

FILED
Superior Court of California
County of Los Angeles

01/08/2024

David W. Slayton, Executive Officer / Clerk of Court

By: A. Aguilar Deputy

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Attorneys for Plaintiff and all aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

WALTER PORTILLO, an individual, on
behalf of the State of California, as a private
attorney general,

PLAINTIFF,

v.

FOX RENT A CAR, INC.; and DOES 1 thru
50, inclusive,

DEFENDANTS.

CASE NO. 22STCV19855

[Case Assigned for All Purposes to Hon.
Wendy Chang in Dept. 36]

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

1. Penalties Pursuant to Labor Code
§2699, et seq. for violations of Labor
Code §§ 201, 202, 203, 204, 226(a),
226.7, 246, 247, 510, 512, 1194, 1197,
1198 and 2802

1 Plaintiff WALTER PORTILLO (“Plaintiff”), on behalf of himself and the people of the
2 State of California and as an “aggrieved employee” under the Labor Code Private Attorneys
3 General Act of 2004, §2699, et seq. (“PAGA”) complains against FOX RENT A CAR, INC.
4 (“Defendant”), a corporation, and DOES 1 to 50 (collectively “Defendants”), as follows:

5 **I.**

6 **GENERAL ALLEGATIONS**

7 1. This is a Representative Action, pursuant to Labor Code §2699 et seq., on behalf
8 of the following individuals:

9 All persons who are employed or were employed by FOX RENT A
10 CAR, INC., in the State of California at any time since one (1) year
11 prior to the date of Plaintiff’s original PAGA letter sent on April 12,
2022 and October 18, 2023. (“aggrieved employees”)

12 2. For at least one (1) year prior to the date of the letter sent to the LWDA and
13 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
14 has failed to properly comply with Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 246, 247,
15 510, 512, 1194, 1197, 1198, and 2802.

16 3. For at least one (1) year prior to the date of the letter sent to the LWDA and
17 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
18 failed to pay all wages/overtime to Plaintiff and the aggrieved employees. Defendant has violated
19 Labor Code §§ 510, 1194, 1197 and 1199. Here, Defendant has had a consistent policy of failing to
20 pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and all aggrieved
21 employees were forced to work on a regular and consistent basis without receiving compensation for
22 all hours worked at the proper rate. Additionally, Defendant fails to pay Plaintiff and all aggrieved
23 employees for each and every hour worked. Specifically, Plaintiff and the aggrieved employees would
24 routinely work “off the clock” and performed compensable activities before and after working
25 each shift for which no pay was provided. Plaintiff and other aggrieved employees were not
26 properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in
27 one week. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant
28 has violated Labor Code §§ 510, 1194, 1197, and 1199 with respect to Plaintiff and all aggrieved

employees.

4. For at least one (1) year prior to the date of the letter sent to the LWDA and Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant has had a consistent policy and practice of: (1) failing to provide Plaintiff and the aggrieved employees with compliant meal periods in violation of Labor Code §§ 226.7 and 512; and (2) failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the complaint meal period was not provided. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code Labor Code §§ 226.7 and 512 with respect to Plaintiff and all aggrieved employees.

5. For at least one (1) year prior to the date of the letter sent to the LWDA and Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period as required by Labor Code § 226.7. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code Labor Code § 226.7 with respect to Plaintiff and all aggrieved employees.

6. For at least one (1) year prior to the date of the letter sent to the LWDA and Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant has engaged in practices that violate Labor Code § 2802. Plaintiff and all aggrieved employees were required to incur substantial expenses in direct consequent of the discharge of their duties for Defendant without reimbursement. Specifically, Defendant has failed to reimburse Plaintiff and the aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by Defendant, and Defendant failed to reimburse Plaintiff

1 and the aggrieved employees for the costs associated with using these personal cell phones. Thus,
2 Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor
3 Code Labor Code § 2802 with respect to Plaintiff and all aggrieved employees.

