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March 12, 2025

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.govfa.net/308)

Subject: *Jose Lechuga v. Del West Engineering, Inc.*

Dear PAGA Administrator:

This office represents Jose Lechuga in connection with his claims under the California Labor Code. Mr. Lechuga was an employee of DEL WEST ENGINEERING, INC. ("DEL WEST").

The employer may be contacted directly at the address below:

DEL WEST ENGINEERING, INC.
28128 LIVINGSTON AVE
VALENCIA, CA 91355

Mr. Lechuga intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Lechuga seeks relief on behalf of himself, the State of California, and other persons who are or were employed by DEL WEST as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

DEL WEST employed Mr. Lechuga as an hourly paid, non-exempt employee from approximately March 2008 to March 2024. Mr. Lechuga worked for DEL WEST as a Robot operator, Machine Operator, Polisher, Tumbler, CRN Coating helper, and/or Tumble Operator at its facilities in Valencia, California. During her employment, Mr. Lechuga typically worked ten (10) hours or more per day and four (4) to five (5) days or more per week. By the end of his employment, Mr. Lechuga was compensated approximately $25.36 per hour. His job duties included, without limitation, operating robotic machinery for polishing the stems of high-performance engine valves, completing XRF certification processes, and maintaining the cleanliness of his work area.

DEL WEST committed each of the following Labor Code violations against Mr. Lechuga, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1): [1]

DEL WEST's Company-Wide and Uniform Payroll and HR Practices

DEL WEST ENGINEERING, INC. is California limited liability company that designs high-precision mechanical products for the racing, high-performance serial vehicle, watchmaking, and aerospace markets, with at least two (2) facilities in California. Upon information and belief, DEL WEST maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Valenica, California, for all non-exempt, hourly paid employees working for DEL WEST in California, including Mr. Lechuga and other aggrieved employees. At all relevant times, DEL WEST issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Lechuga and other aggrieved employees, regardless of their location or position.

Upon information and belief, DEL WEST maintains a centralized Payroll department at its corporate headquarters in Valencia, California, which processes payroll for all non-exempt, hourly paid employees working for DEL WEST in California, including Mr. Lechuga and other aggrieved employees. Further, DEL WEST issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Lechuga and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, DEL WEST utilized the same methods and formulas when calculating wages due to Mr. Lechuga and other aggrieved employees in California.

Violation of California Labor Code §§ 510, 511, and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

California Labor Code section 511 and the applicable IWC Wage Order allow employers, with the employees' approval, to offer an alternative workweek schedule that authorizes employees to work no more than ten (10) hours per day and forty (40) hours per week without receiving overtime compensation. An alternative workweek schedule must pay the employees overtime at one and one-

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[1] These facts, theories, and claims are based on Mr. Lechuga's experience and counsel's review of those records currently available relating to Mr. Lechuga's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Lechuga reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

half times their regular hourly rate for work in excess of ten (10) hours per day or forty (40) hours per week. Overtime must be paid at twice the employees' regular hourly rate for work in excess of twelve (12) hours a day. Labor Code 511 and the applicable IWC Wage order further provide that an employer may not implement an alternative workweek schedule unless at least two-thirds of the affected employees approve the schedule through a secret ballot election, and the results must be reported to the California Division of Labor Standards Enforcement within 30 days after the results are final.

DEL WEST willfully failed to pay all overtime wages owed to Mr. Lechuga and other aggrieved employees. During the relevant time period, Mr. Lechuga and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, DEL WEST had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Lechuga and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime led Mr. Lechuga and other aggrieved employees to work off-the-clock outside of their scheduled shift times. For example, approximately three (3) times per week, Mr. Lechuga was required to engage in discussions with DEL WEST's Team Leaders regarding work-related matters. These discussions, which lasted approximately 3-4 minutes, occurred after Mr. Lechuga had already clocked out.

