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Assigned for All Purposes

Judge Randall J. Sherman

CX-105

Attorneys for Plaintiff BRIGHTON MERCADO-LARA, as representative of the State of California and the Labor and Workforce Development Agency ("LDWA"), and on behalf of himself and other current and former employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF ORANGE

BRIGHTON MERCADO-LARA,

Plaintiff,

v.

TERRA UNIVERSAL, INC., and DOES
1 through 50, inclusive,

Defendants.

Case No.: **30-2022-01268283-CU-OE-CXC**

**REPRESENTATIVE ACTION COMPLAINT
FOR CIVIL PENALTIES**

1. Violation of Private Attorneys General Act, Labor Code §2698 et seq for Failure to Pay All Wages;
2. Violation of Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide Meal Periods;
3. Violation of Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide Rest Periods;
4. Violation of Private Attorneys General Act, Labor Code §2698 et seq for Failure to Pay Wages Due at Separation of Employment;
5. Violation of Private Attorneys General Act, Labor Code §2698 et seq for Failure to Issue Accurate Itemized Wage Statements; and
6. Violation of Private Attorneys General Act, Labor Code §2698 et seq for Failure to Indemnify for Expenditures or Losses in Discharge of Duties.

1 Plaintiff BRIGHTON MERCADO-LARA ("Plaintiff"), as a representative of the State of
2 California and the Labor and Workforce Development Agency ("LDWA"), and on behalf of
3 himself and other current and former employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
6 who were subjected to one or more of the violations alleged herein by Defendant TERRA
7 UNIVERSAL, INC. The terms "Relevant Time Period" or "Time Period" are one (1) year and
8 sixty-five (65) days prior to the filing of this complaint through date of entry of judgment.
9 Plaintiff reserves the right to amend this complaint to reflect a different "Time Period" as further
10 discovery is conducted.

11 2. Plaintiff and similarly-aggrieved employees seek civil penalties from Defendant
12 for the following: (1) failure to pay all wages, including minimum and overtime wages; (2) failure
13 to provide meal periods or premium compensation in lieu thereof; (3) failure to provide rest
14 periods or premium compensation in lieu thereof; (4) failure to pay wages due at separation of
15 employment; (5) failure to issue accurate itemized wage statements; (6) failure to indemnify for
16 necessary expenditures.

17 3. At all relevant times herein, Defendant has consistently maintained and enforced
18 the following unlawful policies and practices against Plaintiff:

19 (a) Willfully refusing to pay all hours worked, including both regular and overtime
20 wages;

21 (b) Willfully refusing to permit off-duty meal periods or providing compensation in
22 lieu thereof;

23 (c) Willfully refusing to permit rest periods or providing compensation in lieu thereof;

24 (d) Willfully refusing to furnish accurate itemized wage statements upon payment of
25 wages;

26 (e) Willfully refusing to pay all wages due upon separation of employment; and

27 (f) Willfully refusing to indemnify for necessary expenditures.
28

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the causes of action alleged in this complaint because the Court is a court of general subject matter jurisdiction and is not otherwise excluded from exercising subject matter jurisdiction over said causes of action. The penalties recoverable for Plaintiff do not exceed seventy-five thousand dollars (\$75,000.00), and collectively amongst all aggrieved employees do not exceed five million dollars (\$5,000,000.00).

5. All named Defendants are California corporations doing business throughout the State of California, and specifically, in Los Angeles County. Plaintiff was employed by all named Defendants in Los Angeles County. There is no federal question at issue, as the issues herein are based solely on California statutes and law, including the California Labor Code, Industrial Welfare Commission ("IWC") Wage Orders, California Code of Civil Procedure, California Business and Professions Code, and California Rules of Court. By doing business in the state of California, Defendants have purposefully availed themselves of the state's jurisdiction. Accordingly, as personal jurisdiction over Defendant would be constitutional, California's long-arm statute provides that California courts may exercise personal jurisdiction over Defendants. (Code Civ. Pro. § 410.10.)

6. Venue is proper in Orange County, because Defendant perform business in Orange County, and the acts set forth herein occurred in Orange County.