4 7. For at least one (1) year prior to the date of the letter sent to the LWDA and
5 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
6 has failed to furnish accurate itemized wage statements that show total hours worked and all
7 applicable hourly rates in effect during the pay period and the corresponding number of hours
8 worked at each hourly rate by the employee under Labor Code Sections 226(a)(2) and (9). Plaintiff
9 and the aggrieved employees are issued wage statements that do not include meal and rest
10 premiums as a result of the claims alleged above and when they are provided, they are not provided
11 at the accurate rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and
12 Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

13 8. For at least one (1) year prior to the date of the letter sent to the LWDA and
14 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
15 has failed to set forth the amount of sick leave available, or paid time off leave an employer
16 provides in lieu of sick leave, on the itemized wage statements it issues to Plaintiff and the
17 aggrieved employees. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and
18 Defendant has violated Labor Code §§ 246 and 247 with respect to Plaintiff and all aggrieved
19 employees.

20 9. For at least one (1) year prior to the date of the letter sent to the LWDA and
21 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
22 has failed to pay Plaintiff and the aggrieved employees all wages for a biweekly payroll period
23 within seven (7) calendar days following the close of the payroll period. As such, Plaintiff is an
24 aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code § 204(d)
25 with respect to Plaintiff and the aggrieved employees.

26 10. For at least one (1) year prior to the date of the letter sent to the LWDA and
27 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
28 has failed to pay all wages due at the time of termination or resignation to Plaintiff and all

aggrieved employees in violation of Labor Code §§201-203.

11. Plaintiff, on behalf of himself and all aggrieved employees presently or formerly employed by Defendant during the liability period, brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendant's violation of Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.7, 246, 247, 510, 512, 1194, 1197, 1198, and 2802.

II.

JURISDICTION & VENUE

12. This Court has subject matter jurisdiction over any and all causes of action asserted herein pursuant to Article VI, §10 of the California Constitution and California Code of Civil Procedure §410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

13. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in Los Angeles County and the State of California through their acts, and by their violation of the California Labor Code and California state common law.

14. At all times set forth herein, Defendant is and was, based upon information and belief, a California corporation doing business in Los Angeles County and in the State of California with its California address at 5500 W. Century Blvd Los Angeles, CA 90045. At all relevant times, Defendant employed Plaintiff in the State of California.

15. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure §395. Defendant operates within California and does business within the county of Los Angeles, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all "aggrieved employees" within the State of California and Los Angeles County.

III.

PARTIES

A. Plaintiff

16. Plaintiff WALTER PORTILLO is a resident of California.

17. Plaintiff, and at all times pertinent hereto, was employed by Defendant as a non-

1 exempt employee in California.

2 18. Upon information and belief, Plaintiff and all aggrieved employees are covered by
3 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
4 Code of Regs. § 11040.)

5 19. Plaintiff and all current and former employees are aggrieved employees within the
6 meaning of Labor Code §2699, et seq. (*See* Labor Code §2699(c).)

7 **B. Defendants**

8 20. Defendant FOX RENT A CAR, INC. is a California Corporation operating in
9 California including in the County of Los Angeles. The Defendant's California address is 5500
10 W. Century Blvd Los Angeles, CA 90045.

11 21. Defendant employed Plaintiff and the other aggrieved employees within California.
12 Some of the violations alleged herein arose in the County of Los Angeles, California.

13 22. The true names and capacities, whether individual, corporate, associate, or
14 otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to
15 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
16 §474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
17 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
18 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
19 capacities of the Defendants designated hereinafter as DOES when such identities become known.

20 23. Plaintiff is informed and believes, and based thereon alleges, that each of the
21 Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried
22 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each of
23 the Defendants are legally attributable to the other Defendants.

24 24. The Defendants named herein as DOE 1 through DOE 10 are and were persons
25 acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one
26 or more provisions of the California Labor Code and public policy as alleged herein.