Second, during the relevant time period, DEL WEST provided Mr. Lechuga and other aggrieved employees with a limited number of timekeeping terminals at its facilities, which impeded their ability to clock in at the start of their shifts and resulted in Mr. Lechuga and other aggrieved employees having to wait in line off-the-clock and under DEL WEST's control, time for which they were paid. For instance, DEL WEST provided Mr. Lechuga and other aggrieved employees who worked at its facility on Hancock Parkway in Valencia, California with only five (5) timekeeping terminals for them to clock in for a shift, thus forcing Mr. Lechuga and other aggrieved employees to wait in line off-the-clock. For example, Mr. Lechuga would be ready to clock in for the start of his shifts, but was required to wait in a line of 4-5 employees before being able to clock in. Moreover, employees from the prior shift also used these same five (5) timekeeping terminals to clock out, further contributing to delays and more time spent waiting in line off-the-clock. Thus, DEL WEST failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Lechuga and other aggrieved employees received no compensation for this time.

Third, DEL WEST had, and continues to have, company-wide policies and/or practices of understaffing its facilities while assigning heavy workloads, including pressuring employees to ensure the continuous operation of machinery and meet production deadlines and goals. DEL WEST's policies and/or practices resulted in a failure to provide Mr. Lechuga and other aggrieved employees with adequate meal period coverage, and thus, Mr. Lechuga and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Also, DEL WEST has systematically, and on a company-wide basis, understaffed its facilities by adopting a single-staffing model for some positions, such as Robot Operator, whereby only one (1) employee was scheduled to work at a time, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. For example, at least three (3) times per week, Mr. Lechuga's meal periods were interrupted by DEL WEST's Team Leaders requiring that he immediately return to the work area to reset any of the four

(4) robotic machines Mr. Lechuga was responsible for overseeing, should any of them momentarily stop for any reason. Consequently, Mr. Lechuga and other aggrieved employees were required to work through their meal periods and/or had their meal periods interrupted or cut short in order to complete their assigned duties, time for which they were not paid.

Fourth, on information and belief, DEL WEST maintained a company-wide on-premises meal period policy, which mandated that Mr. Lechuga and other aggrieved employees remain on its facility premises during their unpaid meal periods. Because Mr. Lechuga and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Mr. Lechuga and other aggrieved employees were unable to run personal errands because they were unable to leave the work premises. Thus, DEL WEST effectively maintained control over Mr. Lechuga and other aggrieved employees during their unpaid meal periods.

Fifth, DEL WEST had, and continues to have, a company-wide policy and/or practice of failing to pay proper overtime when it required Mr. Lechuga and other aggrieved employees to work outside of their regularly scheduled alternative workweek schedule and failed to pay all applicable overtime and/or double-time compensation owed for such hours of work. In addition, to the extent DEL WEST implemented an alternative workweek schedule as to Mr. Lechuga and other aggrieved employees, DEL WEST failed to comply with all requirements for implementing an alternative workweek schedule, including, but not limited to, holding proper workweek elections for the employees working alternative workweeks. Moreover, DEL WEST deviated from the scheduled alternative workweek schedule so frequently, and much more than occasionally, such that the alternative workweek schedule could not be seen as regularly reoccurring, and is therefore invalid. Additionally, Mr. Lechuga and other aggrieved employees often failed to receive two (2) consecutive days off each workweek as required by the applicable IWC Wage Order in order for there to be a valid alternative workweek schedule. Accordingly, DEL WEST owe Mr. Lechuga and other aggrieved employees unpaid overtime wages.

DEL WEST knew or should have known that as a result of these company-wide practices and/or policies, Mr. Lechuga and other aggrieved employees were performing their assigned duties off-the-clock outside of their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Lechuga and other aggrieved employees worked shifts of eight (8) hours or more a day and/or ten (10) hours or more per day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Lechuga and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, DEL WEST did not pay Mr. Lechuga and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, DEL WEST paid Mr. Lechuga and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, DEL WEST failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Lechuga and other aggrieved employees worked overtime and received these other forms of pay, DEL WEST failed to pay all overtime wages by paying a lower overtime rate than required.