THE PARTIES

A. Plaintiff

7. Plaintiff was employed by Defendant from on or around September 13, 2018 through on or around May 5, 2021. Throughout Plaintiff's employment, Plaintiff was employed by Defendant in a non-exempt hourly position as an assembler. Plaintiff is accordingly non-exempt under California labor laws and thereby entitled to civil penalties and all other rights accruing from the alleged violations described herein.

B. Defendant(s)

8. Plaintiff is informed and believes, and based thereon alleges, that Defendant TERRA UNIVERSAL, INC. is a California corporation offering manufacturing services

1 throughout California and is and/or was the employer of Plaintiff and similarly situated employees
2 during the Relevant Time Period. On information and belief, and based thereon, Plaintiff alleges
3 that Defendant is conducting business in good standing in California, and at all time herein
4 mentioned has regularly conducted business throughout the State of California.

5 9. Plaintiff is ignorant of the true names, capacities, relationships and extent of
6 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
7 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
8 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
9 capacities of the DOE Defendants when that information is ascertained.

10 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
11 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
12 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
13 are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint
14 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
15 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
16 the conduct described in this complaint.

17 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
18 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
19 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
20 below was acting, at least in part, within the course and scope of that authority as such agent,
21 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
22 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
23 are legally attributable to the other Defendants.

24 **PAGA ADMINISTRATIVE PREREQUISITES**

25 12. By this complaint, Plaintiff also brings this case as a representative action seeking
26 penalties for the State of California in a representative capacity, as provided for by the Private
27 Attorneys General Act ("PAGA"), Labor Code section 2698 et seq., to the extent permitted by
28 law, as an aggrieved employee who was employed by Defendant and subject to alleged violations

1 set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in his/her notice
2 to the Labor Workforce Development Agency (“LWDA”) and the employer: sections 201, 202,
3 203, 204, 226, 226.7, 227.3, 510, 512, 1174, 1194, and 2802.

4 13. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action
5 under PAGA only after giving the Labor Workforce Development Agency (“LWDA”) and the
6 employer notice of the Labor Code sections alleged to have been violated, and after receiving
7 notice from the LWDA of its intention not to investigate, or after 65 days have passed without
8 notice from the LWDA.

9 14. On April 29, 2022, prior to the filing of this complaint, Plaintiff gave written notice
10 of the specified provisions alleged to have been violated, including the facts and theories to
11 support the alleged violations, as required by Labor Code section 2699.3. This written notice was
12 given via certified mail to Defendant(s), and to the LWDA by electronically filing the notice via
13 the Department of Industrial Relations website. Plaintiff was given a LWDA case number of
14 LWDA-CM-881197-22. A true and correct copy of Plaintiff’s notice to the LWDA and
15 Defendant(s), dated April 29, 2022, is attached hereto as Exhibit A.

16 **FACTUAL ALLEGATIONS**

17 15. Plaintiff and similarly-aggrieved employees are, and all times relevant herein,
18 have been non-exempt employees within the meaning the California Labor Code, and the
19 implementing rules of the IWC California Wage Orders.

20 16. Plaintiff is informed and believes, and based thereon alleges, that Defendant’s
21 policies and practices described herein are common across each of Defendant’s locations within
22 the State of California.

23 17. Plaintiff alleges that Defendant failed to pay Plaintiff and other aggrieved
24 employees for all hours worked in violation of California law, including minimum wage and
25 overtime compensation. Specifically, Defendant required Plaintiff and other aggrieved employees
26 to work in excess of eight (8) hours in a day or forty (40) hours in a week less than one- and one-
27 half times their regular rate. *Huntington Memorial Hospital v. Superior Court of Los Angeles*, 131
28 Cal.App.4th 893 (2005). Specifically, Defendant failed to compensate Plaintiff and other

1 aggrieved employees for time spent undergoing temperatures checks prior to clocking in for their
2 shift and work performed while clocked-out during their meal period. Additionally, Defendant
3 failed to pay Plaintiff employees at a rate of at least one-and-a-half times his regular rate,
4 including but not limited to including incentive payments/nondiscretionary bonuses in employees'
5 regular rate when calculating an employees' overtime rate, despite having worked in excess of
6 eight (8) hours in a day or forty (40) hours in week. Defendant did not properly compensate
7 employees which resulted in lost wages to Plaintiff and other aggrieved employees.