27 25. Furthermore, Defendants acted in all respects as the employers or joint employers
28 of aggrieved employees. Defendants, and each of them, exercised control over the wages, hours

1 or working conditions of aggrieved employees, or suffered or permitted the aggrieved employees
2 to work, or engaged, thereby creating a common law employment relationship, with the aggrieved
3 employees. Therefore, Defendants, and each of them, employed or jointly employed the aggrieved
4 employees.

5 IV.

6 FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

7 26. Plaintiff and the aggrieved employees are, and at all times pertinent hereto, have
8 been classified as non-exempt employees.

9 27. Upon information and belief, Plaintiff and the aggrieved employees are covered by
10 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
11 Code of Regs. § 11040).

12 28. On a regular and consistent basis, Defendant failed to pay all wages/overtime to
13 Plaintiff and the aggrieved employees. Plaintiff and all aggrieved employees were forced to work
14 on a regular and consistent basis without receiving compensation for all hours worked at the proper
15 rate. Additionally, Plaintiff and the aggrieved employees would routinely work “off the clock” and
16 performed compensable activities before and after working each shift for which no pay was
17 provided.

18 29. On a regular and consistent basis, Defendant failed to apprise Plaintiff and the
19 aggrieved employees of their rights associated with meal periods and failed to provide compliant
20 meal periods. In addition, Defendant has had a consistent policy and practice of: (1) failing to
21 provide Plaintiff and the aggrieved employees with compliant meal periods in violation of Labor
22 Code §§ 226.7 and 512; and (2) failing to pay such employees one (1) hour of pay at the employees’
23 regular rate of compensation for each workday that the complaint meal period was not provided.

24 30. On a regular and consistent basis, Defendant failed to provide Plaintiff and the
25 aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work
26 period, or major fraction thereof. Further, Plaintiff and the aggrieved employees were not
27 compensated with one (1) hour of wages at the regular rate of compensation for each missed rest
28 period as required by Labor Code § 226.7.

1 31. On a regular and consistent basis, Defendant failed to reimburse Plaintiff and
2 aggrieved employees the cost of using their personal cell phones for business related purposes.
3 Defendant required that Plaintiff and the aggrieved employees be available by cell phone and
4 answer/use their cell phones, and this was necessary to perform their job duties. These cell phones
5 were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved
6 employees for the costs associated with using these personal cell phones.

7 32. On a regular and consistent basis, Defendant failed to furnish accurate itemized
8 wage statements that show all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate by the employee under Labor Code §§
10 226(a)(2) and (9). In addition, Plaintiff and the aggrieved employees are issued wage statements
11 that do not include meal and rest premiums as a result of the claims alleged above and when they
12 are provided, they are not provided at the accurate rate.

13 33. On a regular and consistent basis, Defendant failed to set forth the amount of sick
14 leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage
15 statements described in Labor Code § 226 that it issues to Plaintiff and all aggrieved employees, in
16 violation of Labor Code §§ 246 and 247.

17 34. On a regular and consistent basis, Defendant failed to pay Plaintiff and the aggrieved
18 employees all wages for a biweekly payroll period within seven (7) calendar days following the close
19 of the payroll period in violation of Labor Code § 204(d).

20 35. Defendant has failed to pay all wages due at the time of termination or within
21 seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days
22 thereafter in violation of Labor Code §§ 201-203.

23 36. On a regular and consistent basis, for all aggrieved employees employed by
24 Defendant, Defendant has failed to comply with Labor Code §§ 201, 202, 203, 204, 226(a), 226.7,
25 246, 247, 510, 512, 1194, 1197, 1198, and 2802.

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V.

