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LLP

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March 20, 2025

VIA PAGA ONLINE FILING

Secretary Stewart Knox
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

Caliber Holdings, LLC
c/o Amanda Garcia
330 N. Brand Blvd.
Glendale, CA 91203

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Re: Notice pursuant to Labor Code Section 2699 et seq.
Labor Code Private Attorneys General Act ("PAGA")

Employers: Caliber Holdings, LLC

Employee: Hector Martinez, on behalf of himself and on behalf of all current and former similarly situated non-exempt California employees of Caliber Holdings, LLC.

Dear Secretary Knox:

Pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee Hector Martinez ("Plaintiff"), on behalf of himself and all other similarly situated current and former non-exempt employees Caliber Holdings, LLC ("Defendant") who worked in Defendant's vehicle repair centers in California, alleges that Defendant violated the California Labor Code throughout Plaintiff's employment and within the one year prior to the mailing of this letter.

15300 Ventura Boulevard, Suite 207, Sherman Oaks, California 91403

General Facts

During the relevant one year period before the date Plaintiff submitted this letter to the Labor & Workforce Development Agency (“LWDA”), Plaintiff worked for Defendant as a non-exempt hourly paid technician at Defendant’s vehicle repair center in Tracy, California. Defendant employed Plaintiff from approximately October 2023 to on or about January 24, 2025.

Defendant is a Delaware limited liability company that repairs and restores automobiles after vehicular collisions throughout California.

Plaintiff seeks civil penalties on behalf of himself, the State of California, and all other similarly aggrieved California employees for the violations described herein.

Unpaid Minimum and Overtime Wages

Throughout Plaintiff’s employment, Defendant employed Plaintiff and other similarly aggrieved employees subject to Labor Code Sections 510, 512, 1194, 1197, 2802 and the applicable Industrial Welfare Commission Wage Orders, including Wage Order 1-2001. Under Labor Code Section 1197 and subsection 4 of Wage Order 1, Plaintiff and other similarly aggrieved employees were entitled to receive minimum wages for all hours worked. Likewise, Section 3 of Wage Order 1-2001 entitled Plaintiff and other similarly aggrieved employees to overtime wages for all hours worked over 8 hours per day or 40 hours per week. Defendant failed to pay all wages for all hours worked in violation of Labor Code Sections 1194 and 1197 and Wage Order 1-2001.

Defendant’s violations of the applicable Wage Orders constitute a violation of Labor Code Section 558, which imposes civil penalties upon an employer for violations of any provisions regulating hours and days of work in any order of the IWC. Labor Code Section 558(a)(1), (2). Defendant’s violations of Wage Order 1-2001 (3) and (4) also constitute violations of Labor Code Sections 1198 and 1199, which prohibit employment under conditions of labor that violate the IWC Wage Orders and subject Defendant to additional civil penalties. See Wage Order 1-2001(20).

As detailed below, Defendant suffered and permitted Plaintiff and other similarly aggrieved employees to perform work related tasks without compensating Plaintiff and other similarly aggrieved employees for all time worked.

Projected Hours Caps and Deductions

Throughout Plaintiff’s employment with Defendant, Plaintiff and other similarly aggrieved employees were required to perform work for the projects that Defendant assigned. On information and belief, Defendant determined the projected hours of labor that it would take to complete each project (based on Defendant’s estimate). Plaintiff and similarly aggrieved

employees were required to complete projects even if doing so took longer than Defendant's estimated projected hours. Although Defendant's timekeeping system captured the hours that Plaintiff and other similarly aggrieved employees actually worked (including the time in excess of projected hours to complete projects), Defendant did not pay Plaintiff and other similarly aggrieved employees for all hours worked.

In addition, even at times when Plaintiff and other similarly aggrieved employees completed a project within Defendant's estimated projected hours, Defendant would deduct hours if an insurance carrier denied coverage for the full projected time. Thus, Defendant did not pay Plaintiff and other similarly aggrieved employees for hours worked in excess of those covered by the insurance carrier.

On-Duty Meal Periods

Due to the volume of work assigned by Defendant, Plaintiff and other similarly aggrieved employees had to regularly work through their meal periods. When this happened, Plaintiff and other similarly aggrieved employees were required to clock out and continue working and clock back in after thirty minutes had passed. Plaintiff and other similarly aggrieved employees were not paid for the time that Defendant required that they work off the clock.

As Defendant failed to pay all overtime wages (and minimum wages when applicable), Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period and \$200 per pay period for each additional violation.

Rest Period Violations

Throughout Plaintiff's employment, Defendant failed to provide, authorize, and/or permit to Plaintiff and other similarly aggrieved employees rest periods that complied with California law.

California law requires that employers must authorize and permit non-exempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. Wage Order 1-2001(12). The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029.)

