

ATTORNEYS

ROBERT S. ARNS
 JONATHAN E. DAVIS*
 ZACHARIAH D. HANSEN
 ROBERT C. FOSS
 SHOUNAK S. DHARAP
 KATHERINE A. RABAGO
 JUAN C. FLORES
 TRUONG X. PHAM
 MICHAEL LANGTON**

Investigator

JERRY LAMBERT

* Licensed to practice in Nevada and California

** Licensed to practice in Nevada only

**California Office:**

515 FOLSOM STREET
 3RD FLOOR
 SAN FRANCISCO, CA 94105
 TEL: 415-495-7800
 FAX: 415-495-7888

SSD@ARNSLAW.COM

May 19, 2022

**VIA ONLINE SUBMISSION TO THE STATE OF CALIFORNIA LABOR AND
 WORKFORCE DEVELOPMENT AGENCY**

Labor and Workforce Development Agency
 Department of Industrial Relations
 455 Golden Gate Avenue, 10th Floor
 San Francisco, CA 94102

**Re: Labor Code § 2699.3 Notice of Violations
 Dexterity, Inc.**

To Whom It May Concern:

This correspondence is intended to provide notice to both the California Labor Workforce Development Agency (“LWDA”) and the above-listed Defendant (“Defendant”) pursuant to California Labor Code (“Labor Code”) § 2699.3 of the intent of Samuel Strauch Eggers, by and through his successor-in-interest, Lisa Strauch Eggers, individually and on behalf of all other similarly situated employees of Defendant (“Plaintiff” or “the Class”), to seek, in addition to all other remedies available at law, civil penalties under the Labor Code in connection with alleged violations thereunder by Defendant.

	DESCRIPTION OF VIOLATION	LABOR CODE SECTIONS
1	Failure to Pay Wages Owed	210, 216, 1194, 1197
2	Failure to Pay Overtime Wages	204, 510, 1198
3	Failure to Pay Wages for Meal and Rest Periods	226.7, 512, 558, 1197.1
4	Failure to Properly Report Pay	226, 1174
5	Failure to Reimburse	224 & 2802
6	Execution of Release of Claim on Account of Wages Due	206.5
7	Waiting Time Penalties	201, 202, 203
8	Failure to Provide Safe and Healthful Workplace;	6400, 6401, 6403

Please Respond to California Office

Nevada Office:

801 RIVERSIDE DRIVE
 RENO, NV 89503
 TEL: 775-324-2723
 FAX: 775-329-7447

I. Factual Background (Labor Code § 2699.3(a)(1))

Sam Eggers was a brilliant, optimistic, driven young man who joined Dexterity, Inc.—a robotics startup in the heart of Silicon Valley. But it was clear from day one that the startup dream was a nightmare.

Dexterity coerced its employees into routinely working long hours over nights and weekends without overtime pay so that Dexterity could meet customer demands. As is typical of many Silicon Valley startups, Dexterity struggled to manage its rapid growth, promises made to customers about its product, a young and inexperienced leadership team, and a lack of organizational supports, resulting in a “pressure-cooker” environment in which employees were subjected to the whims of “arrogant” and “antagonistic” leadership.

Dexterity’s management provided no supports to employees and, in Sam’s case, often dismissed his work while also taking credit for it.

Dexterity also had a practice of offering promotion opportunities to nonexempt employees—to “convert” them to exempt employees with equity. Dexterity’s practice was to empanel a secret committee of Dexterity’s leadership to deliberate a nonexempt employee’s promotion request. If the request was denied, the employee was terminated. Three separate executives, including Dexterity’s CEO, convinced Sam to apply for promotion, representing to him that his request would be granted. It was not, and he was fired.

After a year of working long hours into the nights and weekends, without pay, culminated in a humiliating termination orchestrated by Dexterity’s leadership, Sam took his own life. In a note, he laid responsibility on Dexterity, stating: “It was all Dex.”

Sam’s experience at Dexterity, resulting in his death, was not unique. Sam’s mother and successor-in-interest, Lisa Strauch Eggers, seek to pursue a representative action for civil penalties on behalf of all similarly situated aggrieved employees of Dexterity.

II. Legal Theories (Labor Code § 2699.3(a)(1))

Based on, *inter alia*, the foregoing, Plaintiff alleges that Defendant violated numerous provisions of the Labor Code, as follows:

1. Defendant’s Failure to Pay Wages for Meal Periods and Rest Periods (Labor Code §§ 226.7, 512, 558, 1197.1)

Labor Code § 512 provides, in pertinent part:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes.... An employer may not employ an employee for a work period of

more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes....

Labor Code § 226.7 provides as follows:

No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

Industrial Welfare Commission Wage Order Nos. 4 and 5, §§ 11 and 12, respectively, provide in pertinent parts:

11. Meal Periods

(A) No employer shall employ any persons for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes [...].
[...]

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

12. Rest Periods

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (1) minutes net rest time per four (4) hours or major fraction thereof.
[...]

If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation of each work day that the rest period is not provided.

Plaintiff alleges that employees were not provided meal or rest periods, as required by California Labor Code §§ 226.7 and 512, and Industrial Welfare Commission Wage Orders Nos. 4 and 5, or otherwise compensated for skipped rest or meal periods. Further, Defendant encouraged and instructed Decedent and similarly situated employees to waive breaks in order to provide customer services and meet client/employer demands. As such, Plaintiff asserts that Defendant's conduct violated the Labor Code, including, but not limited to, Labor Code §§ 558 and 1197.1, and Plaintiff will seek to recover all civil penalties available under the Labor Code for these violations.

