upon to speak at conferences and seminars for professional organizations, including a recent presentation titled "Planning for and Executing Trial in Class and Collective Wage & Hour Cases."

9. I have also been honored as a Super Lawyer in the area of class actions by Los Angeles Magazine for multiple years including 2025. I have also been named one of the Top 100 Commercial Litigators by the Los Angeles daily Journal. I am also a member of a number of professional organizations, including the Consumer Attorneys of Los Angeles, the Consumer Attorneys of California, the California Employment Lawyers Association, and the American Association for Justice.

10. My Partner, Ms. Grombacher, specializes her practice in complex litigation including consumer and employment class actions. She has litigated hundreds of employment and consumer class actions throughout her career which began at Arias, Ozzello & Gignac where she gained extensive experience litigating consumer cases.

11. Thereafter, Ms. Grombacher joined Marlin & Saltzman in 2010 where she focused her practice almost exclusively on wage and hour, collective and representative actions including the reported case, Faulkinbury v. Boyd & Associates, which clarified the holding in seminal case, Brinker Restaurant Corp. v. Superior Court, to establish that legality of certain company policies could be determined on a class-wide basis even if the application of the

polices varies by individual.

12. Ms. Grombacher has been selected by Super Lawyers Magazine as a "Rising Star" in the field of complex litigation since 2015 and as a Super Lawyer since 2017. She has published articles on the field of class action litigation including "A Class-Action Primer" which appeared in The Advocate, which is the Journal of Consumer Attorneys of Southern California.

13. Ms. Grombacher has also lectured on various topics involving complex case management and recently spoke at the Beverly Hills Bar Association's Class Action and Complex Case Management Conference. She is also a member of a number of professional organizations, including the Consumer Attorneys of Los Angeles and the American Association for Justice.

**Procedural History**

14. On July 10, 2023, Plaintiff Mata provided written notice to the LWDA and to Defendant of provisions of the Labor Code he contends were violated and the theories supporting his contentions. Plaintiff Mata also filed a Class Action Complaint against Defendant in the Riverside Superior Court, Case No. CVRI2303500 (the "Mata Action") alleging: (a) failure to pay overtime wages; (b) failure to pay all wages and minimum wages; (c) failure to provide meal periods; (d) failure to provide rest periods; (e) failure to timely furnish accurate, itemized wage statements; (f) failure to provide employee's personnel file and record keeping violations; (g) failure to adopt standards that minimize excessive indoor heat; (h) Waiting Time Penalties; (i) failure to reimburse business expenses; and (j) violations of California Business and Professions Code section 17200, et seq. (Unfair Competition Law).

15. On October 9, 2023, Plaintiff Mata filed a First Amended Class Action and Representative Action Complaint (the "Mata Operative Complaint") additionally alleging civil penalties under PAGA for the California Labor Code violations alleged in the Mata Action.

**Investigation and Discovery**

**Other Actions with Similar Claims**

**(CMO Paragraph 3.a.vii)**

16. After making reasonable inquiries, I am not aware of any other class, representative, or other collective action in any other court in this or any other jurisdiction that asserts claims like those asserted in the Hernandez Action or Mata Action on behalf of a class or group of individuals some or all of whom would also be members of the Class defined in this action.

17. Attached hereto as **Exhibit 1** is a true and correct copy of Plaintiff Jose Armando Mata's PAGA letter that was submitted to the LWDA on July 10, 2023.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 24, 2025, at Westlake Village, California.

Marcus J. Bradley, Esq.

# EXHIBIT 1

BRADLEY/GROMBACHER LLP
CLASS ACTIONS, MASS TORTS & CATASTROPHIC INJURIES

Marcus J. Bradley
Kiley L. Grombacher
Lirit A. King
Leslie H. Joyner
Emilie Maclean

July 10, 2023

Labor and Workforce Development Agency
**Attn: PAGA Administrator**
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
*Filed Online and Courtesy Copy Delivered*
*via Certified Mail*

***Re:*** **Written Notice – Private Attorney General Act ("PAGA") – Labor Code section 2698 *et seq.***
*Jose Armando Mata v. Eldorado National California, Inc.*

PAGA Administrator:

Notice is hereby provided that, pursuant to Labor Code section 2699.3, Jose Armando Mata ("Employee") contends that Eldorado National California, Inc., a subsidiary of the Rev Group ("Eldorado" or "Employers") has violated, and continue to violate, provisions of the Labor Code and wage orders promulgated by the Industrial Welfare Commission ("IWC wage order"), including, but not limited to, Labor Code sections 201, 203, 221, 223, 226, 226.7, 510, 512, 1182, 1194, 1197, 1198, 1198.5, 2802, 6720 and the applicable wage order.