8 18. Plaintiff alleges that Plaintiff and other aggrieved employees were often precluded
9 from taking timely and uninterrupted meal and rest breaks in accordance with California law due
10 to the nature of their work. Plaintiff alleges that he and other aggrieved employees routinely did
11 not receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked,
12 and a second meal period before the start of the 11th hour of work. (*Brinker Rest. Corp. v. Superior*
13 *Court* (2012) 53 Cal.4th 1004, 1041-42.). Plaintiff and other aggrieved employees, regularly
14 received late meal periods or had their meal periods interrupted to attend to work responsibilities,
15 including but not limited to, fulfilling work orders.

16 19. Plaintiff further alleges that Plaintiff and other aggrieved employees regularly had
17 their meal and rest periods interrupted due to supervisors requiring employees to complete work
18 orders and or confer with supervisors regarding work responsibilities.

19 20. Plaintiff alleges that Defendant failed to provide Plaintiff and other aggrieved
20 employees with complete and accurate wage statements for all regular hours and overtime hours
21 worked, premium wages earned per pay period, the accurate net and gross wage earned per pay
22 period, and the accurate pay for each hour worked. This conduct is in violation of Labor Code
23 sections 226 and 1174.

24 21. Plaintiff alleges that Defendant failed to pay all wages earned at the time their
25 employment ended to Plaintiff and other aggrieved employees. At the time of Plaintiff and other
26 aggrieved employees' termination, they were entitled to receive back wages for the time worked
27 during the meal breaks or the premiums paid in lieu of missed breaks. This conduct is in violation
28 of Labor Code sections 201, 202, 203, and 204.

22. Additionally, Defendant failed to pay out all unused vacation to Plaintiff and other aggrieved employees in violation of Labor Code section 227.3.

23. Plaintiff alleges Defendant failed to reimburse him and other aggrieved employees for necessary business expenditures. Plaintiff and other aggrieved employees were not reimbursed for use of their personal phones to communicate with Employer regarding work schedules and work orders.

FIRST CAUSE OF ACTION

**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO
PAY ALL WAGES**

(By Plaintiff against All Defendant(s))

24. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged.

25. Any employee receiving less than the legal minimum wage or legal overtime compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees, and costs of suit. (Lab. Code, § 1194, subd. (a).)

26. Labor Code section 1182.12 provides that on and after July 1, 2014, the minimum wage for all industries shall not be less than nine dollars (\$9.00) per hour, and on and after January 1, 2016, the minimum wage for all industries shall not be less than ten (\$10.00) per hour. For employers who employed 26 or more people from January 1, 2017 to December 31, 2017, the minimum wage rate in California was ten dollars and fifty cents (\$10.50) per hour. From January 18, 2018 to December 31, 2018, the minimum wage rate in California was eleven dollars (\$11.00) per hour. Plaintiff is informed and believes Defendant employed more than 26 employees.

27. Notwithstanding any other provision of the Labor Code, hourly minimum wage rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay employees no less than minimum wage for each hour worked. (Lab. Code, § 1194.)

28. In any action to recover payment of wages less than the minimum wage an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

1 29. Any work in excess of eight (8) hours in any workday and any work in excess of
2 forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half
3 times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Any work in excess
4 of twelve (12) hours in a workday shall be compensated at the rate of twice the regular rate of pay
5 for an employee. (Lab. Code, § 510, subd. (a).)

6 30. All wages earned in employment are due and payable twice during each calendar
7 month on dates designated in advance by the employer. (Lab. Code, § 204.)

8 31. In case of a dispute over wages, the employer shall pay, without condition and
9 promptly under the Labor Code all wages conceded due, leaving to the employee all remedies
10 he/she is otherwise entitled to as to any balance claimed. (Lab. Code, § 206.)