For example, DEL WEST paid Mr. Lechuga and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Lechuga's and other aggrieved employees' wage statements as "Bonus." During pay periods that Mr. Lechuga and other aggrieved employees were paid overtime wages, DEL WEST did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Lechuga's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, DEL WEST paid Mr. Lechuga and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. DEL WEST's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Lechuga and other aggrieved employees on a company-wide basis.

DEL WEST's failure to pay Mr. Lechuga and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510, 511, and 1198. Mr. Lechuga and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DEL WEST into compliance with the applicable IWC Wage Order and Labor Code sections 510, 511, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. Tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, as a result of DEL WEST's policy of limiting the amount of overtime employees could accrue, DEL WEST required Mr. Lechuga and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, such as engaging in discussions with DEL WEST's Team Leaders regarding work-related matters, and waiting in a line of employees to clock in at an inadequate number of timekeeping terminals. DEL WEST failed to track this time that Mr. Lechuga and other aggrieved employees spent working off-the-clock, and Mr. Lechuga and other aggrieved employees received no compensation for this time.

As also stated, due to DEL WEST's policies and/or practices of understaffing and/or single-staffing its facilities while assigning heavy workloads, including pressuring employees to ensure the continuous operation of machinery and meet production deadlines and goals, and requiring employees to remain on work premises during meal periods, Mr. Lechuga and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

DEL WEST did not pay at least minimum wages for all hours worked by Mr. Lechuga and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, DEL WEST did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, DEL WEST regularly failed to pay at least minimum wages to Mr. Lechuga and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Lechuga and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DEL WEST into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

First, as stated, DEL WEST had, and continues to have, company-wide policies and/or practices of understaffing its facilities, including single-staffing certain positions such as Robot Operator, while assigning heavy workloads, including pressuring employees to ensure the continuous operation of machinery and meet production deadlines and goals, which has resulted in a lack of meal period coverage and prevented Mr. Lechuga and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled.

As a result, Mr. Lechuga and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, at least three (3) times per week, Mr. Lechuga's meal periods were interrupted by DEL WEST's Team Leaders requiring that he immediately return to the work area to reset any of the four (4) robotic machines Mr. Lechuga was responsible for overseeing, should any of them momentarily stop for any reason.

Second, as stated above, on information and belief, during the relevant time period, DEL WEST maintained and implemented a company-wide on-premises meal period policy for employees, which mandated that Mr. Lechuga and other aggrieved employees, on threat of discipline, remain on the work premises during their meal periods. Because Mr. Lechuga and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, DEL WEST effectively maintained control over Mr. Lechuga and other aggrieved employees during meal periods.

Third, DEL WEST did not provide Mr. Lechuga and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, on days where Mr. Lechuga worked in excess of 10 hours in one day, he was not provided with a second meal period. Mr. Lechuga and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties. To the extent DEL WEST required Mr. Lechuga and other aggrieved employees to sign written "on-duty" meal period agreements, such agreements are invalid as the nature of the work performed by Mr. Lechuga and other aggrieved employees and do not necessitate an "on-duty" meal period under California law.

At all times herein mentioned, DEL WEST knew or should have known that, as a result of these policies, Mr. Lechuga and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. DEL WEST further knew or should have known that DEL WEST did not pay Mr. Lechuga and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Moreover, DEL WEST engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Lechuga and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that DEL WEST did pay Mr. Lechuga and other aggrieved employees for missed, late, interrupted, and shortened meal periods, DEL WEST did not pay Mr. Lechuga and other aggrieved employees at the correct rate of pay for premiums because DEL WEST systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, DEL WEST failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Lechuga and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DEL WEST into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

<u>Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods</u>

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, DEL WEST regularly failed to authorize and permit Mr. Lechuga and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, DEL WEST's company-wide practices, including understaffing and/or single-staffing while assigning heavy workloads, prevented Mr. Lechuga and other aggrieved employees from being relieved of all duty to take rest periods.

Furthermore, DEL WEST maintained a company-wide on-premises rest period policy, which mandated that Mr. Lechuga and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Lechuga and other aggrieved employees were restricted from leaving DEL WEST's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, DEL WEST effectively maintained control over Mr. Lechuga and other aggrieved employees during rest periods.