FIRST CAUSE OF ACTION

**PLAINTIFF WALTER PORTILLO AND ALL AGGRIEVED EMPLOYEES AGAINST
ALL DEFENDANTS FOR PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.
FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204, 226(A), 226.7, 246, 247, 510,
512, 194, 1197, 1198, AND 2802**

37. Plaintiff realleges and incorporates by reference all previous paragraphs.

38. For at least one (1) year prior to the date of the letter sent to the LWDA and Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant failed to pay all wages/overtime to Plaintiff and the aggrieved employees. Defendant has violated Labor Code §§ 510, 1194, 1197 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and all aggrieved employees were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the proper rate. Additionally, Defendant fails to pay Plaintiff and all aggrieved employees for each and every hour worked. Specifically, Plaintiff and the aggrieved employees would routinely work “off the clock” and performed compensable activities before and after working each shift for which no pay was provided. Plaintiff and other aggrieved employees were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week. As such, Plaintiff and the aggrieved employees were paid at a regular rate less than the rate required under California law. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§ 510, 1194, 1197, and 1199 with respect to Plaintiff and all aggrieved employees.

39. For at least one (1) year prior to the date of the letter sent to the LWDA and Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods

1 and failed to provide compliant meal periods. Defendant has had a consistent policy and practice
2 of: (1) failing to provide Plaintiff and the aggrieved employees with compliant meal periods in
3 violation of Labor Code §§ 226.7 and 512; and (2) failing to pay such employees one (1) hour of
4 pay at the employees' regular rate of compensation for each workday that the complaint meal
5 period was not provided. On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California
6 Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are
7 owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held
8 that those premium payments must include the hourly value of any nondiscretionary earnings (such as a
9 nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal
10 period premiums were provided, Defendant has had a consistent policy of paying meal period premiums
11 at the base rate and not blended rate in violation of Labor Code §§ 226.7 and 512. Plaintiff is an
12 aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code Labor
13 Code §§ 226.7 and 512 with respect to Plaintiff and all aggrieved employees.

14 40. For at least one (1) year prior to the date of the letter sent to the LWDA and
15 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
16 failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10)
17 minutes per four (4) hour work period, or major fraction thereof. Further, Plaintiff and the
18 aggrieved employees were not compensated with one (1) hour of wages at the regular rate of
19 compensation for each missed rest period as required by Labor Code § 226.7. As with meal periods,
20 when rest period premiums were provided, Defendant has had a consistent policy of paying rest period
21 premiums at the base rate and not the blended rate in violation of the Labor Code and as articulated in
22 *Ferra*. Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated
23 Labor Code Labor Code § 226.7 with respect to Plaintiff and all aggrieved employees.

24 41. For at least one (1) year prior to the date of the letter sent to the LWDA and
25 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
26 has engaged in practices that violate Labor Code § 2802. Plaintiff and all aggrieved employees
27 were required to incur substantial expenses in direct consequent of the discharge of their duties for
28 Defendant without reimbursement. Specifically, Defendant has failed to reimburse Plaintiff and

1 the aggrieved employees the cost of using their personal cell phones for business related purposes.
2 Defendant required that Plaintiff and the aggrieved employees be available by cell phone and
3 answer/use their cell phones while working and this was necessary to perform their job duties.
4 These cell phones were not provided by Defendant, and Defendant failed to reimburse Plaintiff
5 and the aggrieved employees for the costs associated with using these personal cell phones. Thus,
6 Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor
7 Code Labor Code § 2802 with respect to Plaintiff and all aggrieved employees.

8 42. For at least one (1) year prior to the date of the letter sent to the LWDA and
9 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
10 has failed to furnish accurate itemized wage statements that show total hours worked and all
11 applicable hourly rates in effect during the pay period and the corresponding number of hours
12 worked at each hourly rate by the employee under Labor Code §§ 226(a)(2) and (9). Plaintiff and
13 the aggrieved employees are issued wage statements that do not include meal and rest premiums
14 as a result of the claims alleged above and when they are provided, they are not provided at the
15 accurate rate. Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has
16 violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

