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April 18, 2025

Notice Via Online Submission

PAGA Administrator
California Labor and Workforce Development Agency

Via Certified Mail (Return Receipt Requested)

Xylem Services USA LLC
10 Bank St., Suite 1202
White Plains, NY 10606

Evoqua Water Technologies LLC
c/o CT Corporation System
Agent for Service of Process
330 Brand Blvd., Suite 700
Glendale, CA 91203

Xylem Inc.
c/o CT Corporation System
Agent for Service of Process
330 N. Brand Blvd., Suite 700
Glendale, CA 91203

Re: ***PAGA Letter – Ryan Clay v. Xylem Services USA LLC; Evoqua Water Technologies LLC; Xylem Inc.***

Dear PAGA Administrator:

Please be advised that Bartz Law Group, APC and United Employees Law Group represent Ryan Clay and all other similarly situated aggrieved employees ("Plaintiffs") with respect to their employment in California with Xylem Services USA LLC, Evoqua Water Technologies LLC, and Xylem Inc. (collectively, "Employer").

Employer has committed numerous violations of the California Labor Code, including, but not limited to, sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, and 1198.5. The facts and theories to support the alleged violations are set forth herein.

Employer owns and operates a water technology company operating throughout California. Plaintiff Clay worked as a non-exempt employee for Employer between September 2024 and March 2025. Plaintiffs worked for Employer in California within the last year, and were subject to the same wage and hour violations as Plaintiff Clay.

A. Failure to Pay All Wages

Employer has regularly failed to pay Plaintiff Clay and all other aggrieved employees all wages that they are owed, including pre-shift and post-shift time required to complete their work and overtime compensation, based upon Employer's policy and practice of requiring Plaintiffs to work off-the-clock. For example, Plaintiffs were required to review and respond to company emails, and perform pre-trip and post-trip inspections, and other uncompensated time. Based on its policies and practices, Employer coerces Plaintiffs to perform work before clocking in, and after clocking out for the day, without compensation. Employer also fails to include all non-discretionary compensation in Plaintiffs' regular rate of pay, thus further failing to pay all wages owed. As such, Employer is in violation of Labor Code §§ 226.7, 510 and 1194.

Labor Code § 204(a) provides in pertinent part that "[a]ll wages, other than those mentioned in [Labor Code] Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month." Pursuant to Labor Code § 204(b)(1), moreover, "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." Here, Employer did not pay Plaintiffs' all wages owed in a timely manner, based on the allegations above, thereby violating Labor Code § 204.

B. <u>Meal Breaks</u>

Employer adopted, implemented and enforced uniform meal period policies that are not lawful under California law. Employer is required to provide a first meal period no later than the end of the 5th hour of work, and a second meal period no later than the end of the 10th hour of work. Because of Employer's policies and procedures, Plaintiffs' meal periods often were late, missed, or short, because Plaintiffs were required to complete their jobs before taking their required meal period. Employer set quotas for completing jobs, which required Plaintiffs to frequently work through their meal periods, and even when getting their meal period, Plaintiffs are often interrupted and/or otherwise meal periods are taken while Plaintiffs are still attending to their work activities, and as such, the meal periods are not duty-free.

Employer has also failed to pay Plaintiffs one hour of pay at their regular rate of pay for each workday that a compliant meal period was not provided. As such, Employer has violated Labor Code §§ 226.7 and 512.

C. <u>Rest Breaks</u>

Employer failed to adopt, implement, or enforce a rest break policy that complied with California law. Employer failed to authorize and permit Plaintiffs to take duty-free rest periods of 10 minutes for every four hours worked or major fraction thereof, by requiring Plaintiffs to regularly work through their rest periods to complete their duties. Moreover, Employer imposed obstacles to taking of rest periods, including restricting Plaintiffs from taking their rest periods because they were not allowed to leave the premises to take rest periods, and otherwise discouraging the taking of rest periods. Moreover, because of the nature of their jobs, rest periods could not be taken timely or at all. As a result of Employer's lack of a rest break policy that complies with California law, Employer has violated Labor Code section 226.7.