11 32. Notwithstanding any other provision of the Labor Code, hourly minimum wage
12 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
13 an employee no less than the minimum wage for each hour worked. (Lab. Code, § 1194.)

14 33. In any action to recover payment of wages less than the minimum wage, an
15 employee shall be entitled to recover liquidated damages in an amount equal to the wages
16 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

17 34. Plaintiff and the aggrieved employees regularly worked over eight (8) hours per
18 day and forty (40) hours per week. Defendant failed to pay Plaintiff, and the aggrieved employees
19 all minimum wage, and overtime premiums, for all hours worked in excess of over eight (8) hours
20 per day and/or forty (40) hours per week for work performed for Defendant. Specifically,
21 Defendant failed to compensate Plaintiff and the aggrieved employees for time spent undergoing
22 temperature checks prior to clocking in for their shift. Additionally, Plaintiff and aggrieved
23 employees were not paid at least one and half times their regular rate despite having worked in
24 excess of eight (8) hours in day or forty (40) hours in a week.

25 35. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
26 employees and the State of California for violations of Labor Code sections 204, 510, 1194, and
27 pursuant to Labor Code section 1197.1 during the PAGA period, in a sum as provided by the
28 Labor Code and/or other statutes

36. Plaintiff, individually and on behalf of the aggrieved employees and the State of California also seeks attorneys' fees and costs pursuant to Labor Code section 2699(g) and Code of Civil Procedure section 1021.5.

SECOND CAUSE OF ACTION

**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO
PROVIDE MEAL PERIODS OR PREMIUM COMPENSATION IN LIEU THEREOF**

(By Plaintiff against All Defendant(s))

37. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged.

38. Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes, or employ any person for a work period of more than ten (10) hours without a second meal period of not less than thirty (30) minutes.

39. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section. Plaintiff alleges Defendant failed to provide legally compliant meal periods, in addition to impeding, discouraging, dissuading, and/or not relieving employees from all work duties during meal periods thereby preventing employees from taking legally compliant meal periods.

40. Plaintiff and aggrieved employees were often precluded from taking timely and uninterrupted meal periods. Plaintiff and aggrieved employees regularly received late meal periods or had their meal periods interrupted by supervisors to attend to work duties, such as, fulfilling work orders. Defendant denied Plaintiff and Aggrieved Employees duty-free meal periods, as a result, Plaintiff and Aggrieved Employees were often forced to forego meal periods and/or work during their meal periods. In so doing, Defendant has intentionally and improperly denied meal periods to Plaintiff and Aggrieved Employees in violation of Labor Code sections

226.7 and 512 and other regulations and statutes.

41. At all times relevant hereto, Plaintiff and the aggrieved employees have worked shifts of more than five (5) hours in a workday. Defendant failed to provide legally compliant meal periods to Plaintiff and the aggrieved employees, by failing to provide meal periods before the fifth (5th) hour of work due to its meal period scheduling policy and practice. Despite failing to provide timely meal periods, Defendant failed to pay one additional hour of pay at Plaintiff and aggrieved employees' regular rate of pay for each workday that a meal period violation occurred.

42. At varying times relevant hereto, Plaintiff and the aggrieved employees have worked shifts more than ten (10) hours in a workday.

43. By and through their actions, Defendant has intentionally and improperly denied compliant meal periods or compensation in lieu thereof to Plaintiff and the aggrieved employees in violation of Labor Code sections 226.7 and 512 and/or other statutes.

44. Defendant's Labor Code violations have caused Plaintiff and the aggrieved employees to suffer, and continue to suffer, damages in amounts which are presently unknown, but will be ascertained according to proof at trial.

45. Plaintiff, individually and on behalf of the aggrieved employees and the state of California request recovery of civil penalties for violations of Labor Code sections 226.7 and 512 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

46. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g) and Code of Civil Procedure section 1021.5.

THIRD CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(By Plaintiff against All Defendant(s))

47. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged.

48. Labor Code section 226.7 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or

major fraction thereof.

49. Labor Code section 226.7, subdivision (b) provides that if an employer fails to provide and employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Plaintiff and the aggrieved employees consistently worked over four (4) hours per shift with no rest breaks, due to Defendant's uniform policies and practices.