17 43. For at least one (1) year prior to the date of the letter sent to the LWDA and
18 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
19 has failed to set forth the amount of sick leave available, or paid time off leave an employer
20 provides in lieu of sick leave, on the itemized wage statements it issues to Plaintiff and the
21 aggrieved employees. Labor Code §§ 246 and 247 provide that “[a]n employer shall provide an
22 employee with written notice that sets forth the amount of paid sick leave available, or paid time off
23 leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage
24 statement described in Section 226 or in separate writing provided on the designated pay date with the
25 employee’s payment of wages.” Here, Defendant has failed to set forth the amount of sick leave
26 available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage
27 statements described in Labor Code § 226 that it issues to Plaintiff and all aggrieved employees.
28 Therefore, Defendant has violated Labor Code §§ 246 and 247 with respect to Plaintiff and all

1 aggrieved employees. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and
2 Defendant has violated Labor Code §§ 246 and 247 with respect to Plaintiff and all aggrieved
3 employees.

4 44. For at least one (1) year prior to the date of the letter sent to the LWDA and
5 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
6 has failed to pay Plaintiff and the aggrieved employees all wages for a biweekly payroll period
7 within seven (7) calendar days following the close of the payroll period. Here, Plaintiff and the
8 aggrieved employees were paid after the seventh (7th) day following the close of the payroll period in
9 violation of these statutes. Specifically, Plaintiff and the aggrieved employees were not paid within
10 seven (7) calendar days following the close of the payroll period. As such, Plaintiff is an aggrieved
11 employee within the meaning of PAGA and Defendant has violated Labor Code § 204(d) with respect
12 to Plaintiff and the aggrieved employees.

13 45. For at least one (1) year prior to the date of the letter sent to the LWDA and
14 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
15 has failed to pay all wages due at the time of termination or resignation to Plaintiff and all
16 aggrieved employees in violation of Labor Code §§ 201, 202, and 203.

17 46. Defendant's violation of Labor Code Labor Code §§ 201, 202, 203, 204, 226(a),
18 226.7, 246, 247, 510, 512, 1194, 1197, 1198, and 2802 was all done on a regular and consistent
19 basis.

20 47. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
21 §2699, et seq. because of Defendant's violation of Labor Code §§ 201, 202, 203, 204, 226(a),
22 226.7, 246, 247, 510, 512, 1194, 1197, 1198, and 2802.

23 48. Under Labor Code §§2699(f)(2) and 2699.5, for each such violation, Plaintiff and
24 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial
25 subject to the following formula:

- 26 a. \$100 for the initial violation per employee per pay period; and
- 27 b. \$200 for each subsequent violation per employee per pay period.

28 49. These penalties will be allocated 75% to the Labor & Workforce Development

Agency and 25% to the affected employees.

50. On April 12, 2022, Plaintiff electronically filed a PAGA Claim Notice letter to the LWDA, via the State of California Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/308>), describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, and 2802 and mailed by certified mail, return receipt requested, to Defendant setting forth the specific facts and theories of the violations alleged against Defendant, as prescribed by Labor Code §2698 *et seq.* (see Exhibit "1"). Plaintiff also mailed his Notice letter to Registered Agent Solutions, Inc, the registered agent for service of process for Defendant, on April 12, 2022. (see also Exhibit "1"). Plaintiff obtained an e-filing confirmation from the LWDA confirming receipt of the notice (see Exhibit "2"). Plaintiff received a signed certified mail return receipt by Defendant, including from its registered agent for service of process, verifying that it also received Plaintiff's letter. (see Exhibit "3"). On September 25, 2023, Plaintiff sent an amended PAGA Claim Notice letter to the LWDA and Defendant to add violations for Labor Code §§ 204, 246, 247, 510, 1194, 1197, 1198, for failure to timely pay all wages due during employment, failure to provide paid sick leave, and failure to pay all minimum, regular, and overtime wages. (Exhibit "4").

51. Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within 65 calendar days of the postmark date of the notice. Therefore, Plaintiff is entitled to commence a civil action as though the LWDA has chosen not to investigate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against FOX RENAT A CAR, INC. and Does 1 to 50, Inclusive, and each of them, as follows for Plaintiff and all aggrieved employees:

a. For penalties and other relief pursuant to Labor Code §2698 *et seq.* for Plaintiff and all other aggrieved employees as a result of Defendant's violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 246, 247, 510, 512, 1194, 1197, 1198, and 2802.

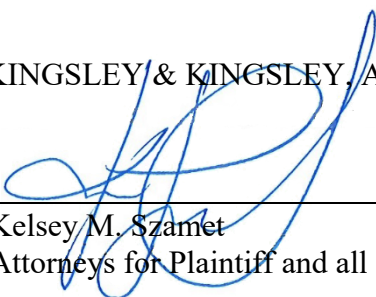
b. An award of prejudgment and post judgment interest;

c. An award providing for payment of costs of suit;

- 1 d. An award of attorneys' fees; and
2 e. Such other and further relief as this Court may deem proper and just.

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4 DATED: January 8, 2024

KINGSLEY & KINGSLEY, APC

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6 By: 

Kelsey M. Szamet

7 Attorneys for Plaintiff and all aggrieved employees
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EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

April 12, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

FOX RENT A CAR, INC.
5500 W. Century Blvd
Los Angeles, CA 90045
Via USPS Certified Mail #7019 2970 0001 4016 5868

FOX RENT A CAR, INC.
c/o Agent for Service of Process
Registered Agent Solutions, Inc
720 14th Street
Sacramento, CA 95814
Via USPS Certified Mail #7019 2970 0001 4016 5875

Re: WALTER PORTILLO v. FOX RENT A CAR, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents WALTER PORTILLO (“Plaintiff”) and proposed groups of current and former employees working for FOX RENT A CAR, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as follows: all non-exempt employees who are employed or have been employed by FOX RENT A CAR, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or statute of

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

April 12, 2022

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limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Defendant has engaged in practices that violate Labor Code §§ 226.7 and 512 with respect to Plaintiff and the aggrieved employees. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods by way of a lawful policy. In addition, Defendant has had a consistent policy and practice of: (1) failing to provide Plaintiff and the aggrieved employees with compliant meal periods in violation of Labor Code §§ 226.7 and 512; and (2) failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the complaint meal period was not provided.

On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal period premiums were provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not blended rate in violation of Labor Code §§ 226.7 and 512.

Defendant also failed to apprise Plaintiff and the aggrieved employees of their rights associated with rest periods and failed to provide compliant rest periods. Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. As with meal periods, when rest period premiums were provided, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of the Labor Code and as articulated in *Ferra*.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful,

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

April 12, 2022

Page 3 of 3

unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and the aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §2802 with respect to Plaintiff and all aggrieved employees.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each employee an accurate itemized statement in writing showing a number of specific items, including total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendant has failed to furnish accurate itemized wage statements that show total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee under Labor Code §§ 226(a)(2) and (9). In addition, Plaintiff and the aggrieved employees are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and when they are provided, they are not provided at the accurate rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and the aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees and the aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code § 203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

(Signature on next page)

LABOR & WORKFORCE DEVELOPMENT AGENCY
California Labor Code §2699 Penalties
April 12, 2022
Page 4 of 1

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: _____

Kelsey M. Szamet

KMS/km

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California ▼

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

WALTER PORTILLO

Plaintiff/Aggrieved Employee Occupation *

Clerk

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

FOX RENT A CAR, INC.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

Employer State ***Employer Zip/Postal Code *****Employer Industry *****Employer Industry for "Other" *****Add additional defendants**☒ Add any entity other than an individual☐ Add an individual/sole proprietor employer**Additional Employer Information (Corporation/General Partnership)****Employer Entity Type****Employer Name ***Maximum 80 Character Limit**Employer Street Name, Number and Suite/Apt *****Employer City *****Employer State *****Employer Zip/Postal Code *****Employer Industry *****Employer Industry for "Other" ***[Add Additional Employers](#)**Notice General Information****Estimated Number of Employees Impacted by Violations ***