In accordance with the required notice under Labor Code section 2699.3 of the Private Attorney General Act ("PAGA"), this letter shall serve as formal written notice to the Labor and Workforce Development Agency ("LWDA").

Employee was hired by Employers in approximately 2022. Employee worked for Employers until his date of termination of approximately January 6, 2023. Employee worked for Employers in Riverside, California as a painter.

Employee is an "aggrieved employee" as defined in Labor Code section 2699(a) and brings this action on behalf of himself and all other aggrieved employees of Employers. Employee, also on behalf of himself and all other aggrieved employees, seek penalties under PAGA for Employers' violations of the Labor Code.

Eldorado is a corporation specializing in emission free technology including transit busses. At all relevant times, Eldorado issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all employees.

Employee and other aggrieved employees seek penalties and other compensation from Employers for the relevant time period because Employers:

1. Failed to pay Employee and aggrieved employees for all overtime (Lab. Code, §§ 510, 1198);
2. Failed to pay Employee and aggrieved employees for all hours worked (Lab. Code, §§ 1182, 1194, 1197, 1198);
3. Failed to provide Employee and aggrieved employees with compliant meal periods (Lab. Code, §§ 226.7, 512);
4. Failed to provide Employee and aggrieved employees with compliant rest periods (Lab. Code, §§ 226.7, 512);
5. Failed to provide Employee and aggreieved employees with their personnel files and maintain records (Lab. Code §§ 226, 6720);
6. Failed to provide Employee and aggrieved employees with accurate, itemized wage statements and failed to maintain accurate records (Lab. Code, §§ 226(a), 1174);
7. Failed to provide Employee and aggrieved employees with suitable seating;
8. Failed to provide Employee and aggrieved employees with reasonable relief from indoor heat;
9. Failed to indemnity aggrieved employees from business expenses (Lab. Code § 2802);
10. Failed to timely pay Employee and aggrieved employees' wages upon separation of employ (Lab. Code, § 203).

Below please find the relevant facts and legal theories to support the aforementioned violations.

**<u>Failure to Pay Overtime</u>**

During the Relevant Time Period, upon information and belief, Employers had, and continue to have, a company-wide policy of discouraging and impeding Employee and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, led Employee and other aggrieved employees to work off-the-clock before and after their scheduled shift times.

At all times, Employee and other aggrieved employees remained under the control of Employers. Employers could have recorded this off-the-clock work but refused to do so to avoid paying Employee and aggrieved employees overtime wages. Employee and aggrieved employees would have wait in long lines when entering the facility and when leaving.

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

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 one-and-one-half (1½) 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 for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

Accordingly, Employers regularly failed to pay overtime wages to Employee and other aggrieved employees for all overtime hours worked in violation of Labor Code sections 510 and 1198. Employee 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).

**Failure to Pay All Wages**

As stated above, during the relevant time period, as a result of Employers' policy of limiting the amount of overtime employees could accrue, Employee and other aggrieved employees were forced to work off-the-clock before and after their scheduled shift times.

Thus, Employers did not pay at least minimum wages for all hours worked by Employee and other aggrieved employees.

Labor Code section 1194(a) provides in relevant part: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage … is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage … including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1194.2(a) provides in relevant part: "[i]n any action under section 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

Labor Code section 1197 provides: "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

Employee is informed and believes, and therefore alleges, that Employers' compensation schemes do not fairly compensate Employee and aggrieved employees for all hours spent performing their job duties.

The failure to pay at least minimum wages to Employee and aggrieved employees for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194, 1194.2, and 1197; the applicable IWC wage order.

The failure to pay designated wages to Employee and aggrieved employees for each and every hour worked violates Labor Code sections 221 and 223; and the applicable IWC wage order.

Accordingly, Employers regularly failed to pay at least minimum wages to Employee and other aggrieved employees for all of the hours they worked in violation of Labor Code sections 1194, 1197, 1197.1 and 1198. Employee 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).