50. Defendant failed to reasonably make available rest breaks to Plaintiff and the aggrieved employees. Defendant regularly precluded Plaintiff and aggrieved employees from taking timely uninterrupted rest breaks due to supervisors requiring employees to complete work orders or confer with supervisors regarding duties.

51. Defendant's Labor Code violations have caused Plaintiff and the aggrieved employees to suffer, and continue to suffer, damages in amounts which are presently unknown, but will be ascertained according to proof at trial.

52. Plaintiff, individually and on behalf of the aggrieved employees and the state of California request recovery of civil penalties for violations of Labor Code sections 226.7 and 512 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

53. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g) and Code of Civil Procedure section 1021.5.

FOURTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES

(By Plaintiff against All Defendant(s))

54. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged herein.

55. Plaintiff is informed and believes, and thereon alleges, that as part of Defendant's ongoing unfair business practices, Defendant failed to pay all employees all wages earned during their employment at the time of their separation in violation of Labor Code sections 200 and 201.

1 56. Labor Code section 201 provides that an employer is required to pay an employee
2 whose employment is terminated by the employer all wages earned and unpaid immediately upon
3 termination.

4 57. Labor Code section 202 requires an employer pay to an employee who quits his or
5 him employment, all wages earned and unpaid no later than 72 hours thereafter.

6 58. Labor Code section 203 provides that an employer who fails to pay all wages
7 earned and due an employee who is discharged or who quits within the timeframe set forth in
8 sections 201 and 202, the wages of the employee shall continue as a penalty from the due date at
9 the same rate of pay until paid, but not more than 30 days.

10 59. In violation of the Labor Code and IWC Wage Orders, Defendant failed to timely
11 pay all wages due to Plaintiff and the aggrieved employees upon separation of employment.
12 Specifically, Defendant failed to pay Plaintiff and the aggrieved employees all minimum and
13 overtime wages and meal and rest break premiums owed immediately upon termination or within
14 72 hours of resignation as a result of their unfair rounding practices, among other things.

15 60. Additionally, Defendant failed to pay out all unused vacation to Plaintiff and
16 aggrieved employees in violation of Labor Code section 227.3.

17 61. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
18 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
19 will be ascertained according to proof at trial.

20 62. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
21 employees and the State of California for violations of Labor Code sections 201, 202, 203, and
22 227.3 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

23 63. Plaintiff, individually and on behalf of the aggrieved employees and the State of
24 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
25 (g) and Code of Civil Procedure section 1021.5.

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1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**
3 **ISSUE ITEMIZED WAGE STATEMENTS AND MAINTAIN RECORDS**

4 **(By Plaintiff against All Defendant(s))**

5 64. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
6 as if fully alleged herein.

7 65. Labor Code sections 226, 226.3, 1174, and 1174.5, and applicable IWC Wage
8 Orders provide that employers must keep records and provide employees with itemized wage
9 statements showing all hours worked and each applicable rate of pay in effect during the pay
10 period with the corresponding number of hours worked at each hourly rate.

11 66. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
12 location in California or at the plant or establishment at which the employee is employed, payroll
13 records showing the hours worked daily, and the wages paid to each employee. Labor Code
14 section 226, subdivision (a) requires an employer to provide employees—either as a detachable
15 part of the check, draft, or voucher paying the employee's wages, or separately when wages are
16 paid by personal check or cash—an accurate itemized wage statement in writing, including
17 specified information, including, but not limited to: (1) gross wages earned; and (2) actual hours
18 worked by the employee; (3) premium wages earned per pay period; (4) accurate rate of pay for
19 each hour worked. Labor Code section 226, subdivision (e) provides that if an employer
20 knowingly and intentionally fails to provide a statement itemizing, inter alia, the gross and net
21 wages earned, the total hours worked by the employee and the applicable hourly overtime rates,
22 causing the employee injury, then the employee is entitled to recover the greater of all actual
23 damages or fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for
24 each subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and
25 believes that Defendant willfully failed to make or keep accurate records for Plaintiff and the
26 aggrieved employees.