Notice Violations – Check All that Apply *

Child Labor – Specify Ages

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

[REDACTED]

Credit Card Number *

[REDACTED]

CVV Number *

[REDACTED]

Credit Card Expiration Month *

[REDACTED]

mm

Credit Card Expiration Year *

[REDACTED]

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File LWDA Letter - ... Car, Inc..pdf

Other Attachment - (if any) (must be a .pdf)

Choose File No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Tuesday, April 12, 2022 1:34 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

4/12/2022

LWDA Case No. LWDA-CM-878318-22
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : WALTER PORTILLO
Employer: FOX RENT A CAR, INC.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7CKimberly%40kingsleykingsley.com%7Cae75bdf875de43a98d6108da1cc3c5a9%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637853924407643156%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwiLCJXVCi6Mn0%3D%7C3000&sdata=NslPrTGR62BP%2BhOn4RUFdz1xLI4O il%2F4SN3asETrUOI%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Tuesday, April 12, 2022 1:34 PM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-878318-22

Order Number: ORD-000157909

Total:\$75.00

Card Type: [REDACTED]

Date: 4/12/2022

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Ste 1200

Encino, California

91436

EXHIBIT "3"

USPS TRACKING#



LOS ANGELES CA 900

15 APR 2022 PM 9 L

9590 9402 7136 1251 6488 82

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY

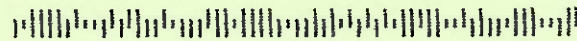
A PROFESSIONAL CORPORATION

CITY NATIONAL BANK BUILDING

16133 VENTURA BOULEVARD, SUITE 1200

ENCINO, CALIFORNIA 91436

PAGA LETTER
FOX RENT A CAR, INC.



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
FOX RENT A CAR, INC.
5500 W. Century Blvd
Los Angeles, CA 90045



9590 9402 7136 1251 6488 82

2. Article Number (Transfer from service label)

7019 2970 0001 4016 5868

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *RT.95 C19* ☐ Agent
☐ Addressee

B. Received by (Printed Name)

FOX

C. Date of Delivery

4-5-22

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
FOX RENT A CAR, INC.
c/o Agent for Service of Process
Registered Agent Solutions, Inc
720 14th Street
Sacramento, CA 95814



9590 9402 7136 1251 6488 75

2. Article Number (Transfer from service label)

7019 2970 0001 4016 5875

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

USPS TRACKING#



SACRAMENTO CA 957

13 APR 2022 PM 7 L

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 7136 1251 6488 75

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY

A PROFESSIONAL CORPORATION

CITY NATIONAL BANK BUILDING

16133 VENTURA BOULEVARD, SUITE 1200

ENCINO, CALIFORNIA 91436

PAGA LETTER
FOX RENT A CAR, INC.

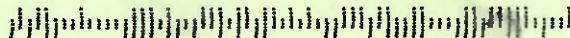


EXHIBIT "4"

KINGSLEY & KINGSLEY

| L A W Y E R S |

September 25, 2023

LABOR & WORKFORCE DEVELOPMENT AGENCY

Attn. PAGA Administrator

1515 Clay Street, Ste. 801

Oakland, CA 94612

Via Electronic Submission: <https://dir.tfaforms.net/308>

FOX RENT A CAR, INC.

c/o LITTLER MENDELSON, P.C.