**Failure to Provide Compliant Meal Breaks**

As stated above, Employee and aggrieved employees' meal breaks were short and late as a result of having to walk a very long distance to the break room. As a result, Employee and aggrieved employees were forced to work in excess of five (5) hours before taking a meal period. Further, when meal periods are not provided, Employers do not pay Employee and aggrieved employees meal premiums. Employee and 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.

Under the foregoing, California employers must provide meal periods and authorize and permit rest periods to all employees during their shifts. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal and rest periods must be "off-duty," which means that employees must be relieved of "all work-related duties," including the duty to remain "on call," and they must be "free from employer control" over how they "spend their time." *Id*. at 264, 269. Employees must have the freedom to use meal and rest periods for their own purposes. *Id*. at 270; *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038-39.

When employees must either "remain at the ready and capable of being summoned to action," "respond when the employer seeks contact with [them]," "perform other work if the employer so requests," and/or remain "on call" during their meal and rest periods, the employees have not been "relieve[d] … of all work-related duties and employer control." *Augustus*, *supra*, 2 Cal.5th at 270. Such a meal or rest period is not "off duty" and therefore is "impermissible." *Ibid*.

The Supreme Court's decision in *Augustus* is just the latest in a series of meal and rest break cases that have affirmed California's broad, protective standard for employees.

Moreover, as the mere existence of a facially lawful meal and rest break policy is unavailing if there are practical constraints and pressures on employees to perform their duties in ways that omit breaks. *See Brinker*, *supra*, 53 Cal.4th at 1040.

Yet Employers did and does not provide Employee and aggrieved employees with meal periods during which they are completely relieved of duty for at least thirty (30) minutes by the fifth hour of work and again by the tenth hour of work.

Thus, Employers has failed to perform its obligations to provide Employee and aggrieved employees with off-duty meal periods by the end of the fifth hour of work and a second meal period by the end of the tenth hour of work. Employers also have failed to pay Employee and aggrieved employees one (1) hour of pay at the regular rate for each off-duty meal period that they have been denied.

On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers must pay premium payments to employees for missed meal, rest, and recovery breaks at the employee's "regular rate of pay" instead of their base hourly rate. The regular rate of pay may be higher than the base hourly rate because the regular rate of pay must include all nondiscretionary incentive payments, including nondiscretionary bonuses.

Employers knew or should have known that as a result of its policies and/or practices, that Employee and aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. Employee further knew or should have known that it did not pay Employee and aggrieved employees all meal period premiums when meal periods were missed, late, short, and/or interrupted. Furthermore, Employers have engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Employee and aggrieved employees have not received all premium pay for missed, interrupted, or late meal periods. Accordingly, Employers failed to provide all meal periods in violation of Labor Code sections 226.7, 512(a), 516, and 1198.

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

**Failure to Provide Compliant Rest Breaks**

Employers also failed to provide compliant rest breaks as rest breaks were frequently provided late and were short due to walking time to the breakroom. Moreover, rest breaks were almost impossible to take due the long walk to the breakroom.

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 workday that a meal or rest period is not provided. 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 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.

Employee is informed and believes, and thereon allege, that Employee and aggrieved employees were entitled to a paid rest period of not less than ten (10) minutes without duty for each and every four (4) hours or major fraction thereof worked during the workday.

Thus, Employers failed to provide Employee and aggrieved employees with rest periods required by Labor Code sections 226.7, 512, and 516, IWC wage order section 11 and categorically failed to pay any and all rest period wages due.

**<u>Failure to Provide a Personnel File and Maintain Records</u>**

Employee requested his personnel file on March 28, 2023 and May 16, 2023 and has received no response. California *Labor Code* § 1198.5 provides that "(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. … (b) (1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request." … "(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars ($750) from the employer."

Mr. Mata wished to review such records to support the violations he contends in this notice. Despite two repeated attempts and notice to Eldorado, no response was received.

Employers have violated California *Labor Code* §1174 (c)-(d), which requires employers to keep records showing the names and addresses of all employees employed, and to keep at a central location in the State of California or at the plants or establishments at which employees are employed, payroll records showing the hours worked duly by and the wages paid to all employees employed at the respective plants or establishments. The IWC Wage Order 1-2001, at §7 (A)(3) further requires employers to keep time records showing when the employee begins and ends each work period, meal period, and split shift interval. Under IWC Wage Order 5-2001 §7(A)(5), employers must also record each employee's total hours worked and the applicable rates of pay and must make such information "readily available" to the employee upon request.