Further, Labor Code Section 226.7 provides that if an employer fails to provide an employee a rest period in accordance with state law, including an order of the IWC, the employer must pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Lab. Code § 226.7(c)

Due to the volume of work assigned, Plaintiff and other similarly aggrieved employees almost never had the opportunity to take an uninterrupted rest break of at least 10 minutes. When this occurred, Defendant did not provide time later in the shift for the employees to make up the missed rest period and did not compensate them for the missed 10 minutes of rest time as required by Wage Order 1-2001(12) and Labor Code Section 226.7. Defendant's violation of Wage Order 1-2001(12) constitute violations of Labor Code Section 1198, which prohibits employment under conditions of labor that violate the IWC Wage Orders.

As Defendant failed to provide rest breaks in compliance with California law and did not pay the required break premiums when such violations occurred, Defendant is liable for penalties of \$100 per pay period for the first violation \$200 per pay period for each subsequent violation

Meal Period Violations

During Plaintiff's employment, Defendant regularly failed to provide, authorize and/or permit Plaintiff and other similarly aggrieved employees with meal periods that complied with California law.

Pursuant to Labor Code Sections 226.7 and 512, and the applicable IWC Wage Orders, including Wage Order 1, Plaintiff and other similarly aggrieved California employees were entitled to an uninterrupted meal period of at least 30 minutes for each workday they worked more than 5 hours in any workday. Additionally, "[i]f an employer fails to provide an employee a meal... period in accordance with state law, ..., the employer shall the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period... is not provided." Wage Order 1-2001(11); see also Lab. Code § 226.7(c) ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with state law, ..., 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."). Defendant's violation of the applicable IWC Wage Orders, including Wage Order 1, constitutes a violation of Labor Code Section 558, which imposes civil penalties upon an employer for a violation to any provision regulating hour and days of work in any order of the IWC. Lab. Code § 558(a)(1), (2).

As stated above, during the relevant period, Plaintiff and other similarly aggrieved employees were frequently required to clock out for a meal period but continue working. When this happened, Plaintiff and other similarly aggrieved employees were not provided the opportunity to make up their meal period at a later time. In the rare occasions when Plaintiff and other similarly aggrieved employees did have the opportunity to take a meal break, it was often after the fifth hour of work. Defendant did not pay Plaintiff and other similarly aggrieved California employees with an additional hour of pay when such violations occurred.

As Defendant failed to provide lawful meal breaks and to pay meal period premiums as required by California law when such violations occurred, Defendant is liable for civil penalties in the amount of \$100 per aggrieved employee per pay period for the first meal period violation and \$200 per aggrieved employee per pay period for each subsequent meal period violation.

Failure to Reimburse Business Expenses

Pursuant to California Labor Code Section 2802:

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...

Throughout Plaintiff's employment, Defendant required Plaintiff and other similarly aggrieved employees to upload pictures of the vehicles they were working on to the CCCOne mobile application in order to track their progress. To do this, Plaintiff had to use his personal cellphone as there was no company device available for Plaintiff to access the CCCOne application. Defendant did not reimburse Plaintiff for the use of his personal cellphone for business purposes.

As Defendant failed to reimburse Plaintiff and other similarly aggrieved employees for business expenses they incurred for using their personal cellphones in violation of Section 2802, Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Inaccurate Wage Statements

Labor Code Section 226(a) requires employers to furnish accurate itemized wage statements in writing that show, inter alia, "(1) gross wages earned, (2) the total hours worked..."

Plaintiff and similarly aggrieved California employees of Defendant received wage statements that did not list all wages earned, including the minimum, overtime, and premium wages discussed above and the total hours worked. As the above infractions explain, Plaintiff and similarly aggrieved employees were entitled to overtime, minimum or premium wages that were not paid and, therefore, are entitled to penalty payments pursuant to Labor Code Section 226. Furthermore, the wage statements of Plaintiff and other similarly aggrieved employees do not accurately reflect all hours worked.

As Defendant violated Labor Code Section 226(a), Defendant is liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Unpaid Final Wages

Plaintiff and others similarly aggrieved have ceased their employment with Defendant. Upon the cessation of that employment relationship (and as prescribed by statute), they did not receive all wages owed. Namely, said former employees did not receive all minimum, overtime and premium wages owed to them on the date of termination. Therefore, Defendant has violated and continues to violate Labor Code Sections 201, 201.3 and 202, because even if Defendant pays employees timely, Defendant has not paid the aforementioned wages.

Likewise, Defendant has violated Section 203 by not paying the waiting time penalties for failure to comply with Sections 201 and 202. Pursuant to Labor Code Section 203, Plaintiff and other similarly aggrieved individuals are entitled to continuation of their wages, from the day of each discharge they experienced until the wages were paid, up to a maximum of thirty (30) days per discharge.

Civil Penalties

As a result of the foregoing, Defendant is liable for civil penalties as provided for by California law. Consequently, Plaintiff and all other aggrieved employees of Defendant in California are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Defendant violated and continues to violate the California law as described above. Plaintiff requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. If Defendant fails to cure those alleged curable violations, Plaintiff requests that the agency inform him if it does not intend to investigate these violations so that he may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,
MOSS BOLLINGER, LLP



Jeremy F. Bollinger