Tracy R. Leidner, Esq. (SBN 278429)

TLeidner@littler.com

Fermin Llaguno, Esq. (SBN 185222)

FLlaguno@littler.com

18565 Jamboree Road, Suite 800

Irvine, California 92612

Via Electronic Mail

Re: WALTER PORTILLO v. FOX RENT A CAR, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents WALTER PORTILLO (“Plaintiff”) and proposed groups of current and former employees working for FOX RENT A CAR, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* This is an amended notice letter which shall serve to incorporate and supplement the letter from our office on April 12, 2022. Plaintiff is amending his letter to add violations for Labor Code §§ 204, 246, 247, 510, 1194, 1197, 1198, for failure to timely pay all wages due during employment, failure to provide paid sick leave, and failure to pay all minimum, regular, and overtime wages. We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as follows: all persons who are employed or were employed by FOX RENT A CAR, INC., in the State of California as a non-exempt employee at any time since one (1) year prior to the date of Plaintiff’s original PAGA letter sent on April 12, 2022 and continuing up either October 18, 2023 or the date the Court grants approval of the long-form settlement agreement. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 25, 2023

Page 2 of 4

from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Defendant has violated Labor Code §§ 510, 1194, 1197 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and all aggrieved employees were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the proper rate. Additionally, Defendant fails to pay Plaintiff and all aggrieved employees for each and every hour worked. Specifically, Plaintiff and the aggrieved employees were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week. As such, Plaintiff and the aggrieved employees were paid at a regular rate less than the rate required under California law.

Defendant has engaged in practices that violate Labor Code §§ 226.7 and 512 with respect to Plaintiff and the aggrieved employees. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods by way of a lawful policy. In addition, Defendant has had a consistent policy and practice of: (1) failing to provide Plaintiff and the aggrieved employees with compliant meal periods in violation of Labor Code §§ 226.7 and 512; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the complaint meal period was not provided.

On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here, when meal period premiums were provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not blended rate in violation of Labor Code §§ 226.7 and 512.

Defendant also failed to apprise Plaintiff and the aggrieved employees of their rights associated

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 25, 2023

Page 3 of 4

with rest periods and failed to provide compliant rest periods. Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. As with meal periods, when rest period premiums were provided, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of the Labor Code and as articulated in *Ferra*.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and the aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §2802 with respect to Plaintiff and all aggrieved employees.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each employee an accurate itemized statement in writing showing a number of specific items, including total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendant has failed to furnish accurate itemized wage statements that show total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee under Labor Code §§ 226(a)(2) and (9). In addition, Plaintiff and the aggrieved employees are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and when they are provided, they are not provided at the accurate rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code §§ 246 and 247 provide that “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in separate writing provided on the designated pay date with the employee's payment of wages.” Here, Defendant has failed to set forth the amount of sick leave available, or paid time off leave an

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 25, 2023

Page 4 of 4

employer provides in lieu of sick leave, on the itemized wage statements described in Labor Code § 226 that it issues to Plaintiff and all aggrieved employees. Therefore, Defendant has violated Labor Code §§ 246 and 247 with respect to Plaintiff and all aggrieved employees.

Defendant failed to pay Plaintiff and the aggrieved employees all wages for a biweekly payroll period within seven (7) calendar days following the close of the payroll period in violation of Labor Code § 204(d). Here, Plaintiff and the aggrieved employees were paid after the seventh (7th) day following the close of the payroll period in violation of these statutes. Specifically, Plaintiff and the aggrieved employees were not paid within seven (7) calendar days following the close of the payroll period. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code § 204(d) with respect to Plaintiff and the aggrieved employees.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and the aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees and the aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code § 203.

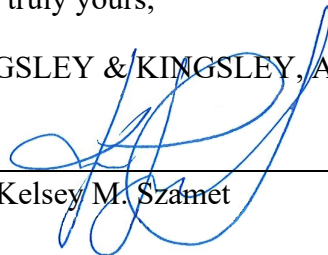
We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 246, 247, 510, 512, 1194, 1197, 1198 and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

(Signature on next page)

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California Labor Code §2699 Penalties
September 25, 2023
Page **5** of **1**

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/km