As a result of DEL WEST's practices and policies, Mr. Lechuga and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, about three (3) times per week, Mr. Lechuga's rest periods were interrupted by DEL WEST's Team Leaders requiring that he immediately return to the work area to reset any of the four (4) robotic machines Mr. Lechuga was responsible for overseeing, should any of them momentarily stop for any reason.

DEL WEST also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Lechuga and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that DEL WEST did pay Mr. Lechuga and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, DEL WEST did not pay Mr. Lechuga and other aggrieved employees at the correct rate of pay for premiums because DEL WEST failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, DEL WEST failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Lechuga and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DEL WEST into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

<u>Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records</u>

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. DEL WEST has not provided Mr. Lechuga and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, DEL WEST has knowingly and intentionally provided Mr. Lechuga and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DEL WEST issued uniform wage statements to Mr. Lechuga and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, DEL WEST violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because DEL WEST did not record the time Mr. Lechuga and other aggrieved employees spent working off-the-clock and deducted time for their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), DEL WEST did not list the correct amount of gross wages and net wages earned by Mr. Lechuga and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, DEL WEST failed to accurately list the total number of hours worked by Mr. Lechuga and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Moreover, because DEL WEST did not calculate Mr. Lechuga's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, and/or meal and rest period premiums, DEL WEST did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, DEL WEST failed to list the correct amount of net wages in violation of section 226(a)(5). DEL WEST also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), DEL WEST willfully failed to maintain accurate payroll records for Mr. Lechuga and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, DEL WEST engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Lechuga and other aggrieved employees, in violation of section 1198. Also, in light of DEL WEST's failure to provide Mr. Lechuga and other aggrieved employees with second 30-minute meal periods to which they were entitled, DEL WEST kept no records of meal start and end times for second meal periods.

Because DEL WEST failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Lechuga and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Lechuga and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Lechuga and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DEL WEST into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

<u>Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment</u>

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, DEL WEST failed to pay Mr. Lechuga and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Lechuga and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DEL WEST into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, DEL WEST had a company-wide practice and/or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Lechuga provided DEL WEST with a two-week notice of his intent to resign from his employment, and his last day of work was March 21, 2024. However, on information and belief, DEL WEST did not provide Mr. Lechuga with his final wages until March 27, 2024. Thus, DEL WEST failed to pay Mr. Lechuga his final wages within the requisite time limit, in violation of California Labor code section 202.

In addition, DEL WEST willfully failed to pay Mr. Lechuga and other aggrieved employees who are no longer employed by DEL WEST the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving DEL WEST's employ.

Mr. Lechuga and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DEL WEST into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, DEL WEST, on a company-wide basis, required that Mr. Lechuga and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Lechuga was required to use his personal cellular phone and/or mobile data to communicate with DEL WEST's engineering employees to troubleshoot issues with robotic machinery, often having to take and send pictures to them. Although DEL WEST required Mr. Lechuga and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, DEL WEST failed to reimburse them for their costs incurred.

Additionally, during the relevant time period, DEL WEST required Mr. Lechuga and other aggrieved employees to wear special safety shoes such as steel-toed boots, which they were required to wear while at work and necessary for the performance of their duties. For example, Mr. Lechuga spent approximately $200 per year during his employment on steel-toed boots, but he was not reimbursed for these costs. Thus, DEL WEST failed to provide or reimburse Mr. Lechuga and other aggrieved employees for the steel-toed boots they required employees to wear during their shifts.

DEL WEST could have provided Mr. Lechuga and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and steel-toed boots, or DEL WEST could have reimbursed employees for the costs of their mobile device usage and supplies and/or boot expenses. Instead, DEL WEST passed these operating costs onto Mr. Lechuga and other aggrieved employees. At all relevant times, Mr. Lechuga did not earn at least two (2) times the minimum wage.

Thus, DEL WEST had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Lechuga and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DEL WEST into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid . . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid . . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." DEL WEST, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Lechuga's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Lechuga seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and 558, Mr. Lechuga, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against DEL WEST for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 511, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Lechuga seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Alexander Lima

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