Employer also failed to pay Plaintiffs one hour of pay at their regular rate of pay for each workday that a compliant rest period was not authorized or permitted. As such, Employer has violated Labor Code §§ 226.7 and 512.

D. <u>Illegal Rounding</u>

Employer further adopted, implemented and enforced a uniform policy and practice of rounding down hours worked by Plaintiffs, so that during the course of their employment, Plaintiffs were paid far less than they would have been had they been paid for actual recorded time. As a result, Employer has violated Labor Code §§ 204, 218, 510, 1194, 1194.2, 1197, and 1198, as a result of the unlawful rounding policies.

E. <u>Wage Statement Violations</u>

In conjunction with the above-referenced violations, Employer willfully failed to provide properly itemized wage statements to Plaintiffs pursuant to Labor Code section 226. Violations include, but are not limited to: an inaccurate showing of wages due and owing, failing to include gross wages earned as a result of not showing the correct meal and rest period premium payments on Plaintiffs' paystubs, failing to show all hourly rates in effect and the corresponding number of hours at each hourly rate, and failing to maintain accurate payroll and itemized wage statements. The failure to provide accurate itemized wage statements violates Labor Code § 226 and 1174.

F. <u>Waiting Time Penalties</u>

Employer willfully failed and refused to timely pay all compensation due and owing to Plaintiffs whose employment was terminated during the relevant time period, by failing to pay overtime, straight time and minimum wages for all hours worked, and failing to pay Plaintiffs for an extra hour at the regular rate of pay because Employer failed to provide compliant meal and rest periods. As such, Employer is liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code §§ 201, 202, and 203.

<u>CONCLUSION</u>

Pursuant to Labor Code Section 2699.3, the undersigned, on behalf of Plaintiff Ryan Clay and other aggrieved employees, are providing written notice of the alleged Labor Code violations. Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Plaintiffs intend to pursue their claims under PAGA in a representative action lawsuit. Please also consider this letter as providing notice on behalf of other similarly aggrieved employees working for Employer, that were subject to the same Labor Code violations described above.

Employer must preserve any and all evidence relating to Plaintiff Clay's employment. This letter constitutes notice and a demand to preserve evidence under *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 12. In particular, please maintain all video and audio recordings of Plaintiff Clay, all information in his files and in any computer system, including but not limited to hard files, computer or digital files, Outlook folders, direct messages, Teams, Zoom and/or Slack messages, archives, e-mails, office applications, calendars, faxes, tasks, project files, and any other files, drives, and information. Employer may have relevant evidence including e-mail and draft documents stored in electronic or digital form, which must be preserved.

Please note that litigants owe an "uncompromising duty to preserve" what they know or reasonably should know may be relevant evidence in a pending lawsuit. *Kronisch v. United States* (2nd Cir. 1998) 150 F.3d 112, 126-127, 130; *Mathias v. Jacobs* (Fed. Cir. 1996) 197 F.R.D. 29, 37; *Reeves v. MV Transportation, Inc*. (2010) 186 Cal.App.4th 666, 681. The duty to preserve exists when a party "is on notice that documents and information in its possession are relevant to litigation, or potential litigation, or are reasonably calculated to lead to the discovery of admissible evidence."

Kronisch, *supra*, at 126-127; *Wm. T. Thompson Co. v. General Nutrition Corp., Inc.* (C.D. Cal. 1984) 593 F. Supp. 1443, 1455. This duty extends to documents that are "relevant in the action, [are] reasonably calculated to lead to the discovery of admissible evidence, [are] reasonably likely to be requested during discovery, and/or [are] the subject of a pending discovery request." *Wm. T. Thompson*, *supra*, at 1455.

Should you have any questions with respect to the above, please do not hesitate to contact the undersigned.

Very truly yours,

BARTZ LAW GROUP, APC

/s/ Aaron A. Bartz
Aaron A. Bartz