27 67. The IWC Wage Orders require that every employer shall keep accurate
28 information with respect to each employee, including time records showing when each employee

1 begins and ends each work period, the total daily hours worked by each employee, and the total
2 hours worked in each payroll period, and applicable rates of pay. Plaintiff is informed and
3 believes that Defendant willfully and intentionally failed to make and/or keep records which
4 accurately reflect the hours worked by Plaintiff and the aggrieved employees. Specifically,
5 Defendant's records do not all hours worked, Plaintiff and aggrieved employees overtime hours,
6 but were not paid for those additional hours at the appropriate rate. Plaintiff believes that
7 Defendant's records: (1) were inaccurate and incomplete.

8 68. An employee is deemed to suffer injury if the employer fails to provide an accurate
9 wage statement containing all of the required information set forth in Labor Code section 226,
10 subdivision (a). (Lab. Code, § 226, subd. (e)(2).) In addition, the omission of time worked, proper
11 rates of pay, records of missed meal and rest breaks, and/or premium pay make it difficult for
12 employees to determine whether they were paid all wages due without complicated calculations
13 and/or reconstruction of records required to be maintained by the employer.

14 69. Labor Code 226.3 provides that any employer who violates subdivision (a) of
15 Labor Code section 226 shall be subject to a civil penalty in the amount of two hundred fifty
16 dollars (\$250) per employee per initial violation and one thousand dollars (\$1,000) per employee
17 for each subsequent violation, for which the employer fails to provide the employee a wage
18 deduction statement or fails to keep the records required in subdivision (a) of Labor Code section
19 226. The civil penalties provided for in this section are in addition to any other penalty provided
20 by law.

21 70. An employee is deemed to suffer injury if the employer fails to provide an accurate
22 wage statement containing all of the required information set forth in Labor Code section 226,
23 subdivision (a). (Lab. Code, § 226, subd. (e)(2).)

24 71. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
25 location in California or at the plant or establishment at which the employees are employed,
26 payroll records showing the hours worked daily and the wages paid to each employee.

27 72. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's
28 failure to maintain accurate and complete records. This civil penalty is in addition to the civil

1 penalty of \$100 per initial violation and \$200 per subsequent violation per pay period, per
2 aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation
3 of section 1174, subdivision (d).

4 73. The IWC Wage Orders require that every employer shall keep accurate
5 information with respect to each employee, including, but not limited to, time records showing
6 the total daily hours worked by each employee, the total hours worked in each payroll period, and
7 applicable rates of pay.

8 74. Plaintiff is informed and believes that Defendant willfully and intentionally failed
9 to make and/or keep records which accurately reflect the hours worked by Plaintiff and aggrieved
10 employees. Specifically, Plaintiff believes that Defendant's records fail to include, inter alia: (1)
11 all rest and meal breaks; (2) reimbursement for all necessary business expenditures; (3)
12 compensation for actual hours worked; (4) total hours worked; (5) number of hours worked at
13 each hourly rate; (6) the correct overtime rate; and (7) gross and net wages earned.

14 75. In addition, the omission of time worked make it difficult for employees to
15 determine whether they were paid all wages due without complicated calculations and/or
16 reconstruction of records required to be maintained by the employer.

17 76. Plaintiff is informed and believes, and based thereon alleges, that Defendant
18 willfully failed to maintain accurate payroll records for Plaintiff and the aggrieved employees by
19 failing to accurately reflect the hours worked by and wages paid to Plaintiff and the aggrieved
20 employees.

21 77. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
22 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
23 will be ascertained according to proof at trial.

24 78. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
25 employees and the State of California for violations of Labor Code sections 226, 1174, and
26 pursuant to Labor Code sections 226.3 and 1174.5 during the PAGA period, in a sum as provided
27 by the Labor Code and/or other statutes.

28 79. Plaintiff, individually and on behalf of the aggrieved employees and the State of

1 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
2 (g) and Code of Civil Procedure section 1021.5.