Employee alleges that such information is not readily available to employees and was not provided upon request.

**Wage Statements**

Labor Code section 226(a) requires employers make, keep, and provide true, accurate, and complete wage records. Employers has not provided Employee 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, Employers have knowingly and intentionally provided Employee and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, Employers issued uniform wage statements to Employee 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, Employers violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Employers did not record the time Employee and other aggrieved employees spent working off-the-clock, Employers did not list the correct amount of gross wages and net wages earned by Employee and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Employers failed to accurately list the total number of hours worked by Employee 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). For the same reason, Employers also failed to list the correct amount of net wages in violation of section 226(a)(5). Employers 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 period premiums, in violation of section 226(a)(9). Employers also failed to provide compliant wage statements because it includes sick pay, holiday pay, down time, meal premiums and bonuses in total hours worked.

As a result of not having kept accurate records, Employee and aggrieved employees suffered injuries in the form of confusion over whether they received all wages owed to them, and difficulty and expense in reconstructing pay records, in addition to other injuries which may come to light during the discovery process.

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.

Employee 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).

**Failure to Provide Suitable Seating**

Eldorado willfully and knowingly failed to provide aggrieved employees with suitable seats, although the nature of work required standing for substantial periods of time.

Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable Wage Order. Labor Code section 1198 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." Code of Regulations, title 8, section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc*. (2016) 63 Cal.4th 1, 8. "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Ibid.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 24. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." See *ibid*.

Eldorado violated Labor Code section 1198 and Code of Regulations, title 8, section 11070(14)(A) because Employee and aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. ATKA's management did not inform Employee and aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of Eldorado's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Employee and aggrieved employees were forced to stand during shifts and denied seats. ATKA's failure to provide suitable seating to Employee and aggrieved employees violates Labor Code section 1198 and IWC wage order No. 7-2001 section 14(A).

Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. Labor Code section 1198 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." Code of Regulations, title 8, section 11070(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

The IWC states that section 14(B) applies during "lulls in operation" when an employee, while still on the job, is not then actively engaged in any duties. *Kilby* citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Ibid.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during "lulls in operation." *Ibid.*

Eldorado did not provide aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. This includes the time Employee and aggrieved employees would have to stand for long durations when sitting would not have impaired with their job duties.

As a result of Eldorado's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, aggrieved employees were forced to stand during shifts and denied seats. Employers' failure to provide suitable seating to aggrieved employees violates Labor Code section 1198 and IWC wage order No. 7-2001 section 14(B).

Employee and aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring Eldorado into compliance with California's seating requirements, pursuant to Labor Code section 1194.5.

**Excessive Indoor Heat**

Eldorado failed to comply with California *Labor Code* §§ 6720, 226.7 and the applicable Wage Order section 15 because it provided employees with an excessively hot indoor working environment. Eldorado failed to implement indoor heat- related standards and increased employees' risk of heat illnesses.

Employee and other aggrieved employees who worked in the warehouse had limited areas to get relief from the heat.

**Failure to Timely Pay Final Wages Upon Termination**

As a pattern and practice, Eldorado regularly failed to pay Employees and aggrieved employees their final wages pursuant to Labor Code sections 201-203.

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.

On information and belief, Eldorado has a company-wide practice or policy of failing to pay all accrued wages to departing employees and don't adhere to the time requirements set forth in Labor Code sections 201 and 202.

Employers willfully failed to pay Employee and aggrieved employees the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Eldorado's employ.

**Failure to Reimburse Expenses**

Pursuant to Eldorado's corporate policy, practice and procedure, Employee and other aggrieved employees were required to incur expenses as a direct consequence of obeying the directions of Employers. This specifically includes, but is not limited to, a uniform cleaning fee.

Employers failed and refused, pursuant to corporate policy, practice and procedure, to reimburse Employee and other aggrieved employees for such expenditures as required by California *Labor Code* §2802.

**Conclusion**

Enclosed please find a copy of the class action complaint that is in the process of being filed in the Superior Court for the State of California, Riverside County. Employee respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate this matter further. A copy is being sent via certified mail to Employers. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.

Thank you for your time and consideration.

Very truly yours,

**BRADLEY/GROMBACHER, LLP**

Marcus J. Bradley, Esq.

cc: Eldorado National (California), Inc.
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