2. Defendant's Failure to Pay Unpaid Wages (Labor Code §§ 210, 216, 1194, 1197)

Labor Code § 204 establishes the fundamental right of all employees in the state of California to be paid wages in a timely fashion for their work, including any overtime. Labor Code § 510 defines a day's work as eight hours and states that any work in excess of eight hours in one workday and any work in excess of forty hours in any one work week must be compensated at the rate of no less than one and one-half times the regular rate of pay.

Plaintiff and similarly situated employees worked without being appropriately compensated for the total hours they worked when they skipped meal and rest breaks or worked more than eight hours in a shift. As a result of Defendant's failure to pay all wages owed in violation of these sections of the Labor Code, in addition to other remedies, Plaintiff will seek to recover all civil penalties available for these violations including, but not limited to, penalties available under Labor Code §§ 203, 210, 1194, and 1197.1.

3. Defendant's Failure to Pay Overtime Wages (Labor Code §§ 204, 510, 1198)

Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission ("IWC") or under conditions prohibited by IWC Wage Orders. Under Labor Code § 1199, it is a misdemeanor for an employer to cause an employee to work under conditions of labor prohibited by the IWC. IWC Order No. 5, which applies to Decedent's employment, provides for payment of overtime wages equal to 1.5 times an employee's regular rate of pay for all hours worked in excess of 8 hours in a day or 40 hours in a work week or, in certain circumstances, 2 times an employee's regular rate of pay. Labor Code § 510 also defines a day's work as 8 hours and states that any work in excess of 8 hours in a workday and any work in excess of 40 hours in a work week must be compensated at the rate of no less than 1.5 times the regular rate of pay.

Plaintiff alleges Decedent and other similarly situated employees worked for more than 8 hours in a day and more than 40 hours in a week but was denied overtime compensation at 1.5 times his regular rate of pay. Defendant's failure to pay overtime wages is in violation of Labor Code §§ 510, 1194, and 1198.

4. Defendant's Failure to Properly Report Pay (Labor Code §§ 226, 1174)

Plaintiff alleges that Defendant did not provide accurate pay stubs indicating the hours worked or the wages paid for the hours worked. In addition, based on fraudulent reporting of hours worked and wages paid, inaccurate information regarding state and federal deductions were provided to employees. This failure is in violation of Labor Code §§ 226 and 1174. As such, Plaintiff will seek to recover all civil penalties available under the Labor Code for these violations.

5. Failure to Reimburse (Labor Code §§ 224 & 2802)

Throughout their employment Sam and similarly situated employees incurred

expenditures or losses related to their employment and in direct consequence of the discharge of their duties as Defendant's employees, or of their obedience to the directions of Defendant. Defendant failed to reimburse or indemnify Sam and other similarly situated employees for these expenditures or losses, including but not limited to Sam's costs for his cellular phone and services used for business purposes. Sam and other similarly situated employees are entitled to reimbursement of the incurred expenses and Defendant has violated Labor Code §§ 224 & 2802.

6. Defendant's Requirement of the Execution of Release of Claim or Right on Account of Wages Due (Labor Code § 206.5)

Labor Code Section 206.5 provides, in pertinent part:

- (a) An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. [...]
- (b) For purposes of this section, "execution of a release" includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false.

Plaintiff alleges that Defendant violated Labor Code § 206.5 by requiring employees to sign agreements waiving meal and rest breaks as a condition of continued employment. Decedent and other similarly situated employees were required to accept false pay statements in order to receive payment for work and continue employment by Defendant. Decedent was purportedly required to affirm that he had been paid in full for all labor and services, even though he regularly worked well in excess of 8 hours per day or 40 hours per week entitling him to significant additional compensation.

Plaintiff alleges that Defendant's conduct violated the Labor Code and Plaintiff will seek to recover all civil penalties available under the Labor Code for these violations.

7. Defendant's Waiting Time Penalties (Labor Code §§ 201, 202, 203)

Labor Code §§ 201 and 202 require Defendant to pay employees all wages due immediately at the time of discharge, layoff or resignation made with at least 72 hours' notice and, within 72 hours of resignation made without 72 hours' notice. Labor Code § 203 further provides that if any employer willfully fails to pay compensation promptly upon discharge, as required by §§ 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 workdays.

Since at least 2021, Defendant has failed to pay all earned wages to aggrieved employees during their employment with Defendant. In addition, beginning in at least 2021, aggrieved employees have been discharged, laid off or have resigned without being paid all wages due and owed. As a consequence of Defendant's willful failure to pay wages due to each such employee following separation from employment as required by Labor Code §§ 201 and 202, Plaintiff whose employment ended prior to the date of the initial filing of this action and continuing through the date of its final disposition is entitled to recover from Defendant an additional sum as

a penalty, pursuant to Labor Code § 203, equal to 30 days' wages per person plus interest for each employee who separated from employment with Defendant, in amounts according to proof at trial.

8. **Failure to Provide Safe and Healthful Workplace (Labor Code §§ 6400, 6401, 6403, 6405)**

Labor Code § 6400 mandates that: "Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein." Section 6403 provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees.

Defendant failed to provide class members with a safe and healthful workplace because of the demands imposed by Defendant. Defendant pressured and coerced employees into working long hours without pay, resulting in an environment injurious to the mental and physical health of its employees in violation of the Labor Code.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions regarding Plaintiff's allegations or their intent to seek leave to assert these claims.

Respectfully yours,



Shounak S. Dharap

cc: **Via Certified Mail**

Dexterity Inc.
1205 Veterans Blvd
Redwood City CA 94063