3 **SIXTH CAUSE OF ACTION**

4 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR**
5 **INDEMNIFICATION FOR EXPENDITURES OR LOSSES IN DISCHARGE OF**
6 **DUTIES**

7 **(By Plaintiff against All Defendant(s))**

8 80. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
9 as if fully alleged herein.

10 81. Defendant failed to indemnify Plaintiff and the aggrieved employees for all
11 necessary expenditures or losses incurred by Plaintiff and the aggrieved employees in direct
12 consequence of the discharge of their duties. Specifically, Defendant failed to indemnify Plaintiff
13 and the aggrieved employees for expenditures they incurred on their behalf, including, but not
14 limited to: (1) use of their cellular phones, in direct consequence of the discharge of their duties
15 to Defendant.

16 82. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
17 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
18 will be ascertained according to proof at trial. Plaintiff seeks recovery of civil penalties
19 individually, on behalf of the aggrieved employees and the State of California for violations of
20 Labor Code section 2802 during the PAGA period, in a sum as provided by the Labor Code and/or
21 other statutes.

22 83. Plaintiff, individually and on behalf of the aggrieved employees and the State of
23 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
24 (g) and Code of Civil Procedure section 1021.5.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 27 1. For civil penalties pursuant to the PAGA in an amount according to proof;
28 2. For reasonable attorney's fees and costs, pursuant to the PAGA and California

1 Code of Civil Procedure section 1021.5; and

2 3. That the Court award such other and further relief as this Court may deem
3 appropriate.

4 Dated: July 5, 2022

MAHONEY LAW GROUP, APC

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6 By:

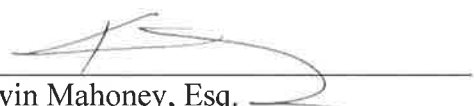
7 Kevin Mahoney, Esq. 
8 John A. Young, Esq.
9 Attorney for Plaintiff BRIGHTON
10 MERCADO-LARA, as an individual, and
11 on behalf of all similarly situated
12 employees.
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EXHIBIT A



Kevin Mahoney, Esq.
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(562) 590-8400 facsimile
kmahoney@mahoney-law.net

April 29, 2022

LWDA Online Submission

LABOR AND WORKFORCE DEVELOPMENT AGENCY

<http://dir.tfaforms.net/308>

VIA CERTIFIED MAIL # 7021 0950 0001 6447 5179

Return Receipt Requested

Terra Universal, Inc.
800 S. Raymond Avenue
Fullerton, CA 92831

VIA CERTIFIED MAIL # 7019 0950 0001 6447 5186

Return Receipt Requested

Terra Universal, Inc.
9 San Simeon
Laguna Niguel, CA 92677

Re: Brighton Mercado Lara v. Terra Universal, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; Terra Universal, Inc.

From: Brighton Mercado Lara, on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Brighton Mercado Lara ("Mr. Mercado Lara" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Terra Universal, Inc., (hereinafter “Terra Universal” or “Employer”) is a California corporation that manufactures laboratory equipment and cleanrooms. Mr. Mercado Lara began his employment with Employer on or around September 13, 2018 until the end of employment on or around May 5, 2021.

Mr. Mercado Lara alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 204, 226, 226.7, 227.3, 510, 1174, 1194 and 2802, by failing to pay Mr. Mercado Lara and all other aggrieved employees all wages owed, including minimum wage and overtime, failing to provide rest periods, failing to provide accurate wage statements and maintain accurate payroll records, failing to pay all wages owed at end of employment, and failing to reimburse for necessary business expenditures. Mr. Mercado Lara and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Employer failed to pay Mr. Mercado Lara and other aggrieved employees for all hours worked, in accordance with California law, including both minimum wage and overtime

Employer failed to pay Mr. Mercado Lara and other aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. Specifically, Employer required Mr. Mercado Lara and other aggrieved employees to work in excess of eight (8) hours in a day or forty (40) hours in a week less than one- and one-half times their regular rate. *Huntington Memorial Hospital v. Superior Court of Los Angeles*, 131 Cal. App. 4th 893 (2005). Specifically, Employer failed to compensate Mr. Mercado Lara and other aggrieved employees for time spent undergoing temperatures checks prior to clocking in for their shift and work performed while clocked-out during their meal period. Additionally, Employer failed to pay Mr. Mercado Lara employees at a rate of at least one-and-a-half times his regular rate, including but not limited to including incentive payments/nondiscretionary bonuses in employees’ regular rate when calculating an employees’ overtime rate, despite having worked in excess of eight (8) hours in a day or forty (40) hours in week. Employer did not properly compensate employees which resulted in lost wages to Mr. Mercado Lara and other aggrieved employees.

Employer's failure to pay minimum wage and applicable overtime rates to Mr. Mercado Lara and other aggrieved employees as detailed above is actionable under PAGA as a violation of Labor Code sections 227.3, 510, and 1194.

B. Employer failed to provide Mr. Mercado Lara and other aggrieved employees with meal and rest periods, or premium compensation in lieu thereof, in accordance with California law

Mr. Mercado Lara alleges that he and other aggrieved employees were often precluded from taking timely and uninterrupted meal and rest breaks in accordance with California law due to the nature of their work. Mr. Mercado Lara alleges that he and other aggrieved employees routinely did not receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked, and a second meal period before the start of the 11th hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.). Mr. Mercado Lara and other aggrieved employees, regularly received late meal periods or had their meal periods interrupted to attend to work responsibilities, including but not limited to, fulfilling work orders.

Further, Mr. Mercado Lara alleges that he and other aggrieved employees regularly had their meal and rest periods interrupted due to supervisors requiring employees to complete work orders and or confer with supervisors regarding work responsibilities.

When employees were prevented from taking timely and complete meal and rest periods, they did not receive premium pay as compensation for the missed meal and periods. Mr. Mercado Lara alleges he and other aggrieved employees were not compensated with premium pay for every meal period and rest period that was not timely provided or interrupted. Employer's conduct is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

C. Employer failed to provide Mr. Mercado Lara and other aggrieved employees compliant wage statements

As a result of Employer's failure to pay all wages owed, as described herein, Employer further failed to keep accurate payroll records and failed to provide Mr. Mercado Lara and other aggrieved employees with complete and accurate itemized wage statements showing the actual hours worked, premium wages earned per pay period, the accurate net and gross wage earned per pay period, and the accurate rate of pay for each hour worked. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

D. Employer failed to provide pay all wages owed at the time their employment ended to Mr. Mercado Lara and aggrieved employees

Pursuant to California Labor Code sections 201-203, employers are required to pay all earned and unpaid wages immediately upon termination by the employer and within 72 hours if the employee resigns. At the time of Mr. Mercado Lara and other aggrieved employees' separation from employment, they were entitled to wages for the time worked during the rest breaks or the premiums paid in lieu of missed/interrupted breaks. However, Employer failed to pay such wages within 72 hours of the end of Mr. Mercado Lara and other aggrieved employees' employment.

Additionally, Employer failed to pay out all unused vacation to Mr. Mercado Lara and other aggrieved employees in violation of Labor Code section 227.3.

E. Employer failed to reimburse Mr. Mercado Lara and aggrieved employees for necessary business expenditures

Here, Mr. Mercado Lara and aggrieved employees were forced to shoulder the burden Employer's cost of doing business by using their personal phones to communicate with Employer regarding work schedules and work orders. Mr. Mercado Lara and aggrieved employees were not reimbursed by Employer for said necessary expenditures. Due to the abovementioned, Employer failed to reimburse Mr. Mercado Lara and aggrieved employees for necessary business expenditures.

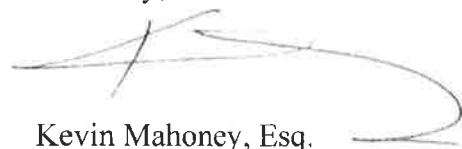
F. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Mercado Lara becomes aware of additional compensation owed or losses incurred by him or by any other aggrieved employee of the Employer, Mr. Mercado Lara expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Kevin Mahoney, Esq.
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: kmahoney@mahoney-law.net

Sincerely,



Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC